

Chapter 6

Deportable and Not so Deportable: Formal and Informal Functions of Administrative Immigration Detention

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Abstract In most EU countries and the United States, immigration detention is defined as an administrative, non-punitive measure to facilitate expulsion. This chapter argues that immigration detention in the Netherlands serves three informal functions in addition to its formal function as an instrument of expulsion: (1) deterring illegal residence, (2) controlling pauperism and (3) managing popular anxiety by symbolically asserting state control. These informal functions indicate that society has not found a definitive solution for the presence of migrants who are not admitted but are also difficult to expel. The analysis, which is placed against the background of the functions of penal detention, is based on policy documents, survey data, administrative data and fieldwork in a Dutch immigration detention centre.

Introduction

All over Europe new detention centres for immigrants are being or have been built in recent years (Gibney and Hansen 2003; Weber and Bowling 2004; Jesuit Refugee Service 2005; Welch and Schuster 2005; Calavita 2005; De Giorgi 2006; Van Kalmthout et al. 2007). In the United States as well, there has been a 'surge in the numbers of undocumented immigrants incarcerated in county jails, federal prisons and immigration detention centers' (Inda 2006, p. 116; see also Scalia

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2002; Ellermann 2005; Amnesty International 2009). Australia also has a notable capacity to detain asylum seekers and unauthorised migrants (Burke 2008). In other words, detention of 'unwanted' migrants is increasingly part and parcel of the governmental regulation of international immigration.

There are two main types of immigration detention (Hailbronner 2007; Cornillise 2010): (1) pre-admission detention at the border involving foreigners not admitted to the state's territory—in some countries this includes asylum seekers—and (2) pre-expulsion detention of foreigners whose stay in the territory is or has become unauthorised (hereafter: unauthorised migrants). This paper primarily pertains to the second type of immigration detention.

In most European countries, including The Netherlands, the detention of migrants for these migration-related reasons is defined as administrative detention, a detention modality that is formally not a punishment, and does not require a conviction for a crime. It is a matter of administrative and not criminal law. Although law stipulates that it be imposed in the interest of 'public order and national safety',¹ administrative immigration detention is defined as a non-punitive, bureaucratic measure that is meant to enable the enactment of border control: it merely ensures that 'unwanted' migrants can be located and identified and cannot abscond while the expulsion is prepared (cf. Noll 1999, p. 268). Given this rationale, immigration law prescribes that confinement has to be annulled as soon as the migrant's departure has been organised, or if an administrative judge decides that the chances of expulsion are too slim to justify continued detention.²

The question can be raised whether the formal policy framework for administrative immigration detention, in which detention is a non-punitive means to achieve the goal of removing unwanted migrants, constitutes a sufficient explanation for actual detention practices. In this chapter, we will be looking more closely at the case of the Netherlands where it appears that immigration detention serves informal social functions that are not codified in law.

There are three main empirical observations in the Netherlands that warrant an examination of de facto functions of immigration detention. First, the number of expulsions turns out to be relatively independent of the number of migrants who are detained; since the early 1990s up to 2006, there has been a steady increase in the capacity and actual use of immigration detention, while the number of expulsions went down in successive years. It was only after 2007 that expulsions increased again, but this happened in a period when detention figures actually decreased somewhat, mostly as an indirect effect of the EU's enlargements in 2004 and 2007, which legalised many Eastern European migrants overnight. Second, the average length of immigration detention in the Netherlands is reported to be substantially longer in the 2000s compared to the 1990s (Van Kalmthout and

¹ Dutch Alien Law 2000, clause 59.

² Detention may also be annulled when immigration authorities anticipate that an administrative judge will decide to annul, or when the acting immigration officer considers continued detention unlawful.

van Leeuwen 2004a, b). Third, if expulsion procedures fail, immigrants are released from detention, back on the streets. In the informal lingo in the field of immigration detention, this practice has become known as *klinkeren*—which roughly translates into ‘cobbling’, i.e., releasing somebody back onto the cobblestone streets. ‘Cobbled’ detainees are often re-apprehended and detained again in case of continued illegal residence.³ To these practically ‘undeportable deportable immigrants’, the detention system risks becoming a revolving door (Broeders 2009, 2010; Leerkes 2009).

Localisation, identification and documentation of unauthorised migrants are a *sine qua non* for their expulsion (Broeders 2007; Ellermann 2008). No country of origin accepts undocumented returnees. Identification with a view to (re-) documenting an unauthorised migrant, takes place during administrative detention. The observations above indicate that the immigration authorities have great difficulties with the identification of unauthorised migrants who are reluctant to be sent home, hide their legal identity and have destroyed their papers (Broeders 2010). Countries of origin too may be reluctant to co-operate with repatriation. The International Organization for Migration (2008, p. 94), for example, reported that Chinese who have stayed in Western Europe for a longer period of time, “are often not allowed back into China, as Chinese authorities fear that their experience of democracy may make them dangerous.” Thus, identification and compliance by countries of origin are the main bottlenecks of the expulsion procedure.

Because of these apparent irrationalities from the perspective of the official legal framework—why increasingly invest in immigration detention, if it does not lead to more expulsions?—it is worthwhile to explore other explanations for the use of immigration detention. Certain ‘irrational’ practices may make sense for certain actors when looked at through a different lens. As has been said, these alternative perspectives are unlikely to be codified in law. What interests us here are immigration detention’s implicit or informal functions, i.e., the various *de facto* uses that it may have for relevant actors in this social field, such as national and local politicians, policymakers, policemen, immigration judges, and unauthorised migrants.

There is an extensive scientific literature on the functions of penal detention (for overviews see Rychlak 1990; Garland 1991; Carlsmith and Darley 2002). This literature provided the ‘sensitizing concepts’ (Blumer 1954) that helped us identify relevant informal functions of immigration detention. The study’s empirical basis

³ Research by Van Kalmthout and Van Leeuwen (2004, p. 60) suggested that at least 29 % of the administratively detained migrants have been detained repeatedly. The authors base this on the checklist used by the government to record information about the alien, filled in by the local aliens police. Out of 329 respondents who were researched by Van Kalmthout and Van Leeuwen, 95 respondents (29 %) had been previously presented, 13 respondents (4 %) had not and there were no data available for 221 respondents (67 %). Repeated immigration detention is allowed if a year has expired after a former period of detention has ended, or if new facts or circumstances occur that may lead to expulsion.

consisted of policy documents, survey data, administrative data and fieldwork in a Dutch centre for immigration detention.⁴ To some extent, our distinction between formal and informal functions of immigration detention resembles Robert Merton's (1957) classic distinction between 'manifest' and 'latent' functions. Yet, whereas Merton stressed the unintended nature of latent functions, we allow for the possibility that some informal functions of administrative detention may be intended by the actors in that social field—politicians, policymakers, policemen, immigration judges, unauthorised migrants—even if such motives are not formalised in law. Thus, detention practices will be analysed "in relation to specific interests, specific social relations, and particular outcomes—bearing in mind that what is 'functional' from one point of view may be dysfunctional from another" (Garland 1991, p. 126).

In the next section, we briefly describe the main functions of penal detention that emerge from the academic literature. We next describe the main characteristics of administrative immigration detention in the Netherlands. In the remainder of the article we explore three possible informal functions, and present some suggestive evidence for each. These alternatives are (1) deterring illegal residence, (2) controlling the negative external effects of (unauthorised migrant) pauperism and (3) asserting symbolical control over unwanted immigration with a view to upholding popular support and trust in national government.

Functions of Penal Punishment

The social scientific literature argues that, on the one hand, punishment is meant to reduce deviance. Or, to be more precise, it can be said that practices of punishment are functional for the ideology that punishment decreases deviance, as there is considerable scholarly disagreement on the effectiveness of punishment in reducing deviance. This instrumental or utilitarian function of punishment includes notions of deterrence (punishment and the threat of punishment inhibit crime), rehabilitation (prisons re-socialise convicted offenders to prepare for their re-integration in society), and incapacitation (crime levels can be controlled by removing dangerous individuals from society). On the other hand, it is argued that punishment satisfies certain moral needs, regardless of its real or perceived effects on deviance levels. This expressive or deontological function of punishment includes notions of retribution (wrongdoers deserve punishment proportional to the moral wrong committed) and denunciation (law trespassers should be held up to the rest

⁴ Empirical observation is crucial to avoid the fallacy of functionalism, i.e., the idea that practice Y must necessarily be functional for actor Z, given interest X, simply because Y can be expected to exert certain beneficial effects for X. It is desirable to demonstrate these effects empirically, for instance by showing that Z aimed for Y because of X (Levy 1968).

of society and denounced as violators of the rules that define what the society represents (cf. Rychlak 1990, p. 331)).

Admittedly, the functions mentioned are to some extent informal. For example, criminal law and penal law do not state that punishment is meant to deter or incapacitate. Yet, contrary to administrative law, most of the functions mentioned are clearly implied in criminal and penal law, and are widely agreed upon in the legal and penal field.

Many criminologists have noted and debated shifts in penal policies and practices concerning the functions of punishment. Under the headings of the 'new penology' (Feely and Simon 1992) and the 'culture of control' (Garland 2001) scholars have noted that ideals and practices of rehabilitation, which were central to penal practices during the 1960s and 1970s, have gradually given way to stricter and harsher policies that place the emphasis on incapacitation. Although these theories have also met with various critiques (see for example Matthews 2005; Cheliotis 2006; Reiner 2007) the shift from rehabilitation to a focus on incarceration remains a central hypothesis. One of the main indicators for this development has been the rising incarceration rates in Western Europe and North America (Feely and Simon 1992; Wacquant 1999).

Another claim of the new penology is that the net of the penal system has been cast wider. It has begun to target a wider range of 'dangerous' social groups apart from the individual criminal. Or, in the words of De Giorgi (2006, p. 106): '[i]t is not so much the individual characteristics of subjects that are the object of penal control, as instead those social factors which permit to assign some individuals to a peculiar risk-class.' In this way, groups that formerly were in the care of the welfare state or private charities, such as the poor, welfare dependents, and drug addicts are increasingly coming into contact with the penal system.

In this chapter, we will go into the question of whether the development described by the new penology is relevant in the case of unauthorised migrants in the Netherlands, as administrative immigration detention only started in earnest in the early 1990s. This roughly coincides with the period in which the shift from rehabilitation to incapacitation is supposed to have occurred. We will also relate the other functions of punishment to immigration detention practices in the Netherlands.

Immigration Detention in the Netherlands

In the Netherlands, as in many other EU member states, expulsion policies have become more prominent in recent years. Even though expulsion remains in essence a solution of last resort—voluntary departure is certainly preferred over expulsion—it has come to be regarded as the indispensable closing section of any serious restrictive immigration policy, which certainly characterises the Dutch policy with respect to non-EU nationals. In 2003, the Dutch White paper on Return even stated that 'return policy should not be a closing section but rather an integral

part of immigration policy itself' (Minister voor Vreemdelingenzaken en Integratie 2003, p. 5).

In the majority of the EU countries, including the Netherlands, illegal residence is, in itself, not a criminal offence, meaning that there is no ground under criminal law for detention (for a legal study on immigration detention in Europe see Cornellise 2010). The Rutte cabinet—a centre-right minority cabinet in office between October 2010 and April 2012 that was supported by the populist Party for Freedom (*Partij voor de Vrijheid*)—planned to criminalise illegal residence as a misdemeanour, which would be punishable with a €3000 fine, or 3 months of imprisonment. In a smaller group of EU countries,⁵ including Germany, illegal residence is a criminal offence (Van Kalmthout et al. 2007, p. 64). Yet, even in Germany, immigration detention usually is administrative detention and does not take place under criminal law (Dünkel et al. 2007, p. 377).

The allowed length of administrative detention in the Netherlands is long when compared to most other European countries. Whereas in some countries administrative immigration detention is a matter of days, Dutch law had, until recently, no fixed duration (Van Kalmthout et al. 2007, p. 59). In principle, detention could be imposed until expulsion was realised or still remained a possibility. In light of the adoption of the European 'Returns Directive', which stipulates that the maximum length of administrative detention shall not exceed 18 months (Baldaccini 2009), Dutch law was adapted in 2011. Considering that the maximum was set at 18 months, detention practices will not have to change much as detentions of that length are exceptional, although they do occur (Van Kalmthout and Hofstee-Van der Meulen 2007, p. 650). At present, roughly 75 % of the total population is detained for less than 3 months (DJI 2008a, p. 13).

The legal framework for administrative detention has been translated into a detention practice that suggests that the Dutch authorities have great confidence in detention for the regulation of migration. During the 1990s, the cell capacity for immigration detention has been greatly increased. While in 1980 there were 45 places available for the administrative detention, (Van Kalmthout 2005) in 2007, the counter stopped at 3,807 places (DJI 2008b; see also Fig. 6.1). If we look at immigration detention as a percentage of the total prison capacity (i.e., excluding youth facilities and enforced mental healthcare) the share of immigration detention has risen from 9.1 % in 1999 to 18.1 % in 2006 (Broeders 2009). That trend was partially reversed after 2007. The 2004 and 2007 enlargements of the European Union had, in principle, given all migrants from the new EU member states legal residence as EU citizens. Furthermore, after 5 years of centre-right cabinets, the centre-left cabinet installed in 2007 gave an amnesty to a group of 35,874 asylum seekers who had been in the country for years (Wijkhuijs et al. 2012). The amnesty involved asylum seekers who no longer had legal stay, as well as asylum seekers who were still appealing to the decision by the government to reject their asylum claim, but who would normally have had a very small chance on obtaining

⁵ Germany, Finland, Ireland, France, Cyprus and, since 2009, Italy.

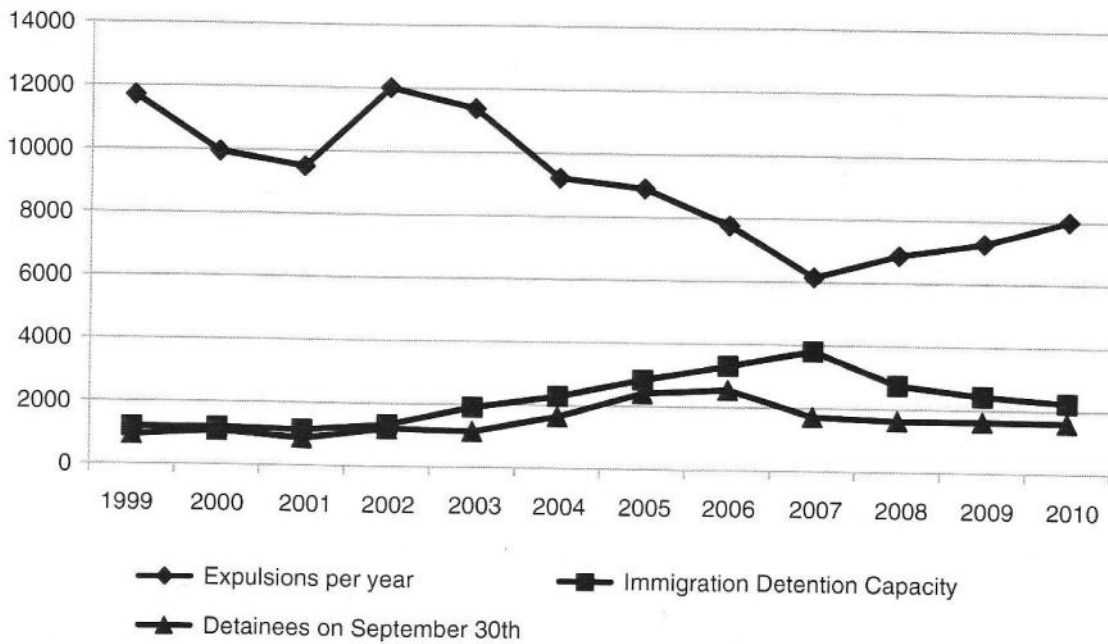


Fig. 6.1 Administrative detention and expulsions in the Netherlands, 1999–2010. *Sources* Data on detention capacity 2008–2010 (Kox 2011); data on number of detainees on September 30th from Statistics Netherlands, <http://statline.cbs.nl> (visited April 2012); data on expulsions 2008–2010 (Ministry of Justice 2011); for the data sources for 1999–2007 see Leerkes and Broeders (2010)

a residence permit. Between 2007 and 2010, the capacity for administrative immigration detention was gradually reduced to 2,249 places, which equals 10.8 % of the total prison capacity.

Over the years, the actual use of immigration detention has also become more prevalent, especially until 2007. While on September 30th 1994, there were 425 administratively detained immigrants, on September 30th 2006, the year immigration detention peaked, there were 2,555 detainees. After 2006, this figure dropped to some extent, and has now stabilised at around 1,600. The annual number of administratively detained immigrants developed from 3,925 in 1994 to 12,480 in 2006, to 7,812 in 2010.⁶

Most detainees in the Netherlands are in pre-expulsion detention. Pre-admission detention is relatively uncommon: asylum seekers are housed in open reception centres spread across the country, and human smuggling is less of an issue than in countries bordering poorer non-Western countries. Almost all administratively detained immigrants are adults (>99 %), about two-thirds of whom are between 18 and 35 years of age. Men predominate (90 %). Diversity in educational backgrounds is substantial: detention surveys held in 2004 and 2007 (see below) yielded the following distribution: 25 % of the detainees had no formal education, 15 % had primary education, 40 % had secondary education and

⁶ Source for 1994 figure: Statistics Netherlands, <http://statline.cbs.nl>, visited January 2010. Source 2006 figure: Dienst Justititiële Inrichtingen, <http://www.dji.nl>, visited April 2010.

25 % reported having completed tertiary education. Thus, the share of the latter educational level was clearly elevated in comparison with regular prisons, which stood at 11 % in 2007. These figures confirm that it is not only, and not even primarily, the poorest who migrate to Western countries (De Haas 2005). Diversity in nationalities is substantial as well: in 2009, according to Ministry of Justice registrations, the majority of the administratively detained immigrants were born in countries that, on their own, represented less than 5 % of the detained population. The most prevalent country of birth was Somalia (12 %).⁷ This variation in national backgrounds resembles the diversity of the unauthorised population in the Netherlands, in which over 200 nationalities are represented. This includes countries that have been a source of immigration for some time now (Morocco, Turkey, China and Surinam, a former colony), 'new' countries of labour migration to the Netherlands (Ukraine, India, Philippines), 'asylum countries' (Somalia, Iraq, Afghanistan), and countries that play an important role on the international 'spouse market' (Brazil, Thailand, Russia) (Leerkes 2009; Leerkes and Kulu-Glasgow 2011). The great diversity of countries of origin involved makes deportation an organisational and financial challenge that EU member states sometimes try to share by pooling diplomatic resources and joint flights for repatriation.

The increased use of immigration detention does not directly translate into high expulsion figures, which appear to have been on the downturn since the late 1990s until 2007. Perhaps tellingly, there is no official publication in the Netherlands reporting on expulsion trends. Thus, in order to create a time series, we had to 'excavate' relevant figures from various periodic reports by the Ministry of Security and Justice. The results, depicted in Fig. 6.1, indicate that the number of expulsions has been dropping since 2002, from a peak of 12,015 deportations in that year, to 6,150 deportations in 2007. After 2007, deportations are reported to have increased again. That increase may be due to the *Dienst Terugkeer en Vertrek* ('Repatriation and Departure Service') which was founded in 2007 as part of the Ministry of Justice, renamed to the Ministry for Security and Justice in 2010. This organisation coordinates (forced) departure, which used to be a shared responsibility of the Aliens Police, the Military Police and the Immigration and Naturalisation Service. Arguably, the efficacy of immigration detention in terms of repatriation rates also increased recently because of the International Organisation for Migration (IOM). Since October 2007, it has become possible for administratively detained migrants to return voluntarily from the detention centre with the assistance of the IOM. Annually, about 400 migrants make use of this alternative to being deported (Kox 2011). Working in detention centres must represent something of a conundrum for the IOM; it makes forced departure more humane, but also gives rise to questions about the organisation's independence vis-à-vis the state, as it contributes to the efficacy of immigration detention ('if

⁷ Source: <http://www.dji.nl>, visited April 2010.

you return with IOM you will be free'). Or, as IOM Netherlands has recently put it: "The provision of Assisted Voluntary Return services in detention centres is perhaps the best indicator of how intertwined forced and voluntary return have become in the overall Dutch return policy" (Mommers et al. 2010, p. 60).

Although deportation rates have been rising somewhat in recent years, there is evidence indicating that the Dutch authorities still have great difficulty expelling detainees. According to Dutch Immigration Services (IND) statistics, immigration detention resulted in expulsion for 60.7 % of all detainees in 2000 and for 56.9 % in 2001 (ACVZ 2002, p. 23). On the basis of his research, among 400 immigrant detainees in 2003–2004 Van Kalmthout (2007, p. 101) claimed the percentage of unauthorised migrants who are actually expelled is lower and may even be below 40 %. According to recent data, 49 % of administratively detained migrants were forcefully expelled in 2010, while 6 % was repatriated voluntarily from detention centres with the assistance of IOM (Kox 2011). The figure of 49 % includes repatriation as well as expulsion to other EU countries. (Expulsions to EU countries occur because of 'Dublin claims' or when migrants are apprehended upon arrival, and have entered the Netherlands through another EU country). There are no publications in which the total number of forced departures is broken down into repatriations and intra-European expulsions.

Clearly, although the official rationale for administrative immigration detention explains part of detention practices—expulsions do certainly take place—it does not give a full explanation of immigration detention practices. Given the gap between the large investments in immigration detention and the limited 'proceeds' thereof in terms of expulsions, the policy's rationality seems to be problematic. Therefore, other explanations for the practice of the administrative detention should be considered.

Deterring Illegal Residence

Although immigration detention is formally not a punishment, there are strong indications that detainees may experience it as a punishment nonetheless. It may even be hypothesised that administrative detention is meant to be experienced as a punishment, even if politicians and policymakers seldom state this intention explicitly.

Other researchers have already asserted that administrative immigration detention is meant to bring about specific deterrence (Van Kalmthout et al. 2007, p. 53). In this view, the regime of administrative detention is intended to increase the pressure on detainees to leave the country and co-operate with the expulsion procedure, just like criminal detention is intended to pressure criminals into law-abiding behaviour. We expand this view by proposing that immigration detention may also be intended as a form of general deterrence. In the latter sense, the perceived threat of administrative detention is meant to deter potential unwanted migrants from violating migration and residence laws, just like the threat of

criminal detention is supposed to suppress criminal behaviour in the non-criminal population.

One important reason for the claim that Dutch immigration detention is intended to be punitive is that the regime is modelled after the model of *voorlopige hechtenis*, i.e., the detention regime for suspects of serious crimes who are put in custody while awaiting their trial. As a consequence, the administrative detainee has to undergo a similar extent of deprivation as suspected serious criminals, when it comes to opportunities to communicate with the outside world, work, daily routine, choice of food, etc.

It could even be argued that administrative immigration detention is more of a punishment than staying in a regular prison, as the actual level of deprivation and degree of separation from local communities are probably higher in the former type of regime (with duration of stay held constant). For instance, although administratively detained immigrants have a right to be visited by family members or volunteers, they have no right to be visited without supervision, which, if it is considered beneficial for the rehabilitation of convicts, is allowed in some prisons. Furthermore, contrary to regular prisons, it is impossible to leave the immigration detention centre under supervision in order to attend important family events, such as attending the funeral of a direct family member. Moreover, in comparison with regular Dutch prisons, immigration detention centres in the Netherlands are characterised by a significantly lower level of facilities when it comes to work and schooling opportunities, sport facilities and single person cells. All centres have some sporting facilities and some type of day programme, but contrary to regular prisons, work opportunities are not always available. Also, it has been noted that there is often a relative lack of medical and legal aid, a risk of overcrowding and fewer well-qualified staff (Dünkel et al. 2007; Van Kalmthout and Hofstee-Van der Meulen 2007). Given these differences, it is not surprising that a place in administrative detention is significantly cheaper than a place in a regular prison.⁸

It could be argued that the elevated level of deprivation in administrative detention in comparison to regular prisons follows from the formal policy framework and cannot be taken as an indication that immigration detention is used for deterrence purposes. It could be argued, for example, that the relative lack of work and study opportunities in administrative detention is consistent with the objective to expel the detainee: the unauthorised migrant is, by definition, not supposed to re-integrate in regular Dutch society.

However, there is ample evidence that politicians and policymakers do use administrative detention for deterrence purposes. For example, Mr Nawijn, a

⁸ In 2007, the average costs for immigration detention per place per day were 155 €, against 197 € in regular prisons (DJI 2008a, b, p. 61). In 2008, after fierce critique by Amnesty International Netherlands, the government decided to improve detention conditions somewhat (the most important change was that multi-person cells were reduced from 6 to 2 persons). In 2010, the average costs were 193 € against 222 € in regular prisons.

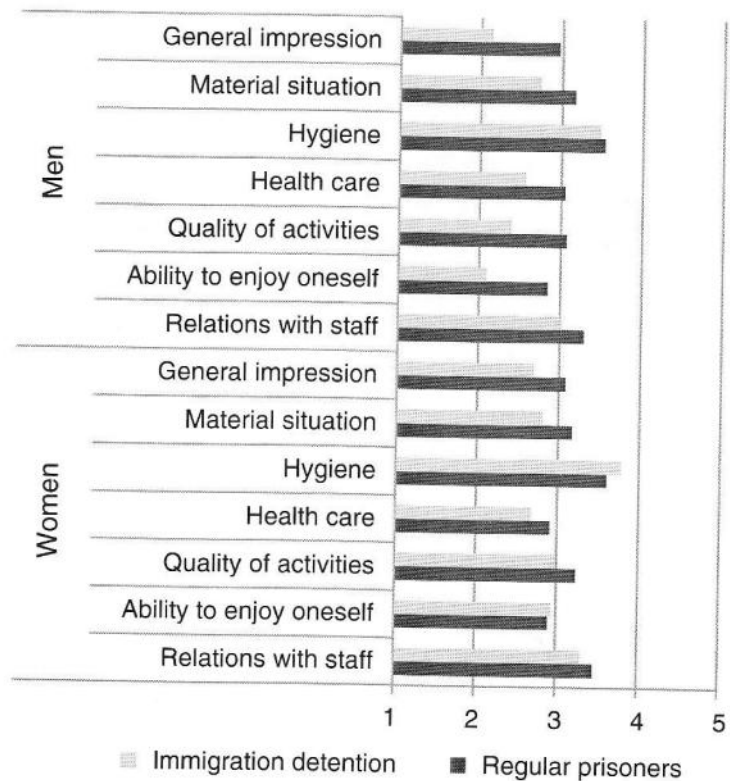
former Dutch Minister of Aliens Affairs and Integration⁹, referred to this function when the Dutch parliament discussed the Ministry of Justice's budget for 2003, which included an increased budget for tracing and detaining unauthorised migrants: "The intensification of Aliens Surveillance will work from two sides. Because of the actual surveillance, when illegals are found and then removed, the number of illegals will decrease [AL/DB: here Mr. Nawijn refers to the formal function of immigration detention]. Furthermore, the realisation that there are more intensive controls—and that, therefore, the apprehension chance is increased—will have a deterrent and, therefore, preventive effect [AL/DB: here Nawijn hints at the informal general deterrence function we hypothesise, even if he does not speak of detention as such]" (Tweede Kamer 2002, p. 142).

There is also an indication that national politicians and policymakers became increasingly motivated in the late 1990s and early 2000s to use criminal law and the threat of detention to deter unwanted immigrants from the Netherlands: since 2000 in particular, there has been a marked increase in 'undesirable aliens' resolutions in the Netherlands. An unauthorised migrant who is apprehended repeatedly for illegal residence, or who has been convicted of certain crimes, can be declared an undesirable alien by the Ministry of Justice (legal migrants can also be declared undesirable aliens on the latter ground). Continued residence in the Netherlands as an undesirable alien is then regarded as a crime against the state, which can be punished with up to 6 months of imprisonment (usually 3 months). The annual number of undesirable aliens resolutions increased from 845 in 2001 to stabilise around roughly 1,500 resolutions per year in the period between 2006 and 2011 (Laagland et al. 2009; IND 2012). The annual number of convictions because of continued residence by undesirable aliens increased from 480 to 848 between 2001 and 2006 (Laagland et al. 2009).

Two recent studies have found indications that immigration detention indeed deters illegal residence to some extent. First, Leerkes et al. (2011) researched the determinants of return intentions among 108 asylum seekers who had almost exhausted all legal means. It turned out that fears about personal safety in the country of origin were the main obstacle to voluntary return. However, if respondents were relatively pessimistic and fearful about their life chances as an unauthorised migrant, they were somewhat more inclined to consider return. Second, Kox (2011) conducted 81 semi-structured interviews with migrants who were being detained in a number of Dutch immigration detention centres. The respondents were asked whether they were willing to leave the Netherlands at the start of their detention, and whether they were willing to leave the Netherlands at the time of the interview. The number of respondents who were unwilling to leave the Netherlands had indeed decreased from 64 to 45 during the detention period. Interestingly, the majority of the respondents who had

⁹ Before becoming a cabinet minister, Mr. Nawijn had a career in the Dutch civil service at the department of Justice. He held various positions in the field of immigration policy, lastly as director of the Immigration and Naturalisation Service (IND).

Fig. 6.2 Detention satisfaction among administratively detained migrants (2004 and 2007 combined) and regular prisoners (2007) by sex. *Source* DJI Vreemdelingensurvey (2004), (2007), and DJI Gedetineerdensurvey (2007)



become more inclined to leave the Netherlands were still not willing to return to their country of origin, but considered to migrate to another EU country. This shows national-level deterrence par excellence: even if countries of origin do not co-operate with repatriation, unauthorised migrants may still be deterred to other EU countries.

There are indications that the increased willingness to leave the Netherlands during the detention period is indeed due to what Sykes (1958) famously called the 'pains of imprisonment'. We know that administratively detained migrants in the Netherlands are substantially less satisfied about being imprisoned than regular prisoners. Moreover, it appears that the elevated level of deprivation in the immigration detention regime is among the principal reasons for the reduced level of detention satisfaction. This conclusion is based on the prison and immigration detention surveys that were conducted by the Ministry of Justice in 2004 and 2007.¹⁰ Our secondary analyses show that the difference in imprisonment satisfaction between immigration detention centres and regular prisons is most marked for males. On an ordinal scale of 1–5, males in immigration detention centres rated their general satisfaction with the institution with an average of 2.1 (2004 and

¹⁰ In 2004, 622 unauthorised migrants participated in the survey, and in 2007 575; in 2007 the number of respondents in regular prisons was 6,020. We are thankful to the National Agency of Correctional Institution's (DJI) for making the data available to us in order to conduct secondary analyses.

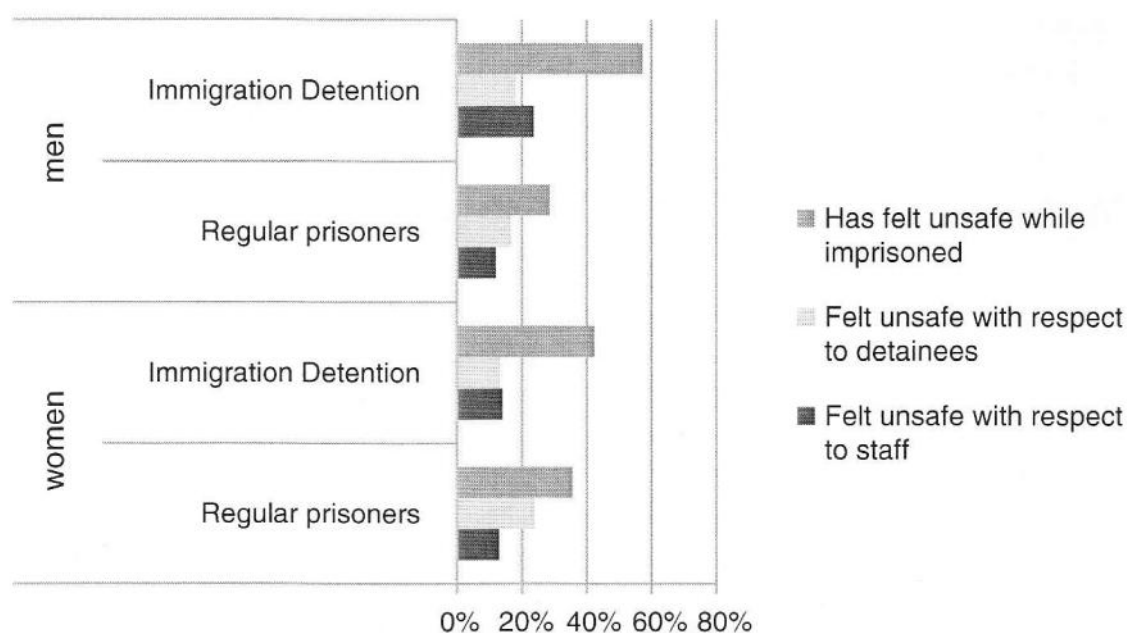


Fig. 6.3 Feelings of unsafety among administratively detained migrants (2004 and 2007 combined) and regular prisoners (2007) by sex. *Source* DJI Vreemdelingsurvey (2004), (2007), and DJI Gedetineerdensurvey (2007)

2007 combined), against 3.0 for regular prisoners (2007) (See Fig. 6.2). For women, these figures were 2.7 and 3.1, respectively. Similarly, we find that a significantly elevated percentage of administratively detained females—and even more so for male detainees—reported having felt unsafe while being detained (Fig. 6.3). These gender differences are consistent with the fact that the detention regime for administratively detained women is less restrictive than for their male counterparts. For instance, female detainees are less likely than male detainees to share a cell with more than one person, and more likely to have access to a shower of their own.¹¹ Moreover, in some centres for women, the detainees are allowed to do their own cooking and have their children with them. However, as we have seen before, the overall population is predominantly male (90%).

The differences between immigration detention and regular detention tend to be most pronounced for precisely the dimensions of detention satisfaction where administrative detention centres are objectively outperformed by regular prisons (see the dimensions ‘quality of activities’ and ‘ability to enjoy oneself’ in Fig. 6.2; see note for details on the scales as there is even reason to think that the scores on

¹¹ About two-third (68%) of the administratively detained females who participated in the Vreemdelingsurvey (2004) or Vreemdelingsurvey (2007) had a shower in their cell against half (51%) of the males. About a quarter of the females (24%) had to share a cell with more than one person, against 46% of the males.

'quality of activities' are an underestimation of the actual difference between regular prisons and the Aliens Custody).¹²

Managing the External Effects of Poverty

In the Netherlands, unauthorised migrants are excluded from formal welfare arrangements and (most) health care, since the Koppelingswet ('Linking Act') was implemented in 1998. As a consequence, unauthorised migrants who stay in the Netherlands in spite of its increasingly restrictive policies with regard to illegal residence have become dependent on informal social safety nets in case of unemployment, homelessness and/or illness. Moreover, the aforementioned restrictive policies also seem to increase the extent to which unauthorised migrants come to depend on relief as such: unauthorised migrants' access to the informal labour market and housing market deteriorated as a consequence of the Koppelingswet and other restrictive measures.¹³ This policy-driven increase in social exclusion appears to have resulted in more marginalisation and a rise in (petty) crime among unauthorised migrants in the Netherlands (Leerkes 2009; Leerkes and Bernasco 2010; Leerkes et al. 2012).

¹² The scale 'material situation' (Cronbach's alpha = 0.74; listwise missing = 14 %) is the average of the scores for the items 'I get enough to eat', 'I am satisfied about the quality of the products in the shop', 'I can buy in the shop what I need', 'Warm food has the right temperature', 'I am satisfied about the eating times', 'I think the warm food is tasty', 'They take religious beliefs into account for the meals'. The scale 'hygiene' (alpha = 0.71; listwise missing = 11 %) is the average of the scores for the items 'It is clean on my unit', 'The showers are clean', 'the air space is clean', 'I can get my clothes cleaned sufficiently regularly', 'I can shower sufficiently regularly'. The scale 'health care' (alpha = 0.73; listwise missing = 18 %) is the average of the scores for the items 'I have been well-informed in this institution about contagious diseases (such a STD's, aids, jaundice)', 'I can get tested easily (for example for aids and hepatitis) if I want to', 'If I want to I can go to the doctor in this institution', 'I am satisfied about the work of the doctor', 'I am satisfied about the work of the nurse'. The scale 'quality of activities' (= 0.79; listwise missing = 21 %) is the average of the scores for the items 'I am satisfied about the sporting facilities', 'I am satisfied about the library', 'I am satisfied about labour facilities', 'I am satisfied about creative facilities'. It is probable that administratively detained migrant are even more negative about the quality of activities than the scores on this scale suggest. For this scale the number of missing values among the latter migrants is quite high (35 %), which may be due to the fact that several administratively detained respondents did not have access to labour and creative facilities. The scale 'ability to enjoy oneself' (alpha = 0.75; listwise missing = 18 %) is the average of the scores for the items 'I can enjoy myself in my cell', 'I can spend my free time with things that I like', 'In the evenings I have enough to do'. The scale 'relations with staff' (alpha = 0.86; listwise missing = 14 %) is the average of the scores for the items 'The personnel will help me if I have problems', 'The personnel are friendly to me', 'If I am down, I can talk with the personnel', 'The personnel treat me in a normal way'.

¹³ In 1991, for instance, the use of social-security numbers was barred for unauthorised migrants, which made it much more difficult for them to work in the formal economy. In 2005, the fine for employers who hired illegal aliens was raised from 900 to 8,000 € per employee, and since the late 1990s the government increasingly allocated resources to enforce employer sanctions.

In spite of this restrictive legal framework, and partly because of it, substantial numbers of unauthorised migrants manage to be supported by non-governmental organisations. A 2002 case study in The Hague and Leiden revealed that there was considerable solidarity with unauthorised migrants at the local level (Rusinovic et al. 2002; Van der Leun 2003). A highly varied group of churches, civil initiatives, migrant organisations, left-wing activists and civil servants expressed support for unauthorised migrants. These institutions and individuals tended to specialise in the support they offered. Some donated meals, while others gave legal advice or information about health care, arranged temporary accommodation or offered language courses.

Interestingly, local governments—faced with the results of restrictive immigration policy in the form of homeless and criminal unauthorised migrants on their streets—have also begun to offer relief to specific categories of unauthorised migrants. For instance, many municipalities subsidise accommodation or have begun to organise accommodation themselves. According to an inventory by the VNG, the association of Dutch municipalities, 170 of the approximately 400 municipalities offered such support in direct or indirect ways, from which more than 2,000 persons benefited (Van der Leun 2004; Van der Welle and Odé 2009). Such municipal support is largely aimed at asylum seekers whose applications have been turned down. The VNG has also spoken out against the Rutte Cabinet's intention to criminalise illegal residence citing fears, among other reasons, that vulnerable unauthorised migrants will disappear out of sight and reach of government and non-governmental organisations.¹⁴

The local networks involved are quite loose and unorganised. Each of the individuals and organisations involved tries to take care of a small part of the demand. Moreover, not every applicant can be helped, as resources are limited. The organisations have to be selective and are forced to set criteria determining who may or may not be helped. The old distinction between the deserving poor and undeserving poor tends to return under these circumstances. Rejected asylum seekers, i.e., 'refugees', have a greater chance of being helped than other groups of unauthorised migrants such as those characterised as 'economic adventurers'. This is the case with municipal support, but also for support by churches. Women and children are helped more often than single men.

Thus, there is a growing group of vulnerable unauthorised migrants in the Netherlands, composed of people who cannot find sufficient employment, do not have a family or partner to support them and are to a great extent excluded from the informal social safety nets that NGOs and municipalities have developed. They are increasingly declared undesirable aliens due to repeated illegal residence, more or less serious criminal activities, or a combination of the two. The size of this group is unknown, but is believed to vary between several hundred and several thousand individuals. They are mostly, but not exclusively, adult males.

¹⁴ Source: Brief VNG aan de Vaste Commissie Immigratie en Asiel van de Tweede Kamer der Staten Generaal over 'Implementatie Terugkeerrichtlijn en strafbaarstelling'. BAWI/U201100108, February 1 2011.

A considerable number of the members of this group are difficult to expel, because, as has been said, they manage to keep their identities secret, but also in part because countries of origin appear to be reluctant to take such marginalised unauthorised migrants back. They are also less likely to be granted residence rights under legalisation programmes which tend, in the Netherlands and elsewhere, to exclude migrants who have been convicted of crimes. Set against the background of previous regularisations in the Netherlands—there have been a few regularisations, but these were limited and politically contested—this group's chances for regularisation are negligible.

For these reasons, we hypothesise that detention—criminal detention as well as immigration detention—may also be used as a form of 'relief of last resort' for such strongly marginalised unauthorised migrants. The aforementioned forms of crime and public order disturbances generate anxieties among the established population, but are often not serious enough to lead to criminal imprisonment. In the general population such forms of deviance, such as homelessness, are often taken care of by social workers, or by means of granting unemployment benefits, but for unauthorised migrants that is increasingly impossible.

As will be elaborated below, our research suggests that the authorities as well as marginalised unauthorised migrants themselves contribute to the use of detention as a form of poor relief, albeit for different reasons. The authorities, including local policemen, use detention to relieve public order disturbances that are associated with immigrant pauperism. Seen from this perspective, it is noteworthy that the Dutch Expulsion Centres in Rotterdam and at Schiphol airport were introduced under the banner of a government programme that was called 'Towards a safer society' (Den Hollander 2004, p. 160). And a recent report by the Ministry of Justice (2009, p. 9) describes its programme 'expelling/detaining' as follows: "[a]ll efforts are aimed at expelling criminal and/or nuisance-causing illegals, and, if that is not yet possible... to detain them in order to take away the nuisance for society". In other words, it seems that Dutch authorities increasingly use immigration detention (and criminal detention) for incapacitation purposes, and not only as a measure of immigration policy.

We have already mentioned the increased average length of stay in administrative detention and the common use of 'cobbling', which may lead to repeated administrative detention. These practices may be the result of the informal function of deterring illegal residence, but are also consistent with the interpretation that administrative detention is used to relieve pauperism and its external effects. During our own fieldwork in the Immigration Detention Centre in Tilburg, which was conducted in 2005, we also found qualitative support for the latter hypothesis (for details on this fieldwork see Leerkes 2009). Several of the 26 men who were interviewed—only men who had been convicted of crimes in the Netherlands were selected for an interview—turned out to have been in immigration detention more than once. The clergymen and psychologists working in the institution turned out to know some of them quite well from previous stays. Institution staff members also told us that undesirable aliens are sometimes put in immigration detention by the police in the big cities during special festivities in town such as Koninginnedag, the national celebration of the Dutch queen's birthday.

Strongly marginalised unauthorised migrants, on their part, sometimes seem to 'use' detention—this goes for criminal detention and immigration detention—as a temporary relief for their lives outside of the detention centre. Most unauthorised migrants whom we interviewed found immigration detention a difficult and denigrating experience, which reflects the reduced level of detention satisfaction in administrative detention (Fig. 6.2). At the same time, some respondents judged it less negatively. An undesirable alien from Iran, who had for years been part of a group of street drug users in a deprived neighbourhood in Amsterdam, claimed that he sometimes pleaded guilty to offences he had not committed in order to recover in detention from his life on the streets. Staff members also claimed that detainees sometimes preferred a stay in immigration detention to life on the streets. Reputedly, there was even a case where a detainee who had been cobbled because no *laissez passer* could be obtained, set up camp in the bushes next to the institution.

The latter impression may also be confirmed by Fig. 6.2. Note that the difference in detention satisfaction between administrative and criminal detention is relatively small or non-existent for aspects of detention that may be related to poor relief (material aspects, hygiene, health care). It may also be that women, in particular, find relief and protection in centres for immigration detention.

In some respects, these practices share similarities with the poorhouses of the past, particularly the earliest variants such as the houses of correction or workhouses. The latter institutions were also meant to control the external effects of pauperism and were similarly characterised by a strong measure of social control and repression (Katz 1986; Wagner 2005). The current detention practices, however, are directed at aliens, at 'outsiders', and not at insiders. Contrary to the poor houses of the past, the present detention centres are not supposed to reform and discipline 'idle' unauthorised migrants into labour. Rather, they are kept off the streets as much as possible. This difference may also explain why labour is not mandatory in immigration detention.

In short, it appears that immigration detention has become a system of control that incapacitates marginal populations, while ideas of rehabilitation and correction disappear into the background. This is in line with the new penology hypothesis.

Managing Popular Anxiety and Symbolically Asserting State Control

International migration—especially migration from poorer non-EU countries—has become a highly politicised topic throughout Europe, including the Netherlands. While considerable parts of the established population continue to press for more restrictive policies, other groups advocate a more liberal migration regime. After years of intense debate the Dutch government regularised about 30,000 rejected asylum seekers in 2008. In general, however, public opinion in the Netherlands

has become increasingly negative towards migration from poorer non-EU countries since at least the mid 1990s. The minority Rutte Cabinet that fell in April 2012 was sustained by the support of the anti-immigrant Party for Freedom of Geert Wilders, reflecting a negative popular opinion of migration among significant segments of the Dutch population.

Social surveys provide clear indications of an increasingly negative public opinion regarding immigration from non-Western countries, especially for the period in which immigration detention increased the most. The European social survey (ESS), which has been carried out four times since 2002, includes the question to what extent 'migrants from poorer countries outside Europe should be allowed [to live in the country]'. In 2002, 43 % of the Dutch respondents (N = 2,364) answered 'a few' or 'none'. In 2004 (N = 1,881) and 2006 (N = 1,889) that share increased to 47 and 53 %. Interestingly, in 2008 that percentage had returned to the 2002 level (43 %, N = 1,778), paralleling the political decision to legalise about 30,000 rejected asylum seekers and the decreased use of administrative immigration detention after 2006 (Fig. 6.1). Additional indications for a negative public opinion towards (illegal) immigration can be found in the international social survey program (ISSP). As part of the ISSP, two representative surveys on 'national identities' were carried out, in 1995 and 2003, respectively. In 1995, 37 % of the Dutch respondents (N = 1,823) agreed or agreed strongly that immigrants increase crime rates. In 2003, this percentage had gone up to 45 % (N = 2,089). Also, in 1995 a large majority (81 %) agreed or agreed strongly that the government should take stronger measures to exclude unauthorised migrants. In 2003, this percentage remained unchanged, even though the Dutch government had in fact taken several measures between 1995 and 2003 to curb illegal residence. Thus, public pressure on the government to 'do something' about unauthorised migration clearly persisted in the face of an increasingly restrictive policy towards unauthorised migrants.

It is against this background of popular opinion that we hypothesise that immigration detention is not only intended to facilitate expulsion (the formal framework for immigration detention) and migration decisions (our hypothesis about immigration detention's covert function of deterring illegal residence); it also seems to have the function to regulate the more abstract social unrest regarding unwanted migration. The increase in immigration detention communicates the message that the State is still in control over the geographical (and social) borders that citizens want to maintain. Admittedly, the poor relief function of administrative detention, which was discussed in the previous section, also addresses social unrest to some extent, but social unrest in connection with pauperism must be distinguished from the more abstract and generalised anxiety about unwanted immigration that concerns us here. This third informal function of immigration detention is akin to the function of punishment as denunciation: it expresses the value that there should be borders demarcating the divide between who belongs to the society and who does not.

Compared to the other informal functions, the denunciation function may be relatively latent, i.e., relevant actors may not realise—or at least openly admit—that immigration detention is functional for denunciation. For this reason, empirical evidence is bound to remain somewhat speculative.

It is clear, however, that an increase in immigration detention is, *par excellence*, useful to appease citizens about unwanted migration: detention symbolises social exclusion in a straightforward way. Bosworth (quoted in Lee 2007, p. 850) puts it as follows: '[t]he point is that prisons and detention centers ... are singularly useful in the management of non-citizens because they provide both a physical and a symbolic exclusion zone'. Zygmunt Bauman also characterises modern prisons as 'factories of exclusion' and links them with political reactions to popular sentiments: "To posit imprisonment as the crucial strategy in the fight for citizen's safety means addressing the issue in a contemporary idiom, using language readily understood and invoking commonly familiar experience" (Bauman 1998, p. 121).

Foucault (1977) is well-known for his argument that pre-modern punishments symbolised and glorified the political power of the Monarch. If we are right, immigration detention is—albeit to a more limited extent and with a more modern dramaturgy—being used to symbolise the power of the national State in times of heightened globalisation. In that respect, it is interesting to note that centres for immigration detention—especially the more punitive regimes for men—are spatially overrepresented in the Randstad, the densely populated Western part of the Netherlands. In contrast to this, reception centres for asylum seekers—which send a different message as asylum seekers may be admitted to the Netherlands—tend to be located in sparsely populated areas.¹⁵ Moreover, it appears that most centres for immigration detention symbolise departure in one way or another. Several centres are located near airports (Schiphol and Rotterdam airport). Admittedly, this may be practical with an eye to expulsion. Yet, other centres are or located near harbours (Rotterdam and Dordrecht), even if no expulsions are carried out by sea. In addition, several centres for immigration detention have been built in the form of detention boats (Rotterdam, Dordrecht, Zaandam) since 2004. The official reason for the construction of these boats was that it was a quick way to increase the detention capacity, but this raises the question of whether there were no other ways to do so, for instance by building centres in less populated areas, and why no detention boats were built to accommodate the increased need for criminal detention capacity. The boats have been taken out of circulation, partly in response to a report by Amnesty International (2008), which criticised the human rights situation on the boats, because of the recent decrease in the number of detained unauthorised migrants, and because a new detention centre at Rotterdam airport have become available. Only the boat in Zaandam was allowed to stay, as its facilities were deemed superior to the other two detention boats; this boat is now called a 'detention platform' instead of a detention boat. The two other detention boats were recently sold to the United Kingdom. (The Netherlands first tried to sell them to Belgium, but that deal failed to go through because Belgium only wanted to buy one boat, while the Netherlands wanted to sell both boats in one deal).

¹⁵ The latter centres are often located in out of the way places, on industrial zones or in abandoned military complexes; this is also done to discourage societal integration in light of the fact that the majority of the asylum claims will be rejected.

There is a final indication for the denunciation function of immigration detention: whereas the expansion of immigration detention capacity was quite well-communicated to the public, information on expulsion trends is certainly not.¹⁶ The latter information is, as mentioned before, deeply buried in Ministry of Justice reports, which are not characterised by a very transparent presentation of expulsion figures, to say the least.

Discussion: Mixed Motives for Administrative Immigration Detention?

Immigrant detention in the Netherlands indeed constitutes a case of mixed motives. Its formal function is still firmly upheld, but does not explain detention practices completely. It has to be said though, that EU member states, including the Netherlands, have been investing heavily in the construction of new biometric identification systems to 'break down the anonymity' of unauthorised migrants (see Broeders 2007, 2009). This may strengthen the formal function by increasing the number and speed of successful expulsions.

Three informal functions have been discussed: (1) deterring illegal residence, (2) controlling pauperism and (3) symbolically asserting state control. There is an elective affinity between the functions mentioned. In many cases the functions need, and reinforce, each other. For example, in order to address social unrest about unwanted immigration, expulsions should occur, and immigration detention should try to deter illegal residence, but it also helps if nuisance-causing unauthorised migrants are kept off the street. There is, however, a tension between expulsion, deterrence and the management of popular anxiety on the one hand, and poor relief on the other hand. If administrative detention becomes too 'comfortable' the incentive to co-operate with repatriation is greatly reduced, and the general public will not be convinced that the state is in control over unwanted migration. If, however, immigration detention becomes too harsh, it will give cause for humanitarian objections, but will also worsen health and behavioural problems among 'cobbled' detainees, thus giving rise to more public order problems and more public anxiety about immigration. For this reason, it is likely that a certain balance between punitive and more humanitarian concerns is and will be considered necessary.

¹⁶ The government's press release of 5th November 2004, which highlights the results of the Ministry's of Justice report *Rapportage Vreemdelingenketen 2004, periode mei tot en met augustus*, is a fairly typical example (see http://www.regering.nl/Actueel/Pers_en_nieuwsberichten/2004/November/05/Rapportage_instroom_asielzoekers_daalt). The press release starts with stressing the decrease in the number of migrants applying for political asylum (in the period May–August 2004 there were 34 % fewer applications compared to the same period in 2003). Later on, the release mentions the increase in the capacity for administrative immigration detention and also lists the number of deported unauthorised migrants in the period May–August 2004. The release does not—contrary to the figures on asylum applications—mention that the number of expulsions decreased since 2003.

The informal functions mentioned have, in part, developed in relation to the phenomenon of the 'undeportable deportable alien'. This suggests that the institution of immigration detention, like immigration policy in general, is in flux: modern society has not yet found a definitive solution for the presence of migrants who are formally not admitted, but are also difficult to expel. Mixed motives for administrative detention are to some extent the result of different actors—state authorities, local authorities, citizens, unauthorised migrants—using detention for their own purposes.

There are clear analogies between the three informal functions of immigration detention and the functions of punishment described by the academic literature. First, there is deterrence in immigration detention, even if it is aimed at influencing migration decisions rather than at deterring criminality as usually defined. Second, there is incapacitation, even if unauthorised migrants qualify for incapacitation more easily than citizens and legal denizens, where minor offences and pauperism usually do not lead to prolonged periods of detention. Third, there is denunciation, though not primarily in connection with social values that obtain regardless of legal status—this tends to be more typical of criminal law—but rather in connection with values that are specifically related to 'unwanted' outsiders, expressing the condemnation of immigration and residence without the consent of the *body politic*.

These analogies question the seemingly clear-cut division between criminal and administrative law. In this connection, our analysis confirms De Giorgi's (2006, p. 133) claims that practices of detention and expulsion of immigrants are 'formally administrative' yet 'concretely penal', an opinion that is echoed in Ericson's (2007, p. 25) notion of 'counter law' in which "the traditional distinctions between the different legal forms of criminal, civil and administrative law" have become blurred.

The analogies raise the question of why immigrant detention is not integrated in criminal law, and why it tends to be dealt with under administrative law even in countries where illegal residence is defined as a crime (such as Germany). We propose that the full incorporation in criminal law risks being at odds with the sense of justice and proportionality that underlies notions of punishment as retribution. A detention lasting 3, 6 or even 18 months on account of the 'mere' crime of illegal residence would contrast strongly with the major—for example violent—crimes usually leading to such a (lengthy) sentence. It would bring illegal residence into a 'league' of crime where it does not belong according to most citizens, but especially in the eyes of criminal judges, academics, human rights organisations and advocacy groups. In this sense, administrative law provides the authorities with a flexible instrument of control (in terms of length of detention) that would probably be difficult to obtain under criminal law. If immigration detention would be completely transferred to the latter body of law, Western societies would have to admit that different standards of punishment and governmental control pertain to citizens and (unwanted) non-citizens (see also Walters 2002; Sayad 2004). In the legal and official policy discourse, this difference remains more hidden and implicit (cf. Bosworth 2007).

In the future, we may see a greater *de facto* and *de jure* differentiation in immigration detention. Some informal punitive aspects may become integrated in

criminal law, for example by making repeated illegal residence a punishable offence. Indeed, as was mentioned before, this was the intention of the Dutch Rutte cabinet, and also seems to be the trend internationally (illegal residence became a crime in Italy in 2009). At the same time, less punitive aspects may be organised in a system of control that is less modelled after criminal detention. While 'undeserving' unauthorised migrants—i.e., male unauthorised migrants, criminal unauthorised migrants, unauthorised migrants not co-operating with expulsion—are likely to be criminalised further (not only de facto, but also de jure), their 'deserving' counterparts may become decriminalised to a greater extent. Should such a development materialise, that would not be the first time in the history of the prison that institutional differentiation occurred: from the houses of correction, for instance, grew both the modern prison and the more humanitarian poor house (cf. Morris and Rothman 1998).

There are, in fact, a number of indications that this differentiation is already underway, both in the Netherlands and elsewhere. We already mentioned the gender difference in immigration detention regimes in the Netherlands and pointed at the increase in the number of aliens that are declared undesirable. Besides this, it is relevant to note that in 2006 the Dutch government started an experiment with what is called a VBL or *vrijheidsbeperkende locatie* ('freedom limiting location'). In this open centre, where clients can stay a maximum of 12 weeks, unauthorised migrants are not detained but nonetheless controlled: they have to report themselves to the authorities two times a day. Tellingly, the institution is reserved for rejected asylum seekers who no longer have a right to stay in the Netherlands and are believed to be willing to co-operate with 'voluntary return'. In 2011, the Dutch parliament adopted a resolution that required the Dutch Minister for Asylum and Migration to examine alternatives to immigration detention for 'deserving' groups. (The resolution was motivated by humanitarian as well as financial motives). At the time of writing, four pilot projects have been initiated: (1) increased use of a reporting obligation for migrants who have accommodation with reliable private persons or organisations (2) expanded use of the VBL for non-criminal unaccompanied minors who have applied for asylum and have exhausted all legal means, (3) the payment of a bail that will be repaid when the migrant leaves the territory of the European Union (4) the subsidising of NGOs that prevent immigration detention by developing projects with regard to voluntary return.¹⁷ Likewise, in the United States, after complaints by civil liberties and immigrant advocacy groups (see Amnesty International 2009), the Immigration and Customs Enforcement (ICE) has declared its intentions to hold '*non-criminal immigrants* [our emphasis] in a smaller number of less prison-like settings'.¹⁸

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¹⁷ Source: Dutch Parliament 19637, nr. 1483.

¹⁸ Source: Washington Post, August 7, 2009.

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