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The Fight Against Illegal Migration

Identification Policies and Immigrants' Counterstrategies

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In recent years, northern European Union (EU) member states have intensified internal surveillance on irregular migrants. Policy innovation has been geared to controlling, identifying, and even reidentifying irregular migrants who settled within their borders. Policy aims are deterrence, exclusion, and, ultimately, expulsion. Developments in labor market, detention, and expulsion policies and surveillance by the EU immigration database are analyzed in relation to the counterstrategies that irregular migrants devise to escape detection and expulsion by the state. The resulting cat and mouse game between the state and irregular migrants seems to result in a serious threat to irregular migrants' room to maneuver and further increases their dependence on informal, and increasingly criminal, networks and institutions.

Keywords: *irregular migration; surveillance; counterstrategies; expulsion; migration policy*

Recent years have seen an avalanche of policy measures aimed at controlling and countering the presence of irregular migrants, especially in the northern European states. This holds true for both the national and the European Union (EU) levels of policy making. The presence of the irregular migrant population in Europe is usually placed in the perspective of the ongoing academic and political debate on whether or not states have "lost control" on immigration (e.g., Cornelius, Tsuda, Martin, & Hollifield, 2004; Joppke, 1999; Sassen, 1996). After family and asylum migration, it is now irregular migration that is casting doubts on the liberal state's capacity to refuse and deter unwanted immigration. Illegal aliens are at the top of the policy agenda, and politicians, fuelled by popular fear and uneasiness, have heavily invested in the various manifestations of the European border (including seaports and airports). Strategic borders have been strengthened with guards, watchtowers, fences, and state-of-the-art technology, such as infrared scanning devices, motion

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detectors, and video surveillance. And yet despite funding and political backing for the "fight against illegal immigration," the presence of irregular migrants remains a fact of life for most EU countries. The realization that borders alone cannot halt irregular migration has already led to a widening of the scope of immigration policy. Border control is "moving away from the border and outside the state" (Lahav & Guiraudon, 2000) or is becoming "remote control" (Zolberg, 2003) or is moving "upwards, downwards and outwards" (Guiraudon, 2001). Now other actors, such as supranational actors (the EU), private parties (e.g., airlines and transport companies), local governments, and public institutions, also have a role to play in the fight against irregular migration.

One of the turns that policy on illegal aliens has made is toward internal control. Border controls, though still important, are increasingly being supplemented with policies of exclusion and discouragement of those unwanted aliens who passed the border. When it comes to irregular migrants, exclusion is now the stated aim of policy. For those illegal aliens who cannot be discouraged or deterred to come, exclusion is meant to complicate and frustrate living and working conditions to such a degree that they will turn round and try their luck elsewhere. The goal of discouraging irregular migrants has led to a shift toward internal migration control, which comprises a wide array of policy measures such as employer sanctions, exclusion from public services, surveillance by the police, incarceration, and expulsion.

In this article, we analyze new policies of identification and exclusion and the counterstrategies they provoke among irregular immigrants. By focussing on the strategic interactions between states and immigrants, we try to answer the question of whether or not states have strengthened their control on irregular migration. However, it will be a preliminary answer, as our analysis lacks the empirical basis to provide definite answers. Our research is primarily based on an analysis of policy instruments that are under construction in northern EU member states such as Germany and the Netherlands, on our own Dutch ethnographic studies on irregular migration (Engbersen, 2001), and on an analysis of relevant studies on irregular migration policies and survival strategies of irregular migrants. We begin with outlining our theoretical framework on surveillance and identification policies and the counterstrategies of irregular migrants. We then evaluate three crucial policy strategies: blocking access to the labor market, detention and expulsion, and digitalization of borders. This article concludes with a discussion of the strengths and limitations of the current policies of surveillance and identification.

Identification Strategies and the Creation of Fog

The state aims to trace, identify, and extradite the irregular immigrant, who, in turn, tries to stay out of sight and obscures his or her identity. The state diverts funds, technology, and manpower to surveillance (its weapons of mass detection), and the immigrant tries to circumvent these policies and innovations, sometimes by simple

yet effective means. Policy on irregular immigrants resembles an arms race: Action provokes reaction. Illegal aliens will attempt to frustrate government policies that aim to identify and control them using strategies that can be captured under the notion of "foggy social structures," social structures that emerge from efforts by individuals and organizations to avoid the production of knowledge about their activities by making them either unobservable or indeterminable, or, put another way, the practical production of fog (Bommes & Kolb, 2002, p. 5). Caplan and Torpey (2001) noted that states and their subjects or citizens routinely play cat and mouse with individual identification requirements. And even though the jury is still out on the outcome, "it still seems realistic to concede that so far the cat has held the better cards" (p. 7).

Surveillance and Identification of Irregular Migrants

The nation-state is an exclusive club in which rights and privileges are awarded to citizens and semicitizens (denizens) only. However, decades of immigration research has shown that access to the clubhouse, the territorial state, does not necessarily depend on membership status or even advance approval. Irregular migration comes in many shapes and sizes. Many of those we call irregular migrants started their journey perfectly legally, for example, by traveling on a tourist visa, and became "illegal" or "irregular" when they stayed on after its validity expired. Most typologies of irregular migration are therefore set up around three main criteria. There is legal and illegal *entry*, legal and illegal *residence*, and legal and illegal *employment*. These criteria can combine in many ways and produce many forms and degrees of irregularity (e.g., Tapinos, 2000, p. 18; van der Leun, 2003, p. 19). Irregular entry and residence are clearly in defiance of the state's claims to control its population and territory. The prominent place that the fight against illegal immigration now occupies on the policy agenda in most western European states is because of both a political and a social shift in attitudes toward this group. Politically, irregular migration adds to the accusation that states have lost control on immigration; a group of immigrants who are by legal definition excluded should not appear to be growing. Socially, popular resistance against this category has, after years of indifference, been steadily mounting. Irregular migrants are generally feared and perceived as a problem (Sciortino, 2000). During the 1990s, irregular immigrants came to be demarcated with more precision and defined as a threat to society and economy in various northern European countries. In this, social myths play an important role, especially those of the illegal alien as "criminal" and "welfare abuser." Even though many countries have regularized irregular migrants in the past, it is primarily the southern member states of the EU that consider periodic regularizations to be a "policy instrument" when dealing with irregular immigration. Most northern states enact policies of exclusion and aim to close gateways between illegal and legal status.

The irregular immigrant has thus become a direct challenge to the state's notions on legal mobility and territoriality in a globalized world. Torpey (1998, 2000) described the idea of the state monopolization of the legitimate "means of movement."

In this process, the state gradually took the freedom of movement away from the ordinary citizen by making the passport the government-issued prerequisite for the legal crossing of borders. However, identifying and documenting citizens meant very little in itself if the state could not enforce its policies and regulate the movement of its subjects. "The successful monopolization of the legitimate means of movement had to await the creation of elaborate bureaucracies and technologies that only gradually came into existence, a trend that intensified dramatically toward the end of the nineteenth century" (Torpey, 2000, p. 35). The historical rise of centralized nation states is thus closely entwined with the gathering of information on the population on a large scale. James Scott (1998) describes this process as one in which the state makes its people "legible" by gathering information on its subjects in the various roles they play in society. This legibility served to increase the state's ability to govern and control its population. As the state enhanced its grip on society, it also increased the information on its inhabitants through registration and documentation. Torpey has argued that the modern state's capacity to penetrate more deeply into society depends on its ability to embrace those societies. Irregular migrants, who are anxious to stay out of sight, pose a problem for bureaucracies that are mapping the population for the purpose of administration and control. "Individuals who remain beyond the embrace of the state necessarily represent a limit on its penetration" (Torpey, 1998, p. 244).

Information and identification are vital for the control of populations, and this goes double for the irregular population. The keywords for the internal control on irregular migrants are surveillance and identification. The development of the "surveillance state" is of course a much broader phenomenon, but it has made an important mark on the fight against illegal immigration. Registration, cross-referencing, and surveillance have become prime instruments of control. The computerization of surveillance and administration has been a revolutionary shift in the administrative power of the state system (Lyon, 2003, 2004). Filing cabinets and card indexes have been, or are being, transformed into searchable digital databanks that can potentially be linked into networks. Whether or not governments connect and combine different bodies of information will increasingly become a matter of legal constraints, as the technological constraints are quickly losing their relevance.

Surveillance can be used to locate irregular migrants but can also be a means to exclude irregular immigrants from the formal and informal institutions of society. The link between the exclusion of irregular migrants and policies of surveillance can follow two separate logics.

Surveillance may be deployed to exclude irregular migrants from key institutions of society, such as the labor market and the housing market, and even from informal networks of fellow countrymen and family. The state raises a protective wall of legal and documentary requirements around the key institutions of the welfare state and "patrols" it with advanced identification and control systems. Engbersen (2001) has called this the development of a "Panopticon Europe," which does not follow a Foucauldian logic of correction but rather a logic of exclusion. Panopticon Europe is

not a "factory of correction." Its aim is not disciplining and correcting undesirable migrants. Panopticon Europe is designed as a "*factory of exclusion* and of people habituated to their status of the *excluded*" (Engbersen, 2001, p. 242). One might say that the state's embrace in this perspective aims to discipline the institutions and social networks irregular migrants use and need for their daily lives. It is a strategy of exclusion through the delegitimization and criminalization of all those who may be employing, housing, and aiding irregular migrants.

In the second type of logic, the state aims to embrace irregular migrants themselves. This logic becomes visible in two policy strategies. First, is the strategy of selective inclusion of specific categories of irregular migrants through regularization programs. Such programs bring undocumented persons out of the shadows and provide information to governments on their numbers and characteristics. It also transforms them into regular denizens with corresponding rights and duties. Second, is the strategy of developing detection tools aimed at exclusion. Embracing illegal aliens is necessary not only for detection and identification (connecting illegal aliens with their true identities) but also for extradition, as states have gradually found out that "unidentifiable immigrants are constitutionally rather invulnerable to expulsion" (van der Leun, 2003, p. 108). The expulsion of illegal aliens can only function when identity, nationality, and (preferably) "migration history" can be established. If not, extradition is likely to be resisted from within (lawyers and judges) and from abroad (countries of transit and origin), in addition to personal resistance from illegal aliens themselves. During the past few years, the Italian, Spanish, and Greek governments have particularly pursued the strategy of selective inclusion through regularization programs. The second strategy is more dominant in the advanced welfare states of northern Europe (Engbersen, 2003).

Everyday Politics of Mystification

The attempts of nation-states to fight irregular entry and stay through surveillance and identification have not led to a total control of migration flows. Europol estimated an annual inflow of 500,000 irregular migrants into western Europe, but reliable numbers are almost impossible to come by (see Jandl, 2004). In 1991, the total number of irregular immigrants in western Europe was estimated at 2.6 million (Castles & Miller, 1993, p. 79). Regularization programs in the 1990s and 2000s in Belgium, France, Italy, Greece, Spain, and Portugal show that nearly 3 million were regularized. These data do not represent the total number of irregular immigrants but are a (minimal) proxy for the size of the illegal resident population (Organization for Economic Cooperation and Development [OECD], 2005, p. 100). The limited effectiveness of migration control is partly the result of various counterstrategies adopted by migrants and intermediary organizations, affecting identification and surveillance policies. It is also the outcome of symbolic policies that serve the interests of specific economic sectors (Castles, 2004). Moreover, the limited effectiveness is also the consequence of

informal policies by central and local states that tolerate the presence of irregular immigrants (Cornelius et al., 2004; van der Leun, 2003). However, in this article, we focus on the counterstrategies of irregular immigrants.

First, there is the emergence of large- and small-scale smuggling organizations that cater to the large supply of migrants who want to go to Europe and enable these people to illegally stay in Europe. In addition to these professional and familial smuggling organizations, there is the emergence and existence of several informal and illegal markets in the spheres of work, housing, relations, and documents. These informal markets can be classified as "bastard institutions" (Hughes, 1951/1994) or "parallel institutions" (Mahler, 1995). These are illegitimate institutions in which we can see the same social processes going on that are to be found in the legitimate institutions (Hughes, 1951/1994, pp. 193-194). These bastard institutions are developed by irregular migrants, regular migrants, and native citizens in response to the demand that is created by restrictive legislation and the large demand for cheap labor, illegal housing, (false) documents, partners, and so on. Bastard institutions are essential for the travel and residence opportunities of irregular migrants and are very hard for the central state to control. As such, they are archetypical examples of foggy social structures that the state instruments of surveillance and identification have difficulty penetrating. Moreover, there are some indications for a growth of the informal economy in highly developed OECD countries (Schneider & Klinglmair, 2004). Various authors presuppose that there is room for informal, labor-intensive jobs at the bottom of the labor market in large cities in advanced societies. In this part of the economy, one can find the remains of industrial activities (e.g., the garment industry with its sewing shops), but there is also informal paid labor in all kinds of enterprises in the business and personal service industries such as cleaning, security, catering, care for children and the elderly, and home improvement. Furthermore, a sizeable ethnic economy has evolved in many large cities in which informal labor by irregular compatriots is a rather common phenomenon (Bade, 2003; Ehrenreich & Hochschild, 2004; Sassen, 1991; Waldinger, 2001).

In addition to bastard institutions that enable them to escape from formal patterns of registration, illegal aliens make strategic use of informal migration networks. These also help them to avoid detection by the state. The transnational social capital of irregular migrants makes it possible for them to follow in the footsteps of compatriots legally residing in Europe and remain in the shadow of ethnic communities (Engbersen, 2001; Gryzmala-Kazlowska, 2005). Although bastard institutions are difficult to control by the state because of their *illegitimate* character, this social capital is hard to control because of its *legitimate* character. After all, regular migrants are allowed to freely travel (and may secretly take someone along in their car) and may also have their compatriots come over on tourist visas and then help them to illegally stay in the country.

The most important strategy to protect oneself against the state's inquisitive eyes is to hide one's personal (legal) identity. Manipulation of personal identity is one of

the major strategies adopted by illegal aliens who want to prevent detection by the state. Irregular migrants often do not have the possibility of living and working under their personal identity in the public sphere (and sometimes not in the private sphere) given the risk of apprehension and deportation. Irregular migrants, therefore, develop various strategies to change and mask their personal identity and illegal status. There are three main variants (Engbersen, 2001). First of all, there is the structural or situational adoption of a false identity. A widespread practice is the acquisition of false papers or legitimate documents—such as passports, social security numbers, and medical insurance cards—from legitimate others. Irregular migrants also use a false identity as a major strategy to ensure that they can stay in the EU in case the police arrest them. The relatively high number of Algerians among apprehended Dutch irregular migrants, for example, may be explained by the fact that many Moroccans assume an Algerian identity. As the Algerian authorities are generally uncooperative when it comes to implementing deportations, it makes them more difficult to deport (van der Leun, 2003).

Second, they obliterate their legal identity—more particularly, their nationality. Thus, irregular migrants can prevent and obstruct deportation by destroying their identification papers (e.g., their passports). Unidentifiable irregular migrants are the "unmanageable" cases with which the immigration authorities have difficulty coping, and they are seldom deported.

Third, they conceal their irregular status from others, such as employers, public officials, and members of their own ethnic community. They do so out of fear of repercussions. Also, knowledge of their status may lead to an inferior position in their own community. Staring (1998) has pointed to the different treatment of Turkish irregular migrants in the labor and marriage markets. Turkish "tourists" occupy a low position in the social hierarchy of their own ethnic community. They therefore benefit from concealing their irregular status. These identity strategies show the importance of lying for irregular immigrants (cf. Engbersen, 2001).

The counterstrategies of irregular migrants—going underground by making use of bastard institutions, mobilization of (transnational) social capital, and manipulation of their identity—are typical "weapons of the weak." Scott (1985) introduced this notion to highlight nonorganized forms of everyday resistance in situations of extreme inequality. Everyday forms of resistance are "a form of individual self-help; and they typically avoid any direct symbolic confrontation with authority or with elite norms" (p. 29). Forms of everyday resistance found among irregular migrants are found in the sabotage of the bureaucratic process of migration management by concealing identity. These weapons of the weak have usually only a marginal significance and are not focused on questioning the foundations of existing power relations. But, together, they may add up to a significant challenge to state policies. The key question in this respect is to what extent the weapons of the weak of irregular migrants and the perverse effects of the current restrictive policies will eventually lead to fundamental changes in migration-control policies. That depends to a large

extent on how successful the national states will be in effectively combating the weapons of the weak.

Tightening the Net: Some Policies in Practice

This section discusses the recent developments in some sectors of policy on irregular immigration, specifically focusing on three central strategies typical of the politics excluding irregular immigrants: blocking access to the labor market, detention and expulsion, and digitalization of borders. We will focus on examples from the Netherlands and Germany to explain these strategies. In all cases, instruments of surveillance and identification are used to apprehend, exclude, deport, and deter irregular migrants. Furthermore, we will also pay some attention to the counterstrategies of irregular immigrants.

Blocking Access to the Labor Market

As the doors were closing for legal labor migration in the early 1970s, European governments also needed to close off illegal access to the labor market. Most countries introduced employer sanctions as a first step to "demagnetize the labor market" (Martin, 2004). The penalization of employers (and illegal employees themselves) varies in severity from country to country. In some countries, fines are very high, and some countries also allow for the imprisonment of employers or for revoking licences (Robin & Barros, 2000). Employer sanctions have also been taken to the EU level, and recent commission documents argue in favor of a harmonization to eliminate "competitive advantages" within the EU (Samers, 2004). The effectiveness of employer sanctions heavily depends on implementation with manpower, resources, and political prioritization of the control on illegal alien employment as the main variables. In general, the effectiveness of employer sanctions to deter irregular entry and employment is thought to have been declining since the 1990s. Martin and Miller (2000, p. 2) assert that the spread of false documents, the rise of subcontractors and other middlemen, inadequate labor and migration law strategies and enforcement budgets, and insufficient cooperation among agencies undermine the effectiveness of employer sanctions. The 1990s saw both intensification in government policy and new evasive practices in the illegal alien population.

In most western European countries, governments have implemented a protective ring of documents and documentary requirements around the formal labor market, blocking access to stable tax-paying jobs. For example, since 1991, it has been impossible for illegal aliens in the Netherlands to register in the population register and thus obtain a social fiscal number, the "entry ticket" to formal work (van der Leun & Kloosterman, 2006). A related example is the Dutch Benefit Entitlement (Residence Status) Act. This act entered into force in July 1998 to exclude illegal

immigrants from tax-supported public services such as social assistance, nonemergency health care, public housing, and education. The act aims to prevent the continuation of unlawful residence and to prevent people without valid documents from building up a quasi-legal position. This strategy of exclusion is also used in the sphere of labor. According to Vogel (2001), documentary requirements make it extremely difficult for illegal aliens to get a job in the legal, regular economy in Germany. Even in Germany, with its corporatist tradition, involving many nonstate or semistate organizations in the regulation of the labor market, and with its federal differences between the states, active cooperation and data exchange among agencies is the norm. With the easy venues into the labor market cut off, illegal aliens have been seeking new ways to become employable. Assuming, borrowing, or buying a "legal identity" has been a key strategy to regain access. Many countries have seen the emergence of a circuit, or more aptly an illegal market, in which false papers are produced and sold. In addition, there is a widespread practice of lending legitimate documents (passports, social security numbers, etc.) to irregular migrants, either free or for money (Engbersen, 2001). As it became more difficult for an individual illegal alien to gain access to the labor market, intermediary organizations sprang up. Subcontracting and temp agencies have become important institutions in facilitating a match between the demand and the supply of illegal workers. Interestingly, it is often official economic policies of deregulation and creating more flexible labor markets that provide the opportunities for these intermediary structures. In the Netherlands, for example, the boom of legal, semilegal, and shady temp agencies was a direct result of the government program that aimed at the deregulation of temp agencies (van der Leun & Kloosterman, 2006). According to Martin and Miller (2000, p. 16), the general trend toward deregulation and greater flexibility in labor markets tends to undercut governmental policies aimed at curbing irregular entry and employment.

In the 1990s, state responses were twofold. First, there were legal initiatives such as the extension of the Dutch Act on Chain Liability to the garment sector in 1994, which made retailers formally responsible for the illegal practices of their contractors. In the early 1990s, it was a public secret that illegal practices, especially illegal labor, were widespread in the Amsterdam garment industry (Raes et al., 2002). Second, governments organized crackdowns in certain industries. Implementation became focused on certain sectors of the economy in which illegal aliens traditionally find employment, such as construction, agriculture, horticulture, the garment industry, and the restaurant and catering industries (Bade, 2003). In Berlin, the largest European building site during the 1990s, implementation zoomed in on the construction sector. Special teams organized at least one major inspection of a construction site per month involving "up to 100 police with dogs to surround the construction site to prevent anyone from leaving during the inspection, and 200 to 300 labour inspectors to check the legal status of each worker on the site" (Martin & Miller, 2000, p. 23). In the Netherlands, the garment industry in Amsterdam was a

thriving sector that was largely populated with illegal businesses and illegal labor. The introduction of a Clothing Intervention Team, which organized raids on Turkish sewing shops and especially targeted violations of the Foreign Nationals (Employment) Act, was one of the main reasons for the nearly complete disappearance of the garment industry in the Dutch capital (Raes et al., 2002). Comparable teams, in which all the relevant government agencies cooperate, were introduced for horticulture (Westland Intervention Team), and the new Social Security Inspectorate targeted the temp agencies in the Netherlands.

Another trend in labor market inspections is the growing use of computerized and networked checks on identities and other documentary requirements, sometimes even on site. Foreigners are usually obliged to carry identity cards and are sometimes even more thoroughly registered than are the native born. "Whereas Germans are only registered in decentralized residential registers that often still use only paper files rather than computerized databases, foreign nationals are registered in a national database with quick or even on-line access" (Vogel, 2001, p. 341). Though these efforts to improve the state's grip on the labor market are certainly not without flaws (implementation capacity and political priorities usually remains suboptimal), they do seem to sort some effects. Van der Leun and Kloosterman (2006) suggest that in the Netherlands there may be a sectoral shift, with illegal aliens moving toward the restaurant and catering sectors and into the domain of personal services. Engbersen and van der Leun (2001) suggested that irregular migrants, especially those who cannot fall back on established immigrant communities, may have to resort to criminal activities if restrictive policies cut off the route to work (see also Engbersen, van der Leun, & de Boom, in press). At the very least, it will strengthen the role of intermediary or bastard institutions, criminal or other, in the lives of illegal alien laborers.

Detention and Expulsion

Other major strategies to combat irregular stay are incarceration and expulsion of irregular immigrants. Irregular migrants are housed in closed centers and subjected to a prison regime. Most of the incarcerated immigrants have not committed any crimes. Their offence is being in a country without the necessary documents, and in a legal sense detention is an administrative matter and not a measure of the penal system. The legal basis of alien detention differs in the European countries. In Belgium, France, Germany, and, to some extent, England, illegal residence is punishable. The penalty usually consists of imprisonment or a fine. In the Netherlands, illegal residence as such is not punishable. The most important reason for nonpenalization is that this can prolong illegal residence. These deportation centers focus on the efficient organization of forced return programs, on one hand, and establishing the identities and nationalities of the apprehended "unidentifiable" immigrants, on the other.

The policy of detention signifies the new strategies of nation states to discipline the space and movement of unwanted immigrants. The group of detainees consists of two categories: (a) migrants who do not want to leave the territory, refuse to cooperate, and frustrate the progress of procedures (e.g., by stating a false name or incorrect country of origin), and (b) migrants who cooperate in acquiring relevant travel documents but cannot return to their countries of origin because the authorities of those countries refuse to cooperate or because of the political developments there. As far as the first group is concerned, noncooperation leads to a complicated bureaucratic process of identification of aliens, determination of their nationalities, and "presentation" of aliens to embassies for the purpose of obtaining travel documents (*laissez passer*). This process involves a multitude of organizations.

In Europe, there is a general trend toward increased use of administrative detention of irregular immigrants. The use of administrative detention is justified as a means to correctly identify persons and to speed up the process of forced repatriation. The assumption is that a prison regime will encourage immigrants to reveal their true identity. Detention is also considered to be a deterrent to prevent immigrants from coming to Europe through irregular channels. There are now nearly 200 detention centers located at strategic sites, such as traditional prisons, islands (Lampedusa, Italy), the Spanish enclave in Morocco (Ceuta and Melilla), airports, seaports, and detention boats in large cities (Jesuit Refugee Service, 2005). International airports and transit zones were not included in the figures. They involve closed centers in which aliens are detained prior to deportation. Detention and deportation are regarded as the final stages of an effective illegal aliens policy. If there is a lack of detention capacity, apprehended irregular migrants who are difficult to remove are not sent back out on the streets, as used to be the practice in countries such as the Netherlands (van der Leun, 2003) and Belgium (Suarez-Orozco, 1994), but are often brought to these detention centers. Germany, for example, has more than 40 detention centers, France has 20, and the Netherlands has 7 (Jesuit Refugee Service, 2005).

In many western European countries, detention must be ordered by a court and must be reviewed every 3 months. The total period of detention should not exceed 6 months, although this can be extended for another 12 months. In practice, many rejected asylum seekers are detained for periods exceeding 6 months. Dutch figures show however that the majority of aliens remain in detention for less than 6 months (Advisory Committee on Aliens Affairs, 2002, p. 41). They also reveal that fewer than half of the apprehended and detained irregular migrants are effectively expelled from the country and that, in contradiction to what the political rhetoric suggests, the share of effective expulsions has in fact been decreasing over the years (Van Kalmthout, Graft, Hansen, & Hadrouk, 2005). The ineffectiveness of expulsions has several causes. One major cause is the reluctant cooperation of countries of origin that do not want to take back their irregular migrants. Another major cause is the difficult identification of illegal aliens. Here, the strategic behavior of irregular

migrants becomes apparent. They make strategic use of international law by concealing their own identity and thereby preventing effective expulsion. The strategy of noncooperation shows that many immigrants are not docile persons who fully cooperate with the authorities. Many of them are difficult to manage by state officials, and they are able to very effectively frustrate the administrative processing of return programs. However, the question is to what extent these strategic "identity politics" of irregular migrants will remain effective in the future. With more and more new methods of identification being employed, it will become difficult for irregular migrants who have gone through a formal asylum procedure or who were registered through their tourist visas to keep evading detection and identification by the state.

The Digitalization of the Border

The limits of expulsion policy underline the importance of identities for the internal control on illegal aliens. It is hard for the state to act when undocumented individuals cannot be connected with their legal identities or with their migration history. In general, illegal aliens have three possible migration histories. They either illegally crossed the border (with or without help), were asylum seekers and stayed after the claim was rejected, or came on a legal visa and stayed after its validity expired. In recent years, European governments have been developing a network of immigration databases at the EU level aimed at documenting these migration histories in order to "re-identify" illegal aliens found on the territories of the member states (Broeders, 2007). This reidentification is meant to facilitate expulsion. The network of EU databases comprises the Schengen Information System (SIS) and its successor under construction (SIS II), the Eurodac database, and the Visa Information System (VIS) that is also under construction. In short, the system works as follows. Irregular migration itself obviously defies registration, but illegal aliens found in member states can be registered in the SIS. Those who enter through asylum procedures will be registered in Eurodac, and those who enter on a legal visa will, in the future, be registered by the VIS.

The Schengen cooperation accomplished the goal of allowing free movement of people among the signatory states. This new freedom was accompanied by a vast list of compensatory measures in external border control, the fight against drug trafficking, police cooperation, and the fight against illegal immigration, and it also introduced the SIS, its database "flagship" (Mitsilegas, Monar, & Rees, 2003). The SIS is a data-based registration and surveillance system that stores information on persons, such as apprehended illegal aliens, and objects, such as stolen vehicles and identity papers. Though the SIS was presented as an instrument intended to maintain "order and security," its main preoccupation seems to be with irregular migrants (Guild, 2001), who make up the lion's share of the information stored on persons. The enlargement of the EU and national "wish lists" to expand the functions of this popular database led to the decision to develop a second generation of the system.

The Justice and Home Affairs Council, in its conclusions of June 6, 2003, made it very clear that SIS II would have to be a "flexible tool that will be able to adapt to changed circumstances" (Council of the European Union, 2003, p. 18). In other words, functions can be added, access can be granted to new organizations, and member states have suggested linking SIS II to other databases. Some documents even consider the possibility of integrating all systems into one European Information System (Brouwer, 2004, p. 5).

The Eurodac database is linked to the Dublin Convention of 1990 that was designed to curtail the possibilities for "asylum shopping," that is, individuals successively entering into the asylum procedure in more than one country. To determine which state is responsible for an asylum claim, a community-wide system for the comparison of fingerprints of asylum claimants was created that will reveal whether or not an asylum claimant has already lodged a claim in another member state. Eurodac went online in 2003. Originally, it was meant to contain just the prints of asylum seekers, but in 1998, Germany pushed for the inclusion of illegal aliens (Aus, 2003, p. 12). Irregular migrants were already following in the footsteps of asylum seekers as the most problematic group of immigrants. In 1997, the Schengen Executive Committee had already concluded "that it could be necessary to take the fingerprints of every irregular immigrant whose identity could not be established without doubt, and to store this information for the exchange with other member states" (quoted in Brouwer, 2002, p. 235). As the SIS could not accommodate the registration of fingerprints, the member states had to look elsewhere. Now an illegal alien who is silent about his or her identity but produces a hit in the Eurodac system may be linked to an asylum application made in another country that will contain information on his or her identity and country of origin. In other words, it could reidentify him or her by traces left in bureaucratic procedures.

The logical next, and, for now, final step is the VIS that is currently under construction. Representing the latest effort in the EU's bid to establish "control over identity," this system registers all visa applications and the fingerprints of the citizens of states that are required to request a visa when traveling to the EU (Guild, 2003). It also includes details of the person or company that issued an invitation or is liable for the cost of living of the visa applicant during the stay (Commission of the European Communities, 2004, pp. 14-15). This means that the family members and companies that vouch for the visa recipient—and who may be held accountable should he or she overstay the visa—are also registered. The VIS will make it possible to identify those irregular migrants who legally traveled into the EU at any border and then overstayed. Once identified, the system can facilitate the provision of travel documents for undocumented illegal residents on the basis of the exchange of information through the VIS (Samers, 2004). When the VIS is completed, the EU will have a new digital border that will survey the immigrant population rather than the territorial border (cf. Bigo & Guild, 2005). It is hard to tell whether this network of immigration databases actually constitutes a net that will work. The amount of

data stored on potential irregular migrants is enormous and is set to grow at great speed as the Eurodac database fills up and the VIS and the SIS II become operational. Especially the information stored in the Eurodac and VIS databases—biometric identifiers, coupled with information on a documented identity of application papers and so on—may become important in detection and identification. Still, much will depend on the day-to-day use of these systems in the affairs of police, immigration officers, and other authorities who have access to them. It is questionable whether the steep rise of information will be paralleled by a similar rise in implementation.

Reactions on the part of the subjects of this new and future surveillance have obviously been scarce. There have been some reports of migrants who mutilated their fingerprints to make them illegible (Thomas, 2005). One might expect that the larger part of the irregular immigrant population will turn to the less tragic option of avoiding the "identity routes" of visa and asylum applications when traveling into Europe. One likely effect will be an even steeper descent of irregular migration into the underground and an increase in the dependency of illegal aliens on intermediaries (criminal and noncriminal), making human smuggling even more of a "growth industry" than it already is.

Conclusion

The effectiveness of state policies has increased over the years, especially when measured in terms of capacity building. The growing capacity of the state to detect irregular migrants is noticeable in the increase in apprehensions of illegal workers and detained irregular immigrants. German and Dutch figures also point out that the formal labor market is now practically closed to irregular migrants. The strategy of detention to effectuate expulsion seems less effective. Expelling the current millions of "unidentifiable" irregular immigrants in Europe, aided by the pressure of incarceration, would take decades, even if conservative estimates of the "stock" of irregular migrants are true. The development of the digital border is a potential boost for the state's capacity to identify irregular migrants. Documenting identities in combination with biometric identifiers on the legal entry routes of asylum, tourism, and other legal forms of migration that require a visa may effectively close off these routes. If hiding or obliterating legal identities is no longer an option for irregular migrants, they will have to search for new routes or become much more vulnerable to identification and expulsion when caught. However, another important potential of the new politics (i.e., of the digitalization of borders) is that in addition to providing information on the identity and migration history of migrants, it can provide information on the people who are part of their network (see the VIS). That offers opportunities for effective intervention in the transnational networks that migrants

use to enter Europe and remain there. In other words, the state will be able to inter-vene in the crucial counterstrategies of irregular migrants, particularly in the use of migration networks and the manipulation of their identity. The biggest strength of the state's instruments, however, can be found in the combined effect of policy offensives.

If the effectiveness of the strategies of the state has increased, the effectiveness of the strategies of irregular migrants has likely decreased. Their main strategy of iden-tity manipulation that has proven to a very effective weapon of resistance—a simple lie made an irregular immigrant invulnerable to expulsion—is now being targeted by new policies of surveillance and identification. Though identity manipulation by no means loses its significance, the room to maneuver is decreasing. So it would indeed seem that the state holds the better cards and that its hand is getting better. However, the game of cat and mouse does not take place in splendid isolation, and as Scott (1998) already warned us, "we must never assume that local practice confirms with state theory" (p. 49). Policies of internal migration control are subject to "policy ambiguities" (cf. Cornelius & Tsuda, 2004) and unforeseen outcomes or side effects that may be called "perverse effects of policy."

Policy ambiguities are often the result of competing economic, political, profes-sional, and humanitarian interests. Economic interests sometimes lead to a temporary or permanent de facto policy of toleration in certain economic sectors, such as agri-culture and domestic work. As Cornelius (2005) has shown, there is a huge gap between the rhetoric and funding of the patrolling of the U.S.–Mexican border and the virtual nonexistence of internal controls on the labor market (i.e., control on employ-ers). Given the much more serious labor market controls in European countries such as Germany and the Netherlands, these policy ambiguities are much more prominent in the United States, but they are still a fact of life in Europe as well. Policy ambigu-ities are found not only in economic constraints but also (and, in Europe, more often) in the resistance of professionals, civil society groups, and lower levels of government that oppose national policies or put their professional ethics above state policies (see Ellerman, 2006; Lahav & Guiraudon, 2006; van der Leun, 2006).

The fight against illegal migration in Northern Europe dramatically increases the burden of life for undocumented immigrants in Europe. It stands to reason that the array of measures, including the exclusion of irregular migrants from public ser-vices, is likely to cause the irregular migrants to go even deeper underground. As identity routes are cut off, irregular migrants are increasingly likely to cross the bor-ders in an irregular manner and participate in various informal economies to be able to stay in Europe. Traveling to and staying in Europe may very well become an affair of professional and criminal activity as "softer" connections, such as those resulting from transnational social capital, are cut off or made too perilous for legal immi-grants in the country of destination. Under such conditions, Panopticon Europe seems on the way to creating new markets for mobility and bastard institutions that will exist alongside the manifest worlds of legitimate citizens and institutions.

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