Over-policed? Tackling incivilities and the intersections with migration control

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Introduction: tackling incivilities in the urban context

Social incivilities, understood as lower-level breaches of community standards, have received ample scholarly attention over the years, although mostly in the Anglo-American context, because they appear to signal crime and trouble (LaGrange, Ferraro and Supancic 1992, Hunter 1978), just like broken windows or other physical cues do. Activities such as loitering, hanging around and displaying improper behaviour, have increasingly become the target of policies aimed at reducing fear for crime and insecurities (Garland 2001). This also holds for the Netherlands, where the government does not provide an explicit definition, but describes social incivilities as “behaviour systematically severely impacting on the wellbeing, and which is specifically targeted at specific persons”i. A more useful definition might be the one of the European Commission (2000: 4) that defined antisocial conduct as “conduct that without being a criminal offence can by its cumulative effect generate a climate of tension and insecurity”. Preventing and punishing these categories of behaviour have become crucial in times in which the police and other law enforcement agencies are under pressure to prevent crime from happening.

As the types of behaviour that comprise incivilities or anti-social behaviour are open to broad interpretation and are framed and criminalised differently across time and space (Persák 2014: 13), this approach to security combines the broad interest in incivilities and sub-crime with the increased monitoring of ‘suspect populations’ and ‘disorderly spaces’ (Van der Leun and Koemans 2013, De Leeuw and Van Swaanningen 2011). The preventive aims of the new crime complex are therefore typically accompanied by new technologies and risk assessments (Feeley and Simon 1992, Dekkers and Van der Woude 2014). On the other hand, the discretionary judgements of police officers get a lot of weight, as the police is expected to intervene early and ‘nip crime in the bud’ (Svensson and Saharso 2014).

For decades, Dutch politicians supported the strong social character of crime policies and felt that (perceived) problems of incivilities, disorder, sub-crime or anti-social behaviour should not be dealt with under criminal law (Downes and Van Swaanningen 2007). This restraint tied in with the emphasis on regulated tolerance that characterised Dutch society for a long time (Buruma 2007, Engbersen, Van der Leun and De Boom 2007). In 1985, a governmental committee explicitly advised the Dutch cabinet not to address phenomena such as nuisance or disorder in the public domain with criminal law in order to avoid over-criminalisation and escalation. Now, thirty years later, criminalisation is seen as an important
tool in the combat against incivilities. In particular in reaction to the events of 9/11, preventive powers of law enforcement have been seriously expanded (see the next section). In 2007, Den Boer (2007: 17) noted with respect to Dutch policy changes after 2011: “With the relatively one-sided choice for repression and selective and proactive investigation, the Netherlands seems to have abandoned its traditional culture of trust, familiarity and tolerance”. Garland’s influential observations regarding contemporary societies such as the US and the UK that came to be cultures of control also appears to be applicable to the Netherlands with its rapidly changing crime policies in which tackling sub-crime and incivilities has moved to the fore (Van Swaaningen 2005, Daems 2009, Koemans 2010). The Dutch government has chosen to expand the traditional criminal law approach to misdemeanours (a category of behaviour that is deemed less serious than criminal offences) and criminalize social incivilities at the national level. Inspired by British examples, criminal law has also been supplemented with new possibilities of punishing behaviour under administrative law. Administrative legislation provides local authorities, which have strong powers with respect to security and public order, with more legal instruments (often dubbed administrative sanctions) to react to and prevent incivilities. In 2010 a law pertaining to severe anti-social behaviour, with many similarities to the British Anti-Social Behaviour Order (ASBO), was enactedii. This law consists of a civil order backed up by a criminal penalty (Koemans 2010). These forms of criminalisation do not imply that social policies have been abandoned, though. The Dutch approach to incivilities can best be described as a mix of repression and criminalisation on the one hand and social and urban restructuring on the other. A longstanding policy tradition under the label of Big Cities Policy (GSB) aims to improve disadvantaged urban neighbourhoods by focussing on the economic pillar, the physical infrastructure, and the social infrastructure, and the national government has heavily invested in doing so for decades now (Van Kempen, 2000).

Several authors have concluded that repressive policies aiming at incivilities are primarily concerned with governing troublesome youth, in particular when hanging around in public spaces (Crawford 2008, Bannister and Kearns 2013). Whereas this selective focus is indeed visible in the Netherlands, problems of incivilities and anti-social behaviour in the streets in the Netherlands are first and foremost associated with young male citizens with an immigrant background in distressed and multi-ethnic neighbourhoods. Notwithstanding the Big Cities Policy, this process is comparable to what has been noticed in the United States with respect to inhabitants of disadvantaged neighbourhoods, many of whom have a different ethnic or racial background than the dominant groups in society. In many large cities and in particular in diverse areas, hanging around in public spaces is reason enough for the police to intervene (Collins 2007).

The keen interest in people with a migrant background is directly linked to the social climate in the Netherlands more in general. Over the last two decades, tensions resulting from the persistently weak socioeconomic position of certain (ethnic) groups combined with public concern with the feasibility of the prevailing tolerant approach to immigration rose (Pakes 2004, Engbersen et al. 2007, Van der Leun and Van der Woude 2011). Tensions manifested themselves more intensely in specific urban areas than elsewhere in the Netherlands. Many diverse urban neighbourhoods contain a relatively high share of low-income families including those with an ethnic minority background. The same neighbourhoods are also
plagued by relatively high levels of disorder and crime and feelings of insecurity, and highly policed. For many Dutch politicians, it has become self-evident that the authorities should not only fight employment, restructure housings stock and actively involve citizens in urban policies, but also act firm against incivilities and social problems (Pakes 2005, Van Stokkom 2007, Van Swaaningen 2008). Already in 1995, the Social and Cultural Planning Bureau concluded that the mere presence of ethnic minority groups in areas increased feelings of insecurity among the traditional neighbourhood residents and gave them the impression that the neighbourhood was deteriorating (SCP 1995, Uitermark 2003). Tapping into these insecurities, which have been exacerbated over the years by fears of terrorism and cross-border crimes and the mediatised attention for high crime figures for some groups of immigrants, politicians have effectively called for broader powers for law enforcement and for a more repressive stance. We could argue that the expressive characteristics of the anti-incivilities agenda are accompanied by fear for outsiders in that its tools enable the targeting of those marginalized groups who (seemingly) exhibit behaviours that are seen as ‘different’ (Tonry and Bildsten 2009, Boone and Van Swaaningen 2013).

The present chapter will critically look at these development from a crimmigration control point of view: to what extent do these broad policing powers and the combat against incivilities lead to the selective de facto criminalisation of marginalized young people with a migrant background when using public space? And how does that impact upon the (perceived) selectivity with regard to people with a migrant background? The underlying aim is to turn the attention to a broader lens than the traditional rather narrow one which is advocated by human rights organisations, which emphasises police discrimination or institutionalised racism and tends to overlook wider societal processes including law making and policy drafting. By way of illustration of the dynamics that these policies can bring about, it will zoom in (a) on ID checks in the streets based on explorative qualitative fieldwork in six neighbourhoods in two large Dutch cities, namely Amsterdam and The Hague, and observation of police citizens encounters in these same neighbourhoods in The Hague, and (b) on surveillance of irregular migrants. But first, we will depict the legal framework of expanding law enforcement powers.

Powers, legitimisations and selectivity

In addition to far-reaching urban renewal programs with a combination of urban restructuring, social policies, repression and the introduction of restraining orders after British example (Van der Leun and Koemans 2013), a number of fairly recent legislative changes have evidently broadened the scope for action for law enforcement officials (Van der Woude and Van der Leun 2013). These changes include the introduction of preventive stop and search powers as of 2002. Before, law enforcement officials could carry out searches if there was a reasonable suspicion of a criminal offense (Art. 27 in relation to 55b of the Code of Criminal Procedure). Since 2002, the legal basis for stop and search powers can be found in both the Municipalities Act (Art. 151b) and the Weapons and Ammunitions Act (Art. 50-52). The powers to stop and search are vested in mayors by means of a by-law which they can decide on after having consulted the municipal council and the public prosecutor. The mayor can designate certain areas as ‘security risk zones’ in which anyone can be subjected to a
preventive search’ by police officers during a fixed period of twelve hours. Under authority of the public prosecutor, the police can search any individual as well as goods and vehicles, without having concrete grounds for suspicion (Van der Woude and Van der Leun 2013).

Within the context of counterterrorism, police officers can also perform preventive searches without a preceding order by the public prosecutor. These searches can take place in permanent security areas that are considered at risk. Over the years, these powers have been expanded. A crucial body of law enabling these preventive searches is the Dutch counterterrorism legislation: in response to the 2004 terrorist attacks in Madrid, the Investigation and Prosecution of Terrorist Offences (Extension of Powers) Act was implemented\(^v\) (see also Van der Woude 2010).

In addition to these wide stop and search powers in designated areas, police officers and other law enforcement officials exercise several broader powers, which relate to concerns about irregular migration and residence. Cases in point, which are relevant for the present chapter, are immigration controls and identification checks, which have both been expanded against the background of concerns about migration. The most recent significant adaption of the Aliens legislation, the Netherlands Aliens Act 2000\(^v\), which came into force in 2001, includes several renewed provisions (sections 50 and 53) for police and immigration authorities to carry out house searches for illegally residing immigrants and also broadened the scope for stopping people in the street to ask for their identity and nationality. Police officers are the ones who are vested with the surveillance of illegal residence in the Netherlands and they can stop people in the streets when there is a reasonable suspicion that such persons are unlawfully residing or in order to prevent illegal residence of persons after they have crossed the border (section 48). Moreover, the police are authorized to enter a dwelling without the consent of the occupant if there is a reasonable suspicion that an alien who is not a lawful resident is staying there (section 51). In the adjacent area of illegal and undeclared labour, the powers of the Labour Inspectorate have been expanded since 2013 under the Act on Enforcement of Labour and Social Security Law\(^viii\) and a new policy was introduced to focus more specifically on high risk sectors, which are likely to be sectors with high shares of migrant labour (Renooy 2013). These are all laws, regulations and policy choices that are based on broad powers, which at least open up the possibility that people with a migrant background will run a relatively high risk of being detected when crossing legal boundaries in one way or another.

Equally relevant for the present chapter is the expansion of the Identification Act\(^ix\). Opportunities for identification checks were vastly expanded with the introduction of the 2005 Extended Compulsory Identification Act (WUID), which replaced the more limited act of 1994 which was officially based on consent (meaning that a person could refuse cooperation). Investigating officers and supervisors were given the power to demand proof of identity from individuals aged 14 or older as part of the performance of their regular duties instead of only under specific instances, as held before. Individuals who do not immediately comply with this demand are guilty of a criminal offence as they are violating Section 447e of the Dutch Criminal Code\(^x\) and can incur a fine. Whereas in the past, many Dutch citizens strongly opposed identification checks, which were often associated with World War II (Böcker 2002, Pakes 2004), these expansions were accepted without significant protests, presumably as they were seen as crucial in fostering security. Internal rules emphasise that
there have to be circumstances that warrant ID checks and that the police should not check identification documents of people of whom they already know who they are (Van Klink and Zeegers 2008). It is clear that the police are not allowed to check IDs independently of other reasons (Van Kempen 2006). The limit is set by the fact that there has to be a concrete reason to ask for a person’s identity; doing so has to be reasonably necessary for enforcing police tasks. Like most expanded powers, the Identification Act was expanded in order to reduce a vague mixture of crime, irregular migration and terrorism (Beck and Broadhurst 1998). As far as it has been evaluated, evidence has shown that compulsory identification was initially applied widely. It was mainly used in the case of regularly occurring minor criminal acts that had to do with public order. Apart from conducting checks in public transport and with traffic incidents, papers were for instance asked when checking on youths loitering and causing a nuisance in places where such disturbances were common, checking on vagrants, beggars and people who seemed drunk. Contrary to widely expressed fears, no evidence was found of an increase in discrimination after the introduction of the new law (Everwijn, Jongebreur and Lolkema 2009). It should be noted, however, that this latter conclusion was largely based on information from investigating officers, operational staff, supervisory officials and official complaints, which raised some doubts about this conclusion (Eijkman and Schuurman 2011). In 2010, the National Government provided more specific criteria for when ID checks were allowed and not.

Several authors have expressed concerns that these rapidly widened powers with respect to legal and policy interventions have transformed the Netherlands into a surveillance society without sufficiently monitoring the consequences and without introducing adequate counterbalances (Den Boer 2007). These concerns deepen with respect to ethnic minority groups (Eijkman and Schuurman 2011). The fear is that when young men with an ethnic background different from the majority population are more likely to be stopped by the police and asked for their identity documents, the already difficult relationship between police and certain ethnic minority groups may worsen (Smith 1997). It is probably not without reasons that the debate on selectivity with respect to people with a migrant background started to receive more attention in the Dutch context than in earlier times.

Ever since the late 1990s the political and social discourse on migration has gradually become more excluding and repressive (Pakes 2004, Van der Leun and van der Woude 2011, Van der Woude and Van der Leun 2013). Links between crime, security, migration, and integration became more widely seen as social problem than before. Immigrants, and especially irregular migrants and those who cause trouble in cities by being criminally active or causing nuisance, became increasingly targeted (Leerkes, Engbersen and Van der Leun 2012). Dutch legislative reforms in the field of crime and immigration control, as well as the public and political discourse supporting them, fit into a trend often referred to as crimmigration (Stumpf 2006, Van der Woude and Van der Leun 2013): the process whereby criminal law and immigration law become interlinked (Legomsky 2007, Sklansky 2012, Chacón 2012). So far, there have been few reflections on the implications of the expanded laws and enforcement powers in both fields together in practice. Below we will zoom in on the example of ID checks and surveillance of irregular migrants departing from the assumption that both combine elements of crime control and migration control and both will
raise the likelihood that people from an ethnic minority background will be stopped by the police when being present in public space, as this may be seen as ‘incivility’.

**ID checks in urban neighbourhoods**

Roughly after 2012, the issue of ‘ethnic profiling’ by the police suddenly started to attract public and scholarly attention in the Netherlands. Incidents and indications were rapidly translated by NGOs, citizens and scholars into a matter of discrimination, without taking into account broader trends such as selective policy attention more in general (Mutsaers 2014, Landman 2015). As part of a broader study into police perceptions and police-citizens relations in urban neighbourhoods, a considerable body of research has attempted to explore the complex relationship between the criminal justice system and ethnic minorities. Views with respect to selectivity vary considerably and there has been little consensus to date between the various studies as conducted in the Netherlands. On the one hand it is clear that members of certain ethnic minority groups, particularly those with a Moroccan and an Antillean background are disproportionately represented in criminal justice data, which may relate to differences in criminal overrepresentation, but also appears to point to biases. On the other hand, studies that directly look into street level decision making have resulted in diverging outcomes that do not warrant the strong conclusions that are made in public debate. We will not try and solve this debate here, but instead focus on police perceptions and police-citizens relations in urban neighbourhoods with a particular interest in ID checks.

As part of a broader project and with the help of master students in criminology we conducted 252 street interviews with young adults in the streets of six neighbourhoods in two of the Netherlands largest cities: Amsterdam (141) and The Hague (111). We also observed police-citizen interactions during ride-alongs with the police in the same neighbourhoods in The Hague. In the course of this empirical study our attention was drawn towards the issue of ID checks in relation to unwanted behaviour in public spaces, in particular in the accounts of young adults in the streets. Below we will first draw on the street interviews. By going into the streets and spontaneously and informally approaching young people we aimed at reaching a part of the population that is (a) likely to be more than average at risk for being stopped and searched by the police because of their routine activities and (b) likely to be under-represented in general population surveys. In the following section, we specifically focus on the recurrent theme of ID checks, although the study dealt much more broadly with police-citizens relations and was also introduced as such to respondents (Van der Leun et al. 2014).

**Young people’s views**

After some opening questions, respondents were asked if they were approached or stopped by the police in the last 12 months prior to the interview. In Amsterdam, less than half of the respondents (43 per cent, N=141) were approached and/or stopped, while in The Hague more than half of the respondents (54 per cent, N=111) were approached and/or stopped by the police. This held more for men than for women and we also found differences across ethnic groups. Respondents with an Antillean, Surinamese and Moroccan background were most
frequently stopped. Many people reported to have been stopped more than once in a year. They mentioned being stopped between two and 30 times a year, and some even said twice a week. Many respondents said they had been stopped ‘a couple of times’, ‘quite often’, ‘too often’ or ‘too many times to count’. In The Hague, 85 per cent of the respondents who have been stopped said they had been stopped more than once in a year’s time.

When being asked about the reason of the stops, most people were short or rather vague in their answers: ‘Something happened in the neighbourhood and I was stopped for being a suspect’. Others gave more detail on traffic-related incidents (speeding, driving through a red sign, not wearing a seatbelt, not wearing a helmet on a motorcycle, no lights or broken lights on a car, motorcycle or bicycle, and cycling in a pedestrian area) or causing nuisance and creating alcohol and/or drugs related incidents in public areas: ‘I was stopped for hanging around and smoking weed’. A few others were reporting general checks for weapons, preventive stop-and-search, checks of vehicles, and checks for driving licenses.

An aspect that stood out in the interviews was the fact that many respondents spoke strongly about the fact that they were often asked for their IDs. Several respondents told they saw no reason for these checks: ‘I had to give my ID, but I did nothing’, ‘I was standing in the street with friends. They came to ask what we were doing. I had to show my ID’. Although we cannot draw strong conclusions, as we did not witness these cases on a large scale, these stories seemed to indicate that these young adults felt or were heavily policed, or both, and that ID checks played a crucial role in these police checks. In an earlier study in another area of the country, Svensson and Saharso (2014) found similar results for a younger age group. Their survey showed that ethnic minority youths have more often a proactive contact with the police and proactive instruments – including ID checks – used against them. Yet, in a more refined analysis, the significance of ethnic appearance disappeared when various control variables were introduced. This led the authors to conclude that, to a considerable extent, outcome inequalities seem to be largely the result of justifiable distinctions, which may be made by the police on other grounds. Yet, they also concluded that this does not eliminate the concern, as young people with an ethnic minority background feel over-targeted and were in practice more often confronted with proactive policing than their counterparts who were native to the country.

**Police views**

Next to interviewing citizens in the streets, we also conducted observations and interviews with police officers on the beat during ride-alongs, in which the topic of ID checks also often came to the fore. Overall, research assistants engaged in ride-alongs during 17 police shifts (in total 153 hours of observations) and informally talked to the officers in charge during and after these shifts (cf. Sollund 2005). During the ride-alongs, the research assistants observed actions of 31 officers, eight female and 23 male. As they were together with the officers nine hours in a row, they were able to build trust. With approval of the police, the ride-alongs were held in three different neighbourhoods in The Hague, two of which were multi-ethnic neighbourhoods. Observations were described during and after the shifts in research memos, which were later analysed. In the present chapter we only focus on the issue of ID checks related to incivilities.
The following interaction, described by one of the research assistants during a ride along with the police, forms an example of a situation that attracts police attention:

At the moment that we passed a bakery on X-street, a group of youngsters, probably from Moroccan descent, yelled at us (‘hey’…) . The police officer turned the car around and drove by again. She immediately explained she just wanted to drive by. As soon as we returned, the guys slipped into houses or into a porch. One guy ran off. We made another round and passed the bakery again, just in time to see the guy running away. After another round we drove by for a third time to check on the hangout. And after the guys again went inside, we left the area. While driving, one of the officers commented: ‘This is just to let them know that we keep an eye on them’. Her colleague added: ‘One of the guys ran away just to lure us into going after them. But we are not going to turn this into a cat and mouse game’.

One of the police officers in the situation emphasised that the individuals they checked were OK. They saw them as ‘blokes that you can still talk to’. Yet, the officers did feel they had to send out a message that they were keeping an eye on them. In the situation above, the officers did just ‘show authority’. The next step is often asking for identification documents. Police officer: ‘We can play with our competences. To ask for an ID is always a possibility of course’. In many conversations in our study police officers described situations in which they express authority – either by asking questions or by asking for IDs – as rather innocent. Police officer: ‘Often, it is just a game. Me and a guy, we engage in a fake conversation. Just to let him know I keep an eye on him. Sometimes they throw eggs at us or spit on the ground before us’.

Another officer said: ‘I do not know all details by heart. If someone is not able to show an ID, we sometimes take them to the police station. It depends. For example: I have a lot of issues with a young Moroccan guy and I always take him with me. We are never able to catch him and he is always acting in annoying ways. He might be cycling circles around our car, just showing very provoking behaviour. So, in order to antagonise, we will take him along [if he is not able to show his ID – the author]. It is a cat and mouse game.’ According to the interviews with police officers, they usually made sure they checked identity papers only when they had a legitimate reason to do so. Circumstances were always taken into account, but then again reasons to engage in an ID check were formulated broadly. Checking papers takes place for instance in situations in which young people hang around in places that are designated risk areas or emergency areas and where dispersal powers apply. In these instances, officers are always allowed to ask for documentation. Some respondents in the streets with an ethnic minority background, however, commented that this implied that they were stopped and fined when standing in front of their own house or business, which frustrated them immensely. They saw this as characteristic for the relations in their neighbourhood, which they described as a continuing battle between youngsters and the police. Some of them deliberately go to places where they are not supposed to hang around in order to provoke the police to act. Police officers frequented these places to show their presence and authority. When they indeed take action, they are determined to make clear who is in charge. They therefore prefer to show up with several officers and cars and bring young people to the office without further ado if they do not carry their IDs. They want to make sure they ‘win the game’. Whereas many young people feel harassed by the police just for being
there, police officers emphasise that they have to uphold norms and prevent disorder. As one police officer said: ‘They hang around in the streets, but even if they only talk in these groups of four, they cause disorder. The acoustics of the squares in these neighbourhoods also do not help. For us as police officers it is difficult to explain to the youngsters that they have to leave because of incivilities if they are only talking. Some of them grow more impertinent after every check’.

Most police officers seemed to regard ID checks as a simple procedure without realising what this could mean to those who are checked regularly. Some officers were more critical with respect to the frequent ID checks: ‘It is not something we should want, that they are checked so often. We have to make clear their behaviour is wrong, but we should not give them the impression that they are fined for who they are’. […] ‘The fines are meant to contribute to self-reflection, but that does not happen as they do not really understand what they are fined for. And there is no way of explaining this to them, as we cannot even have a normal conversation with them’. Below we will turn to a second example of a policy, which is increasingly becoming a mixture of crime and migration policy: the surveillance of irregular migrants.

The surveillance of irregular migrants

In the Netherlands, the police are responsible for the surveillance of irregular migrants. This surveillance used to be a matter of immigration policy and administrative law, but has become increasingly intertwined with crime control. Whereas in the 1960s and 1970s migrants could also be ‘illegally residing’, their presence was not perceived as a particularly worrying or pressing problem. The leniency at the time was closely related to the demand for low-skilled labour in an expanding Dutch economy, which characterised the policy at that time. In the 1980s and 1990s, the discourse on (irregular) immigration became more restrictive, but in reality things changed gradually and incrementally. For instance, it remained fairly easy for irregular immigrants to acquire a tax and social security number with which they could be formally employed in certain economic sectors. After 1991, certain practices continued to be tolerated, but a number of legislative and other measures were taken to combat illegality more effectively. Access to the formal labour market was blocked by imposing sanctions on employers and by establishing a protective ring of documentary requirements around the formal labour market. It became impossible for illegal immigrants to obtain a tax and social insurance number (Van der Leun 2003, Broeders and Engbersen 2007). Subsequently, steps were taken to systematically exclude irregular immigrants from public services (welfare, social security, health care, education and public housing). In 1998, the Benefit Entitlement (Residence Status) Act came into force (Van der Leun 2003). From then on, only immigrants with residence permits could obtain social security and other social rights. The Act is also known as the ‘Linking Act’ because immigration service registration files, census bureau data, tax identification data, and social security and social assistance data can all be cross-checked to verify the validity of a person’s immigration and work status.

Linking up crime and migration only happened in more recent years, when the Dutch government has stated its intentions to put more emphasis on tracing, arresting, detaining and attempting to expel irregular immigrants. A concrete proposal to take the final step and de
jure criminalize illegal residence was included in two recent coalition agreements. After years of debate, the Dutch government decided in 2012 to make illegal residence in the Netherlands a criminal offence. Foreign national adults who reside illegally would then be guilty of a crime (misdemeanour) when apprehended in the country. They could be sanctioned with a fine of up to 3,800 Euros and could be imprisoned if they failed to pay the fine. In the end this ‘crimmigration measure’ was rejected.

Remarkably, we know very little about the active surveillance of irregular immigrants in practice. My own work in the mid-1990s showed that police officers were often reluctant to engage in active migration control. They would only intervene in the case of criminal activities. After all, frontline police officers are not only supposed to fight illegal residence, they also have to secure good community relations (Van der Leun and Van der Woude 2011). A more recent empirical work is lacking. In 2011, there was a mediatized case in which bus drivers noticed a number of dark-skinned men and women taking the bus from the Bijlmer neighbourhood to posh areas outside Amsterdam. They suspected illegal practices and contacted the police, who arrested a number of people and praised the bus drivers for helping them in their fight against labour exploitation. Later it turned out that the workers were expelled on the basis of illegal residence and labour, and the issue of labour exploitation was never investigated. The employers were never fined. Much later, the Council of State decided that the police had not been authorized to check the passports of the workers, as there was no ‘reasonable cause’ to suspect that they were residing illegally. It is difficult to tell whether this case concerns a single incident or whether it illustrates a changing attitude towards detecting irregular migrants. In our recent study on police decision in The Hague we did not have the impression that during regular duties police officers were actively looking for irregular immigrants. We might conclude carefully that there are no indications that the police have become more active in apprehending migrants just for the sake of being in the country illegally. Apprehensions are not particularly high as far as we know (Van der Heijden, Cruyff and Van Gils 2011). Several spokespersons of the police also spoke out against criminalization of irregular residence and ‘razzias’ (raids). Yet, at the same time, an independent evaluation in 2004 of the use of immigration control powers under the renewed Aliens Act 2000 showed that these new powers were increasingly being used (Boekhoorn, Speller and Kruijssen 2004), and in today’s highly regulated society with all kinds of regular identity checks, illegal immigrants always run the risk of being detected for one reason or another when they are present in the public space. The only conclusion we can safely draw is that there is little insight into the extent to which irregular immigrants are apprehended by the police merely because they are present in public space.

Conclusions: the expressive impact of criminalising incivilities

Among the powers of the police that were expanded over the years in order to deal with incivilities, crime and migration, the renewed Dutch Aliens Act and the expanded Identification Act and their long-term consequences have received little scholarly and societal attention. Both types of control are examples taken out of a wide context of proactively policing suspect groups and suspect spaces, yet they seem to be telling examples of the consequences of the preventive turn in policing and migration control, and of the intertwining
of the two. Both carry the risk of being used selectively against people from with an immigrant background. This risk was rather easily dismissed in the political debates that surrounded the law making process. When the legislation on carrying IDs was changed in 2005, the Ministry of Justice emphasised in the parliamentary debate that the new law did not involve a general obligation to prove one’s identity. When the issue of thresholds for checking people’s residence status in public spaces was brought up, the mantra that was always used was that there would be ‘no razzias’. In both instances, professional ethics was seen as a safeguard against selective implementation. In practice, however, both types of policy seem to contribute to an intensive governing of the behaviour of young men with a migrant background in public spaces (Van Klink and Zeegers 2008), although our explorative analysis seems to suggest that this is fuelled more by worries about immigrant crime than by immigration control rationales. At the same time, we should acknowledge that firm empirical evidence is missing.

Back in 1986, criminologist Fijnaut alluded to potential unintended outcomes of a compulsory ID scheme in the Netherlands by commenting that the groups against who the police does not have a reasonable suspicion and who have a marginal position in society are likely to be those who will become object of massive police surveillance. He referred to “foreigners, young people in the squatting movement, and other non-mainstream groups such as itinerant groups and inhabitants of old urban neighborhoods” (Böcker 2002: 95, Van Klink and Zeegers 2008). Almost three decades later we can conclude that Fijnaut’s worries were probably somewhat strongly voiced but not without reason. Whereas police officers often view their practices of asking for IDs as routine practices and their interactions with groups of young people in the streets as an innocent way of keeping track of what happens and who is doing what, young adults with a migrant background increasingly understand their experiences as unjustified examples of selective police attention and the expression of exclusion and unrestricted state power. This may also intersect with the surveillance of irregular migrants, but there is very little insight into the extent of which this is the case in practice.

In the Dutch debate, selective attention and feelings of being specifically targeted has so far primarily been explained as evidence of ethnic profiling, discrimination or misuse of competencies by the police, but our study suggests that lens is far too narrow. The process of (perceived) selectivity in policing does not develop solely in the streets. The choice of which neighbourhoods or even neighbourhood segments the police shall focus on may have a huge impact on those living and working in these neighbourhoods, and the same holds for the style of policing. And even more generally: the choice of wide discretionary powers and a lack of oversight on how these powers are used are important in fuelling tensions between the police and migrant communities (Mutsaers 2014). The fact that anti-police riots erupted in the summer of 2015 in a multi-ethnic neighbourhood in The Hague shows that trust between migrant communities and the police is unstable and volatile. In October 2015, the mayor of The Hague Van Aartsen announced an encompassing Diversity Action Plan as developed by the police xiv. Among many other measures, this included restraint on the side of the police with respect to checking identification documents and more emphasis on explaining why people are subjected to controls if they are, thereby acknowledging the external effects of these checks. This sounds like a good start, but it is crucial that the unintended consequences
of official policies are more openly discussed in Dutch society and that we gain better insight into the impact of wide police powers on people with a migrant background. It is equally important to look beyond perceptions and street-level decision making and to take higher-level policy choices – including the choice to focus on incivilities – more thoroughly into account. After all, police-citizen relations are not only shaped in the streets.

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