ISS International Institute of Social Studies

Securitizing Migration Through Immigration Detention:

An Analysis of the Entrenchment and Expansion of the Detention Regime Within the Netherlands and Across the European Union Through a Constructivist Theory of Control

A Research Paper presented by:

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Canada

in partial fulfilment of the requirements for obtaining the degree of
MASTER OF ARTS IN DEVELOPMENT STUDIES

Major:

Human Rights, Gender, and Conflict Studies

SJP

Members of the Examining Committee:

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The Hague, The Netherlands
December 2013

Disclaimer:

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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List of Acronyms

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ACVZ	Adviescommissie voor Vreemdelingenzaken (Advisory Committee on Migration Affairs)
AVR	Assisted Voluntary Return
AVRD	Assisted Voluntary Return from Detention
CAT	United Nations Committee Against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EC	European Commission
EU	European Union
GDP	Global Detention Project
ICEM	Intergovernmental Committee for European Migration
IOM	International Organization for Migration
NGO	Non-Governmental Organization
NJCM	Nederlands Juristen Comitte voor de Mensenrechten (Dutch Section of the International Commission of Jurists)
UK	United Kingdom
UNHCR	United Nations High Commissioner for Refugees
REAN	Return and Emigration of Aliens from the Netherlands

Abstract

Immigration detention is increasingly employed by states to 'securitize' against irregular migration; alongside this trend is the rapid intensification policies aiming to control migration through a host of repressive crime-centered means. How can we make sense of these trends, and how can we understand their relationship to each other? This paper offers one explanation through a constructivist theory of migration control. It analyses the entrenchment of detention in the Netherlands relationship to the expansion of detention across the EU. Embedded in a constitutive relationship with migration control, this means these two layers are constantly reshaping, and reifying one another. As they do so, they perpetuate but one strand of means to 'securitize' migration. This paper is an invitation for researchers to further explore the constitutive relationships between migration control and the practices and regimes embedded within it; as well, to seek to theorize connections between these practices in new ways in order to build more holistic picture of the emerging trends in immigration policy.

Relevance to Development Studies

The international geopolitical reality is one that is becoming increasingly connected, and increasingly disconnected, through migration. The securitization of migration profoundly shapes these connections and divisions. This paper contributes one constructivist explanation of the transforming 'immigration reality'. It is an invitation to explore the profound impacts immigration control has on reshaping global relations altogether.

Keywords

Securitization of migration, migration control, immigration detention, crimmigration, irregular migration, voluntary return, constructivist theory

SECURITIZATING MIGRATION THROUGH IMMIGRATION DETENTION:
An Analysis Of The Entrenchment and Expansion of the Detention Regime Within The Netherlands and Across the European Union Through a Constructivist Theory of Control

1. INTRODUCTION

Administrative immigration detention, the detention of migrants without criminal charge, is increasingly wielded throughout the globe as a tool for controlling irregular migration. It is a growing means for states to 'securitize migration.' As of 2012, immigration detention (henceforth, 'detention') is practiced by all liberal democratic states (Silverman and Massa 2012: 677).

The current evolutionary pattern of detention is one of "deepening" and "widening" (Flynn 2013a: 8). Within states detention is becoming more engrained in immigration policies, while across states it is spreading as a tool for sharing and externalizing these policies (Flynn 2013a; Flynn 2013b; Flynn 2012; Flynn & Cannon 2010).[1] Detention can thus be understood as a regime, as it extends across states to control migration.

As the detention regime has 'deepened and widened', so too have its meanings and functions (Silverman and Massa 2012). Its disproportionately harsh penal characterization and the detrimental effects experienced by migrants alongside its incomplete achievement of policy-stated aims make detention a magnet for legal, moral, political, and economic scrutiny (see for example Bosworth 2008a; de Senarclens 2013; Leerkes and Broeders 2010; Welch and Schuster 2005). Yet despite this criticism, detention continues to grow, indicating its increasing normalization in immigration policy. A crucial feature of the literature addresses this relationship between the growth and increasing normativity of detention (see for example Flynn 2013a; Silverman 2012).

The normalization of the detention regime leaves its migration control ends unquestioned, shielding it from a crucial interrogation of its underpinning structures and interests. Alongside the proliferation of detention, an unprecedented intensification of other crime-centred immigration policies and practices ('crimmigration') has also developed. These are not incoherent developments; the persistence of detention is increasingly interdependent with these broader policies aimed to control migration (Silverman 2012: 1132). Extending across states, migration control is also a regime of its own. Understandings of the entrenchment and expansion of detention must therefore also link to understandings of this more expansive migration control regime (see for example Bosworth and Guild 2008).

In this paper, I seek to to contribute to the burgeoning body of literature that is developing explanations for these interrelated trends. I aim to first debunk the normativity of detention. Then, address the implications of this normalization in relation to the entrenchment and expansion of the regime. I embed this transformation of detention within a mutually constitutive relationship with migration control. Through this, it is possible to understand how the entrenchment and expansion of the detention regime is shaped by the migration control regime. Further, how it in turn reshapes and reifies these control ends

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[1] [1] Flynn (2013a: 8) uses the terms "deepening" and "widening" to replicate the EU's terminology for the deepening harmonization amongst and widening increase of members.

1

that it is purposed for. Thus, we can connect this relationship to the securitization of migration project that detention and migration control are instruments of.

This paper thus argues that detention functions within the state's migration control-related constraints. These shape and normalize its perpetuation; in turn detention reshapes and reifies the state's identification with migration control. As a function of the securitization of migration, detention benefits the perpetuation of its limited definition of reality. Through this, this paper answers the central question: *why and how can a theory of control explain the entrenchment and expansion of immigration detention?*

1.1 The Entrenchment of Detention in the Netherlands and the Expansion of Detention Across the European Union

The evolution of detention within the Netherlands in relation to its expansion across the European Union (EU) provides a primary illustration for this research problem. The Netherlands exercises one of the EU's most controversial detention policies (GDP 2009). The Netherlands is also one of the states that most radically transformed the welfare state toward selective immigration policy (Kuboyama 2008: 6). This intensified with crimmigration policies and practices alongside the growth of detention. While Dutch detention increasingly diminishes in effectiveness and necessity it persists nonetheless (Broeders 2010; Leerkes and Broeders 2010). This signifies its normative and institutional deepening within immigration policy.

This entrenchment in the Netherlands is marked by slight scale-backs in practices and application. Meanwhile, detention continues to expand at the EU's periphery. Migration control measures, particularly those of crime-based nature, simultaneously continue to intensify both within the Netherlands and across the EU. Locating the entrenchment of detention in the Netherlands alongside its expansion at the EU's periphery is therefore the central case used illustrate this paper's guiding research question.

1.2 Methods and Methodology

1.2.1 Primary and Secondary Data Sources

In order to answer this research question in the context of the Netherlands and the EU, I collected qualitative interview data over a two-month period in the Netherlands. This dataset was intended to build a holistic understanding of the interests and challenges engaged with the transformation of Dutch detention policy.

I accessed informants by snowballing through several key contacts who have longstanding connection to actors engaged with Dutch immigration policy. Particularly, I networked through the Dutch Section of the International Commission of Jurists ('Nederlands Juristen Comitte voor de Mensenrechten'

(NJCM)). All informants interact with the detention regime at the level of the Dutch state.

To build as holistic a picture, I selected informants from the three most prominent areas engaged with detention: government, human rights advocacy, and law. The two key variables for selecting informants was their prominence in their field and their longstanding engagement with immigration policy and/or detention. Both considerations ensured that informants would be able to contribute experiential knowledge unavailable in reports and literature. The latter variable in particular provided deep insight into the transformation of detention across time. It was not possible for all interviewees to meet both criteria. However, this does not weaken the dataset, as each informant is intimately involved with immigration or detention policy.

Each of these interviews lasted approximately one to two hours. They richly contributed to shaping the contours of this paper's understanding of detention and its evolution in the Netherlands. In order that these informants could shape understanding of this transformation, I steered away from bias through pre-determined suppositions of causality (King and Horrocks 2010). Most questions were broad in scope, but maintaining context (King and Horrocks 2010). Interviews began by inquiring into what the most important changes in detention policy have been and the reasons for these. Each interview diverged from here as informants contributed their unique experiences and understandings.

I did interrupt this method with causal questions to verify details and clarify perceptions relating to comparative ideas from literature or other interviews. As well, I ensured that a pre-determined overarching set of topics was covered. The order and quality of insight into these topics varied depending on informants' experience. The consistency of this method varied across interviews, as several informants requested a set of topics or questions prior to meeting.

Altogether, the dataset includes seven interviews, some of which included more than one informant. From government: Severijns and van Dooijewert of the Advisory Committee on Migration Affairs ('Adviescommissie voor Vreemdelingenzaken' (ACVZ)), and van Krieken, former policy advisor at the Ministry of Security and Justice. From human rights advocacy: Busser and Ricci Ascoli of the Dutch Section of Amnesty International. From law: Oosterholt of LegalAid and van Kempen of Böhler Advocaten (a human rights law firm). Mommers, phD candidate at the Institute of Immigration Law at Leiden University, also with related governmental and intergovernmental experience.

One informant's expertise is not directly connected to detention or immigration policy. Olujic, of NJCM, was incorporated in the dataset because of NJCM's longstanding prominence in legal human rights engagements in the Netherlands, providing comprehensive insight into the role this interest plays in affecting Dutch policy over time. Brief profiles for each of these informants are in Annex A.

All informants provided permission to note their names and organizational affiliations in this paper. However, each one of these informants spoke on their own behalf. Their views do not necessarily represent the views of their organization. In some cases, I was unable to use direct quotes as per inform-

ants' request. This does not weaken this paper because I have still been able to develop a holistic picture of detention from the dataset.

For the analysis in chapter five, I conducted two brief interviews over the phone to for specific data to triangulate with this interview set. Informants were: Mommers, also an informant for the initial dataset, and Carpier, of the International Organization for Migration (IOM). Note that Carpier's comments represent those of the IOM. In chapter five, I will detail my selection of these informants and how I have applied the data from this interview set. These informants are also listed in Annex A.

I undertook extensive literature review from academic sources, governmental, and non-governmental reports prior to these interviews. As informants flagged new issues relating to detention's transformation, particularly as these same issues were raised in multiple interviews, this directed the chief areas I explored. I therefore consistently incorporated new literature and reports as the focus of this research changed shape.

Finally, my interview with Oosterholt took place at the LegalAid office on the premise of the Schiphol-Oost Detention Centre. It thus included an informal viewing of an unoccupied wing of the centre, which contributed to building a picture of the context for the research the problem.

1.2.2 Methodology of Analysis

There are multiple theorizations of control that can contribute to explaining the entrenchment and expansion of detention. I have selected to answer the research question through constructivist theory. Constructivism accounts for the constitutive relationship between migration control and detention. Located between rationalist and interpretevist theories, it examines constitution through interacting objective and subjective realities (Adler 1997a). Constructivism therefore deconstructs the normalization of detention and simultaneously reconstructs its entrenching and expanding transformation. It does so by focusing on its mutually constitutive relationship with migration control.

Part of the methodology of this paper is arguing why constructivism is apt for addressing the research problem. I therefore analyse the relationship between detention and migration control firstly through rationalist paradigms. Then, I analyse this through post-structuralism. I then engage this through constructivist theory, applying its improvements on both rationalist and post-structural paradigms. I subsequently operationalize these interactions through constructivism's theory of security communities and epistemic communities. This activates the entrenchment and expansion of detention through its constitutive relationship with migration control.

1.2.3 Scope and Limitations

The purpose of this paper is to contribute *an* explanation for the entrenchment and expansion of detention through its relationship to migration control. Selecting the Dutch and EU cases are illustrative of this question, rather than a comprehensive answer. The picture I deliver of this context is therefore also limited to focusing on related migration control policies and practices. Many other explanations can, and should, also be made to explain these changes.

Further, constructivist theory offers but one contribution for theorizing the relationship between detention and migration control. This analysis is therefore by no means comprehensively addresses these trends. Instead it is one contributory insight into the constitutive, and overpowering, nature of migration control as it relates to detention. This research thus serves as an invitation for researchers to continue to investigate the evolving nature of detention, migration control, and the broader securitization of migration.

1.3 Research Objectives and Structure of Paper

I have structured this paper in such a way that I begin with a 'skeleton' of detention in its relationship to migration control and gradually bring this to life. I do so through contextualizing, then theorizing, and finally, operationalizing this relationship. This final operationalization activates the entrenchment and expansion of detention.

I complete this through a three-pronged set of objectives. Firstly, to conceptualize and contextualize detention in relation to migration control. Secondly, to destabilize the normativity of detention through its relationship to migration control. Thirdly, explain the entrenchment and expansion of migration control through its constitutive relationship with migration control.

The chapter that follows this introduction (chapter two) will conceptualize detention within crimmigration, migration control and the securitization of migration. This is the 'skeletal framework' that I will continue to build upon throughout the paper. Chapter three then contextualizes these concepts through the interrelated Dutch and EU cases. This serves as a platform for the subsequent theoretical and operational objectives.

Chapter four then addresses the second prong. Through constructivist theory, I uproot the normativity of detention. Then, I embed it within crimmigration, migration control and the securitization of migration. By theorizing these layers as mutually constitutive regimes, this theorizes the relationship between their evolution within the Netherlands and across the EU. Addressing the normativity of these layers also heeds the ethical issue that studying such means of controlling migration can actually reinforce their claims (van der Leun and van der Woude in Guia, van der Woude and van der Leun (eds) 2013: 57).

Chapter five then operationalizes this theorization. This addresses the third prong, completing an explanation for the entrenchment and expansion of detention through a theory of control. Firstly, I examine the implanting of the detention regime within state policies through migration control. Here, I use constructivist security communities to activate this analysis. Secondly, I examine how this re-rooted regime spreads across states, carrying with it the structures and ideas of the migration control regime. Here, I use epistemic communities, a crucial element of security communities, to activate this analysis. This chapter tests Flynn's (2013a; 2013b; 2012; see also Flynn & Cannon 2010; in Silverman 2012: 1147) argument that human rights norms play an (unintentional) role in contributing to the entrenchment and expansion of detention. By using a constructivist theory of control, this paper expands on Flynn by examining the (re)constitution of both the detention and migration control regimes through this process.

This paper concludes that the detention and migration control regimes play a mutually constitutive role in not only entrenching and expanding detention within the Netherlands and across the EU, but in underpinning the dominance of the securitization of migration paradigm within which migration control and detention operate. We can now address the 'skeletal framework' in order to achieve this paper's objectives.

2. A CONCEPTUAL FRAMEWORK OF DETENTION AND MIGRATION CONTROL

In this chapter I define the parameters of the framework through which I contextualize, theorize and analyse the entrenchment and expansion of the detention regime. This chapter firstly defines this paper's focus on the detention of irregular migrants for the purpose of return. The following section defines the conceptual layers that the detention regime is embedded within. The chapter concludes here. In the subsequent chapter I will bring these concepts to life in the Dutch and EU context. Together, these two chapters address the first objective, conceptualizing and contextualizing detention in relation to migration control.

2.1 Conceptualizing Detention

The detention of migrants is utilized for multiple migration-related ends (Silverman and Massa 2012). Its conditions also vary greatly across contexts (Flynn 2011). Detention therefore cannot be defined by a singular purpose or practice, either within the Netherlands or throughout the EU (and the globe). As a broad conceptualization, I borrow Silverman and Massa's (2012: 1134) definition of detention as

> "the deprivation of a noncitizen's liberty for the purposes of an immigration-related goal, with 'noncitizen' signifying a 'person subject to immigration control.'"

In the Netherlands, the Aliens Act 2000 stipulates two forms of detention. Both are measures of control purposed to secure the state against irregular migration. Border detention in Article 6 concerns those who are not permitted entrance into the territory. Because internal border checks in the Schengen territory are abolished, both the Schengen Border Code and the Aliens Act limit the application of border detention to only persons arriving by ship or airplane (Amnesty International 2008: 17).

Article 59 of the Act stipulates territorial detention as a means to secure the return of irregular migrants. The aim is to repatriate those already in the territory but not, or no longer, permitted to reside. The irregular migrant population it addresses includes failed asylum seekers, those whose asylum status is no longer in effect, and migrants with no (former) legal status altogether. In comparison to border detention, territorial detention is "imposed 'with a view to the expulsion' of the migrant in question" (Amnesty International 2008: 17). It is therefore "also referred to as 'immigrant detention pending deportation'" (CPT 2012: 29).

This paper focuses on territorial detention as a means to control irregular migration. Territorial detention skyrocketed in the Netherlands in the early 2000s. During this time, the state achieved its highly controversial reputation for detention practices. Though Dutch detention has since scaled back in ap-

plication and harsh conditions, territorial detention persists as one of the state's primary tools for controlling irregular migration.

The legal distinctions across the EU, as made above for the Dutch context, are not necessary for connecting the entrenchment of detention in the Netherlands to the expansion of detention across the EU. Because much of the mandating structures differ across states, and many actors engage within the state-level, detention policy is mostly understood within comparative or individualized national contexts (for examples including the Netherlands see Broeders 2010; Schinkel 2009). In order to connect its policies, we must rely more heavily on theory (see for example de Senarclens 2013). I have introduced that defining detention as a 'regime' connects these practices; I will continue to develop the meaning of this in later chapters. However, I will not refer to detention or migration control as 'regimes' until I have theorized the implications of this meaning in chapter four.

2.2 Conceptualizing Detention and Migration Control through the Securitization of Migration

2.2.1 Detention as a Means of Crimmigration

The territorial detention of irregular migrants in the Netherlands is an administrative measure, meaning that it does not fall within criminal law. Administrative detention is therefore arbitrary by nature (Amnesty International 2008: 16). "Immigration control is not criminal justice" (Velloso 2013: 177). This binary distinction between criminal and administrative law can limit understanding of the punitive norms subsumed within 'administrative' immigration practices (Velloso 2013).

Conditions in Dutch administrative detention are guided by the same stipulations as criminal detention (in Article 9 of the 'Penitentiary Principles Act', or 'Penitentiaire Beginselenwet'). Conditions in administrative detention thus strongly resemble those in criminal detention (Amnesty International 2008; CAT 2013). Handcuffing is systematically applied to migrants while under supervised leave of facilities (CPT 2012: 30). Strip searches can be enforced upon entrance and re-entrance into facilities (Mommers 2013a, personal interview). Aside from 'free time' hours, migrants are locked in their cells (Oosterholt 2013, personal interview and viewing of detention facility). Activities are not provided for migrants because these are purposed for reintegration, and thus, only allotted for criminal detention (Amnesty International 2008: 20).

Detention here depends on the broader body of migration control policy and practice called 'crimmigration.' Integrated with the evolution of detention, crimmigration has also transformed dramatically over the past decades. A recent theme in academic literature, the term 'crimmigration' marks "the intertwinement of crime control and migration control" (van der Leun and van der Woude in Guia, van der Woude and van der Leun (eds) 2013: 43). It merges immigration with securitization by approaching migration-related insecurity through a repressive and harsh control paradigm (Stumpf in Guia, van der Woude and van der Leun (eds) 2013: 8-14).

Though often focusing on the legal merger between criminal and immigration law in the United States, I expand the narrower legal definition of crimmigration (as called for by van der Leun and van der Woude in Guia, van der Woude and van der Leun (eds) 2013: 42). For this paper, crimmigration refers to any migration control policy, practice, or discourse that symbolically or practically conflates 'immigration' with crime-based control measures. These characterize the EU's "fight against illegal immigration" (language employed by the EU, 2007). It includes measures such as surveillance, policing, social security restrictions, as well as the legal criminalization of irregular migration. As the following chapters demonstrate, crimmigration signifies a web of institutions and ideas that enable and justify the entrenchment and expansion of detention. As a poignant mechanism of crimmigration, detention in turn reinforces the crimmigration regime.

2.2.2 Migration Control as a Means of Securitizing Migration

In this paper's context, 'migration control' signifies the state's interest to have complete control over migration (Broeders 2010). Control is a means to securitize migration by completely excluding undesired migrants from the state. This manifests through crimmigration measures to keep migrants out (hence, the construction of walls and increased patrol at the EU's periphery), and to remove those already 'in.' Effective return policy is therefore an effort of migration control to close policy gaps. It is thus the "ultimate indication of a government's control" (Broeders 2010: 172).

> "The migration control perspective [thus] expects detention to be a means to the end of establishing control over migration processes through effective expulsion policies" (Broeders 2010: 171-172).

This concept is embedded in security concerns, or the 'securitization of migration.' Securitization is the means of framing what is 'freedom' and what can be 'free' (Bigo 2006: 386). To securitize migration thus means to identify threats, or insecurities, in migrant populations as global immigration-related contexts change (Bigo 2006; Bosworth 2008b).

Irregular migration, or 'illegal migration,' has only intensified as a 'threat' to the state in recent decades (see for example Walters in Geiger & Pécoud (eds) 2010). The distinction between legal and illegal migrants now pervades migration policy in the EU, consistently relied upon as explanatory for a host of migration-related issues (Cvajner and Sciortino 2010: 390). Migration control is fuelled by this distinction because it depends on membership to justify exclusion and removal (Stumpf in Guia, van der Leun & van der Woude (eds) 2013). Detention is therefore a means to enforce the securitization of migration through migration control. The use of detention thus contributes to institutionalizing the group's identity as a 'threat.'

2.3 Summary of Conceptual Framework

I have strung the above concepts together in an interconnected progression. Detention is embedded in crimmigration. Crimmigration is a means of the state's migration control. Migration control is an immigration policy aim embedded in a particular securitization context in which irregular migration is

identified as a threat to the state. Accomplishing this paper's agenda – to destabilize detention's normativity and subsequently embed its entrenchment and expansion in a mutually constitutive relationship with control – requires a theory that can identify the rich interdependency in the aforementioned stream. The next chapter will place these concepts into context, and the duration of this paper will analyse their mutually constitutive interactions.

3. PLACING DETENTION AND MIGRATION CONTROL IN CONTEXT

In the previous chapter, I established the framework of concepts that I use in this paper to explain the entrenchment and expansion of detention. By conceptualizing detention in relation to crimmigration, migration control, and the securitization of migration, I established that neither detention nor the migration control goal to return irregular migrants is an inherent to immigration policy. In this section I now contextualize the relationship of detention to immigration control policies.

3.1 The Roots of Dutch Detention

Policymakers continuously reshape immigration policy to address current migration-related threats. The Netherlands' restrictive policies were initialized in the wake of the First World War (Smits-Baauw 2010: 13). These changes linked to its transformation into a welfare state (Smits-Bauw 2010: 13). Restricting migration can thus be understood a means to secure the Netherlands' strong welfare identity. The Dutch welfare state was thoroughly developed through the 1950s and 1960s, necessitating more clear-cut immigration regulations (Smits-Baauw 2010: 13). The roots of Dutch detention policy were founded at this time in the Aliens Act 1965 (Smits-Baauw 2010: 9).

Until the 1980s, administrative detention capacity was limited to 45 spaces (van Kalmthout in Broeders 2010: 175). This decade marked the beginning of the intensification of migration control, rooting the transformation of detention. Asylum seeker influx increased during this decade. More restrictive control measures were introduced in Dutch policy, including "increased possibilities for and use of immigration detention" (Doomernik in Smits-Bauw 2010: 15). By 1989, immigration detention capacity had increased to 200 cells (Amnesty International 2008: 15).

A Committee for the Domestic Supervision of Aliens ('Commissie Zeevalking') was created out of the government's 1989 coalition agreement (Smits-Baauw 2010: 16). This Committee produced the 1992 Zeevalking Report, which inaugurated the rise of migration control as it is known today. The Report initiated concerns regarding irregular migration. It instigated the call for harsher expulsion policy and formalized the link between return and detention (Schinkel 2009: 783). Applying detention to migrants increased dramatically over this time, from 2000 cases in 1988 to 9600 cases in 1993 (*Handelingen II* in Smits-Bauw 2010: 18).

At this same time, immigration and asylum became an object of the EU's efforts to harmonize Member State policies. This means the EU possessed a strengthening role in shaping Dutch immigration policy (Maas 2008). The elimination of the Netherlands' physical borders began during this time. In 1985, the Schengen Agreement on the Gradual Abolition of Checks at the Common Borders was enacted. However, it did not apply to third country nationals and asylum seekers until its follow-up Treaty in 1990 (Maas 2008: 16). Throughout

this period, influxes of asylum seekers increased dramatically both in the Netherlands and across the EU.

Alongside Denmark, the Netherlands "changed most drastically immigra[tion] policy and the conception of social integration" during this time (Kuboyama 2008: 8). To enable the new return priority, the Dutch border shifted to its socio-economic entry points (van Krieken 2013, personal interview). This initialized the crimmigration trend that subsequently intensified alongside detention. With the view to expel irregular migrants, these policies jointly locked migrants out of the welfare state, and into detention to secure their return.

3.2 The Rise of Dutch Detention

The Aliens Act 2000 marked a fundamental shift for migration control, resulting in unprecedented expansion and intensification of detention measures. The Act transferred the responsibility of return from the state to the migrant. Failing to return indicated deviance, the migrants' intentional failure to cooperate with the state (van Krieken 2013, personal interview). Policy mandated detention as a means to (attempt to) enforce return by ensuring compliance and/or securing the migrant from absconding. I will selectively review the ensuing period to make explicit decreasing effectiveness and need of detention alongside its continued expansion (see also Broeders 2010, Leerkes and Broeders 2010). Table 3.1 and 3.2 on the following page visualize these trends. They show an increase in asylum influx in the Netherlands prior to this period's increase in Dutch detention capacity. As asylum numbers sharply decrease, detention sharply increases.

The expansion of detention was facilitated by a simultaneous increase of crimmigration policies. The 2003 Policy Memorandum on Return ('Terugkeemota') focused on lack of cooperation relating to return. It introduced additional control measures to "stimulate the migrant's own responsibility to return" (Amnesty International 2008: 12). The 2004 Policy Memorandum on Illegal Migrants ('Illegalnnota') provided for increasing investigation and penal measures to address the population (Amnesty International 2008: 12). Exemplary practices include house searches for irregular migrants and mandatory police identification checks on the streets (Amnesty International 2008: 11). These measures thus also reinforced the perceived 'need' for detention (Leerkes and Broeders 2010). The share of immigrant detainees of the total prison population (excluding youth and mental institutes) essentially doubled in this period, from 9.1% in 1999 to 18% in 2006 (Broeders 2010: 176).

Administrative Detention Capacity in the Netherlands
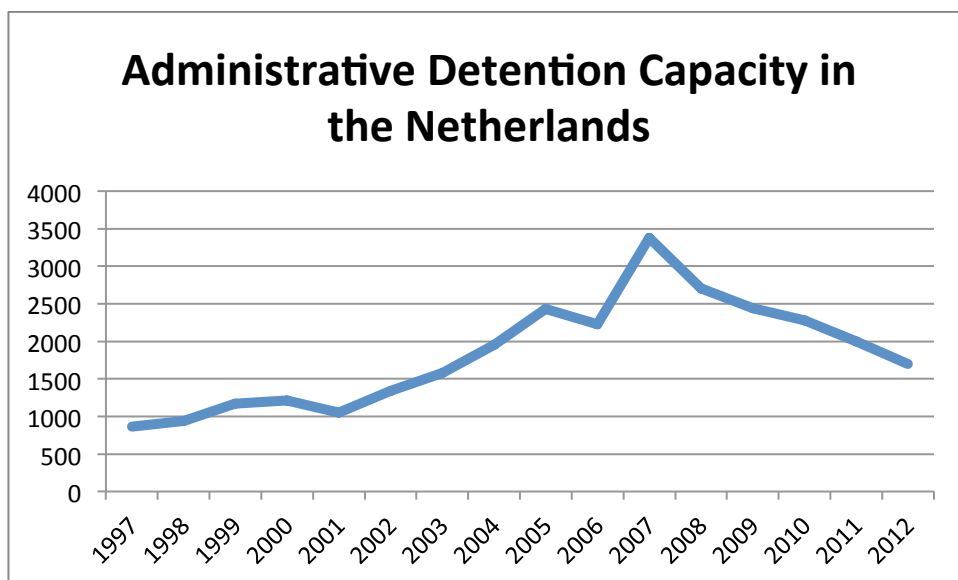
Table 3.1

Data Source: Amnesty International (2013)

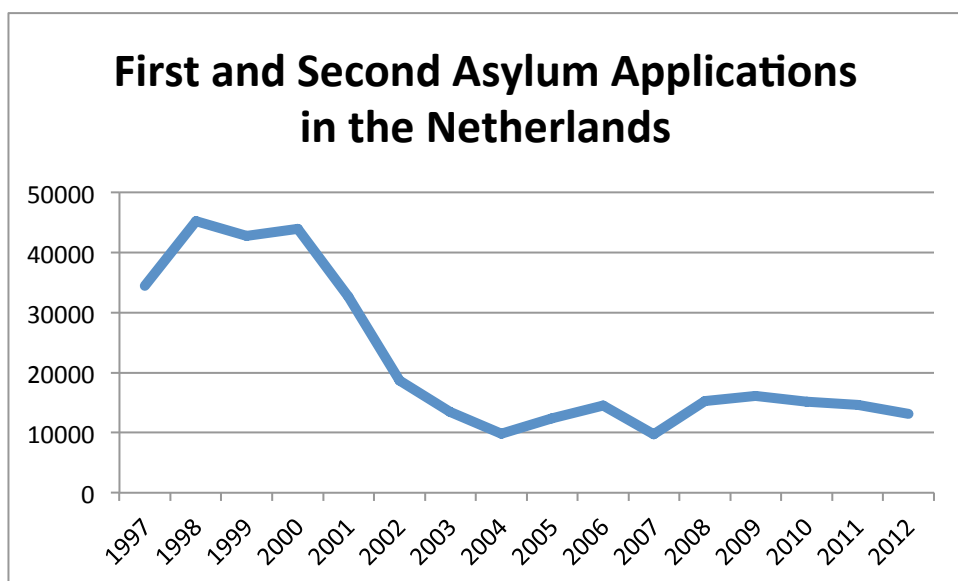**First and Second Asylum Applications in the Netherlands**

Table 3.2

Data Source: 1997-2011 (IND in VluchtelingenWerk Nederland n.d.); 2012 (Statistics Netherlands 2013)

This overwhelming expansion was marked by insufficient regulation of conditions. There was no stipulated legal time limit for detention. The average stay in detention was 36 days (ACVZ in Broeders 2010: 177). Yet it was not exceptional for stays to last up to 18 months (van Kalmthout and Hofstee-van der Meulen in Broeders 2010: 177). A significant proportion of detention facilities occupied boats in Rotterdam and Dordrecht harbours. Here, guards' mistreatment toward migrants, amongst other problems, was reported (Amnesty 2008: 15, 20-21). These have since been taken out of use (CPT 2012: 30). In October 2005, fire broke out in the Schiphol Airport's expulsion centre, killing 11 persons and injuring 15 (Amnesty International 2008: 8). This generated widespread scrutiny of Dutch detention, which had evolved largely beneath the public's radar (Busser and Ricci Ascoli 2013, personal interview).

While detention increased, its success in securing return decreased. Migrants with less likelihood to return tended to spend longer times in detention (ACVZ, van Kalmthout et al in Broeders 2010: 177-178). "This makes the detention regime harshest for those irregular migrants who (eventually) prove to be 'undeportable'" (Broeders 2010: 178). While nearly 12,000 returns were effected in 2002, by 2007, the number nearly halved, hovering slightly above 6000 (Leerkes and Broeders 2010: 835). Evidenced in Table 3.2, the need for detention also diminished. Fewer migrants were entering the Netherlands, and much of the residing irregular migrant population gained legal status through the EU's enlargement in 2004 and a general Dutch amnesty in 2007 (Leerkes and Broeders 2010: 831).

3.3 The Entrenchment of Detention in the Netherlands and the Expansion of Detention Across the EU

After 2007, detention capacity and numbers of migrants detained began decreasing, while the expansion of detention at the EU's periphery steadily increased. This period exemplifies the 'deepening and widening' this paper is concerned with. Table 3.3 on the following page depicts this expansion. See also Annex B for a more detailed graph of changes in detention centres on a map that locates these (known) detention centres.

The regression in Dutch detention capacity can be characterized partly by enhanced alignment to human rights pressures. Infrastructure improved; boats were eliminated and new facilities opened. Reporting on their 2011 visit, the European Committee for the Prevention of Torture noted improvements in activities in detention since their previous 2007 visit (2012: 33). Dutch policy made exceptions for children and for families (Busser and Ricci Ascoli 2013, personal interview). In 2011 the government implemented small pilot projects of alternatives to detention for a fractional number of asylum seekers (NJCM 2013: 18; Verhoef et al 2012). It is important to note that while administrative detention capacity decreased in the Netherlands, criminal detention capacity also decreased due to increased budgetary constraints (Mommers 2013a, personal interview).
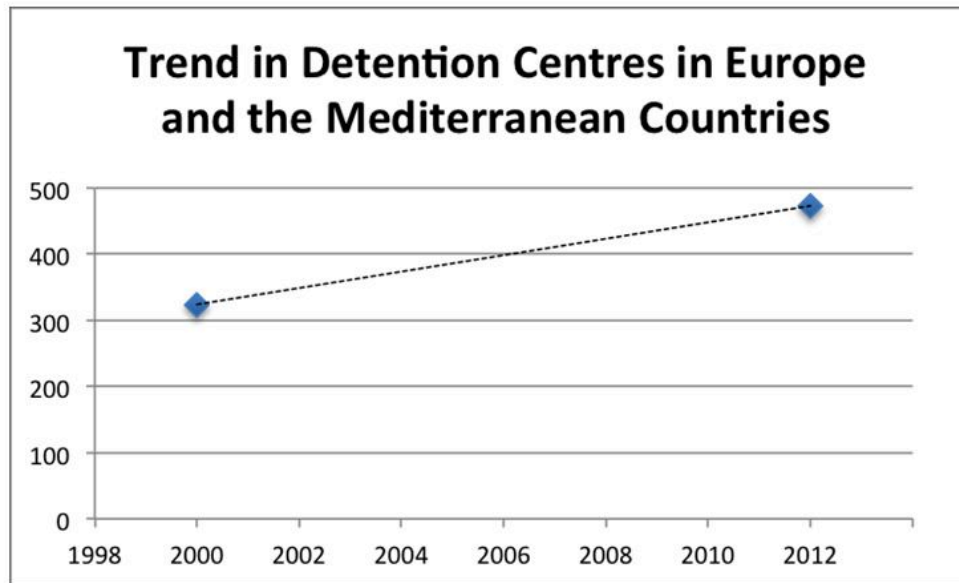
Table 3.3

Data Source: Migreurop (2013)

These scale backs do not indicate a policy departure from detention. But instead, the "institutional entrenchment" Flynn (2013a: 8) discusses. Though continuing to adapt to pressures and restrictions, detention persists in the Netherlands.

The migration control return goal detention is purposed for also persists, and crimmigration measures have intensified alongside decreases in detention. Amongst other measures to restrict immigration, the Dutch government's 2012 coalition agreement promised to officially make illegal residence "a criminal offence" (41). I end my analysis of the evolution of detention over time here, toward the end of 2012.

While the need for and application of detention in the Netherlands decreased, the EU intensified its control policies and practices. Particularly, through efforts to harmonize efforts to return irregular migrants. The return of irregular migrants became a priority of policy harmonization through The Hague Programme of 2004. The 2008 EU Return Directive established guiding parameters for state's return policies. The Directive allowed for detention as an *ultimum remidium*, or last resort measure. It also enabled the Netherlands to apply a re-entry ban (van Kempen 2013, personal interview). Specific details of these changes will be analysed in chapter five.

Migrant influxes also continued at the EU's periphery, intensifying pressure on these border countries. Estimates of 37,220 irregular migrants entered into Greece in 2012, for example (Frontex 2012). Hence, the concentration of detention centres in Greece as mapped in Annex B. In 2012, the EU's known detention capacity approximated 37,000 spaces; two thirds of this is within EU territory (Migreurop 2013: n.p.).

Timeline of Dutch and EU-Wide Policy Changes Affecting the Entrenchment and Expansion of the Detention and Migration Control Regimes

Roots of Dutch Migration Control and Detention

Intensifying Dutch Migration Control and Detention

Entrenching Dutch Detention in Migration Control

Restructuring the Welfare State with Increasingly Restrictive Crimmigration Policies

Aliens Act 2000 Shifted Responsibility from the State to the Migrant

2003 Policy Memorandum on Return to Motivate Migrants' Responsibility for Return

2004 Policy Memorandum on Illegal Migrants Intensifies Crimmigration

2008 EU Return Directive Formalized Detention as *ultimum remidium*

Increasing Budgetary Pressures

2012 Coalition Agreement to Criminalize Irregular Migration

- - 1990 - - - - - - - - - - 2000---2002---2004---2006---2008---2010---2012

The Roots of EU-Wide Migration Control

Intensifying EU-Wide Migration Control

Expanding Detention In EU-Wide Migration Control

1992 Treaty of Amsterdam Harmonizes Immigration as a Third Pillar EU Priority

1997 Treaty of Maastricht Harmonizes Immigration and Asylum as a First Pillar Supranational Priority

2004 The Hague Programme Prioritizes the Return of Irregular Migrants in Harmonized Immigration and Asylum Policy

2008 EU Return Directive Formalizes Detention as *ultimum remidium*

Expansion of Migration Control Practices

Figure 3.1

3.4 Conclusion

In this chapter I have contextualized the conceptual framework I established in chapter two. By accounting for the context of the evolution of detention in the Netherlands and the EU, I have clearly linked detention to crimmigration, migration control, and the securitization of migration as they are related in practice. In the final section of this chapter, I contextualized the entrenchment and expansion of detention, which is the concern of this research. Yet by delivering the historical context from which these trends emerged, I have clarified the value of studying detention within this paper's framework. This has completed the first prong of this paper's research objectives.

In the next chapter I will now theorize the mutually constitutive relationship that occurs between detention, crimmigration, migration control, and securitization. Until this point, this has only been conceptualized and contextualized. This will open up this paper's guiding question by arguing how a constructivist theory of control contributes to understanding the entrenchment and expansion of detention.

4. THE CONSTITUTIVE RELATIONSHIP BETWEEN THE DETENTION AND MIGRATION CONTROL REGIMES

The previous chapter concluded that as the Netherlands began scaling back detention, it continued to escalate as an EU-wide trend, particularly at the peripheral borders. Simultaneously, crimmigration measures continued to intensify within the Netherlands and across the EU. Having contextualized these trends, I will now argue how and why constructivism contributes to theorizing migration control as explanatory for the entrenchment and expansion of detention. The first sections of this chapter conclude that constructivist theory completes this paper's research agenda because it examines the constitutive nature of control, maintaining footing both in the objective and subjective reality that the transformation of detention is embedded in.

I now move from conceptualizing and contextualizing to theorizing. I will address the second prong of this paper's research objectives, to destabilize the normativity of detention in relation to migration control. The following section will apply this theory to unearth the crimmigration, migration control and securitization layers that mutually constituting the transformation of detention. Though these layers have been conceptualized and contextualized in the previous chapters, this now deconstructs the normativity of detention. This contributes to developments in literature that seek to explain the "naturalization" of detention and migration control as related to their growth (Silverman 2012: 1146-1147). This chapter establishes the theoretical platform from which I then operationalize the constitutive relationship between migration control and detention in the following chapter.

4.1 A Rationalist Theorization of Detention as Migration Control

Rationalist theories approach detention, crimmigration, migration control, and securitization by assuming these are measures taken by the rational state for self-interested purposes. In the realist tradition, state's behaviour responds to an international arrangement composed of other rational self-interested states. The state's identity is hence innate (see Wendt 1992 for comparison with constructivism). Realism's later modification, neorealism, also endorses this principle, "focus[ing] on the relative distribution of capabilities between sovereign states" (Sørensen 2008: 6, see pages 5-11 for a comparison with constructivism).

Lacking a theory of ontology and epistemology, these theories cannot explain the transformations of detention in interaction with its underpinning layers (see Adler 1997a). Predetermined, exogenous interests indicate that the state's identity is not affected by the evolution of detention and migration control (see Adler and Barnett 1996; see also Wendt 1992). This assumes that detention is an innate function of the state's self-interested nature to control migration, and further, the repressive and crime-centred nature of migration

control is also inherent to the state's interests. This paper has already established, however, that the interest in detention is birthed out of a formerly subjective securitization paradigm; the state's identification with migration control is embedded in this securitization, not constant or inherent. This also implies that migration control is not inevitably a mode of state competition, but in fact may provide a shared security identity amongst states (see Adler and Barnett 1996). I verify this conjecture through constructivism's security communities in chapter five.

Neoliberal institutionalism bridges to (neo)realism's interpretivist deficit by joining rational individual ideas alongside the external material forces that shape detention (Adler 1997a). Detention is a product of these forces but also becomes an external physical force itself. As it does so, it begins to affect behaviour. Yet, neoliberal institutionalism maintains rationalism by seeing that constraints on behaviour come from the material world only. This does not account for the transforming identity or interests of those structures and actors that make up this material world. Even by incorporating individual ideas and recognizing that detention impacts behaviour, neoliberal institutionalism cannot address the norms and structures of its underpinning migration control. This interest is pre-determined (Adler and Barnett 1996: 69-70).

Critiques toward state-centric analyses of the securitization of migration urge research to adhere less to the state's identity as a fixed over time and instead look toward the transforming nature of geopolitical relations (see for example Hyndman 2012; Mitchell 2012). Maintaining the state's identity as exogeneous undermines the transformative nature of detention. The following section will now outline the post-structural reaction to rationalism. Yet, concluding that it insufficiently completes this paper's research agenda.

4.2 A Post-Structural Theorization of Detention as Migration Control

Post-structuralism reacts to the sheer objectivity of rationalism with an entirely subjective theorization of reality. Rather than assuming innate identities and interests, post-structuralism strips detention to the ideas that root it. Its ontological relativism reduces detention's migration control underpinnings to these ideas, but only these ideas (Adler 1997a). The theory's epistemological interpretivism finds these ideas in language (Adler 1997a). Because there is no objective reality in the poststructuralist paradigm, language is interpreted entirely in relation to itself (see Adler 1997a). Chapter five will return to the operational restrictions of accounting only for language, while the duration of this section will discuss the crucial contributions, but also limitations, of using post-structuralism to explain the transformation of detention through a theory of control.

Post-structural theory adds crucial insight to the study of detention because it demystifies the norms that make such a form of migration control seem necessary. By explaining how these norms become authoritative, the post-structural theory deconstructs reality to a field of alternative ideas that are no more 'true' than those that are normatively enforced. As such, detention is

no longer an inevitable feature of migration control, and migration control is an entirely relative construct.

Poststructuralism then deconstructs that the security threats migration control is premised on are also wholly imagined. Applying to the Dutch context Agamben's well-cited theorization of detention as a space of exception, Schinkel (2009: 788) sees that irregular migrants are a "contracted symbol of contemporary global threats to the nation-state." As purely symbolic identities, irregular migrants are imagined as threatening, and consequently, can be re-imagined as non-threatening. What ensues in post-structuralism is re-imagining the relationship between globalization and the state, and even re-imagining the state entirely.

The state's migration control, however, cannot be entirely deconstructed to a set of ideas relative to one another. "No borders, no nations, stop deportation," a campaign slogan protesting intensifying migration control practices in the Netherlands, demonstrates the implausibility of the poststructuralists' unlimited imagination (2012, personal observation). Deconstructing constitutive structures, institutions, and norms, renders the crucial objective factors in security and migration control fictitious (see Adler 1997a). It forsakes the existence, and necessity, of a constraining material world that constitutes identity and interests (Adler 1997a).

As exemplified in the abovementioned slogan, by forsaking these real constraints, post-structural engagement is limited to an ideational reality. Though these ideas are crucial, they only partly account for the identity and interest that detention and migration control are purposed for. To embed the evolution of detention in migration control thus does not require that the state be re-imagined entirely, but that the dynamism of its migration control identity must be accounted for.

4.3 Theorizing Detention as Migration Control Through Constructivism

Rather than selecting between these polar theorizations, constructivist theory interacts both objectivity and subjectivity. It applies this to an evolutionary nature of reality. Through analysis of this productive interaction, constructivism reveals important "enigmatic" features of reality (Adler 1997a: 323). It unveils the practical implications detention as a non-innate policy and practice has on reality (Adler 1997a).

I derive the groundwork for constructivist theorization in this paper from the works of Adler (1997a), Risse (in Wiener and Diez (eds) 2004), and later in chapter five, add Adler (1997b), and Adler and Barnett (1996). These contributions are intended as resources for constructivist research agendas. Their methodology maintains balance between both the discursive and the non-discursive practices that constitute detention. I will detail the importance of this balance in the remainder of this chapter and the subsequent chapter (hence, why I selected these authors). I have already concluded through the post-structural theory that 'going beyond language' is imperative for examining the relationship between detention and migration control.

4.3.1 Constructivist Foundations

The constructivist's reality is socially-embedded. All beings, whether behaving subjectively or objectively, were at one time constructed in the social environment. Through practice and communication, individual ideas and behaviours become shared in the social field (Adler 1997a; Risse in Wiener and Diez (eds) 2004). As these become shared, or 'intersubjective,' they constitute objective reality (Adler 1997a; Wendt 1992).

The agency that develops intersubjectivity is also constituted by preceding objective social forces and structures (Adler 1997a). These objectivities, such as norms and institutions, enable that certain collective understandings are socialized instead of others (Adler 1997a: 338). They constrain intersubjectivity, "confront[ing] individuals as more or less coercive social facts" (Wendt 1992: 399). Reality is therefore a function of simultaneously emerging subjectivities and preceding cognitive and institutional structures, or objectivities (Adler 1997a; Risse in Wiener and Diez (eds) 2004).

> "Constructivism [therefore] shows that even our most enduring institutions are based on collective understandings; that they are reified structures that were once upon a time conceived *ex nihilo* by human consciousness; and that these understandings were subsequently diffused and consolidated until they were taken for granted" (emphasis in original, Adler 1997a: 322).

This dynamic interaction, where structures and agents mutually constitute one another, constructs the identity of beings (Risse in Wiener & Diez (eds) 2004). This includes the state's migration control identity. Identity is crucial to the meaning and nature of reality because it houses interests (Wendt, and Checkel in Risse in Wiener & Diez (eds) 2004: 163). Interests describe the properties, behaviour, purpose, and thus the meaning of social interaction and production (Risse in Wiener & Diez (eds) 2004: 163). They are not innate, but constantly evolving in relationship to other identities (and hence interests). Identity, which should hereafter be understood as comprised of interest, influences how the objective world is interpreted, and thus, how it "shapes and it shaped by human action" (Adler 1997a: 322).

The evolution of detention thus occurs as subjectivities interact with the objective nature of migration control. It then feeds back to reconstitute the meaning of migration control. Constructivism sees that detention is produced by objective constraints imposed by migration control *and* interactions with the subjective production of new ideas and behaviour. Constructivism then embeds detention within the subjective and objective interaction that constitutes migration control. Further, within those interactions that constitute securitization. This explains the evolutionary nature of detention and migration control. It exposes the concealed effects these layers have on one another. Ultimately, as they operate within constitutive constraints, they reify the securitization of migration.

Constructivism thus improves on the positivist assumption of innate or given identities and interests. By embedding beings in their social reality, constructivism endogenizes socially produced interests into these identities that make up reality (Risse in Wiener & Diez (eds) 2004: 163). Further, constructiv-

ism improves on the relativism of post-structuralism by maintaining footing in factuality. Taken-for-granted interpretations impose objectivity on the development of new intersubjective constructions. Interacting subjectivities and objectivities therefore merits constructivism's claim as a 'middle ground approach' (Adler 1997a).

4.3.2 Constructivist Methods

Deeming constructivism as a 'middle ground' must not be misunderstood as a haphazard 'theory conglomerate.' Rather, constructivism meticulously uncovers the truth of reality. Though there are multiple variations within constructivist theory itself, all constructivists mediate between both the objective and subjective realities (Adler 1997a). This section is now concerned with the methods with which constructivism approaches the reality of detention and migration control. This portrays constructivism's interaction between the emergence and concretization of reality.

Fundamental to constructivism is the evolutionary nature of its ontology (Balzacq in Dunn Cavelty and Mauer (eds) 2010). Detention and its constitutive political structures and agents are transforming and emerging. Identities (thus interests) undergo constant processes of redefinition (Adler 1997a: 334). They do so whilst embedded within "collectively shared systems of meaning" (Risse in Wiener and Diez (eds) 2004: 160). This means that ontology is derived from intersubjectivity (Adler 1997a). This is enabled by social communication, which the previous section established is the interactions between structures and agents (Adler 1997a).

This evolutionary ontology now implicates constructivism's epistemology (Adler 1997a). How actors interpret reality, and the way they subsequently interact with one another, is fundamental to redefining reality (Risse in Wiener & Diez (eds) 2004). As ideas move through intersubjective processes, they become institutionalized as 'social facts' (Searle in Adler 1997a: 327-328). Certain otherwise subjective frameworks of knowledge are now objective. This epistemological claim confirms why the evolutionary ontology of identity (and interest) is so crucial. Because identity filters how actors interpret reality, it implicates how reality reconstitutes their own identity and interest.

Progress occurs when practices "that enhance human interests within and across political communities" emerge and solidify (Adler 1997a: 334). Mediating constructivism's ontology and epistemology explain this progressive reality. Changes in detention and migration control are constituted, rather than regulated, by these "new interpretations of reality" (Adler 1997a: 339).

4.3.3 Material Shortcomings of Constructivist Theory

In its ultimate deconstruction of reality, constructivism begins with intersubjective ideas rather than material bases. Because the ideas analysed never interact outside of objective constraints, critics argue that these material forces should be accounted for *before* the ideas that construct them (Sørensen 2008: 21-22). Critical realism presents a meta-theory that adopts qualitative frameworks into the material basis of realism. This deepens the otherwise lacking ontology of

rationalism yet does not stray from its material starting point altogether (Iosifides 2011: 1-3).

The constructivist approach to detention is therefore certainly not the only way through which to study the transformations of detention. As stated in this paper's guiding research question, this paper does not employ constructivism as an answer to the entrenchment and expansion of detention, but rather, as one in-depth contribution to explaining the problem.

In this chapter I have thus far established the crucial elements of this contributing constructivist theory. I have founded how and why a constructivist theory of control can contribute to explaining detention's evolution. In this next section I apply constructivism unearthing the normativity of detention. I theorize detention as an emerging and transforming regime embedded within the migration control regime.

4.4 Theorizing the Detention and Migration Control Regimes Through Constructivism

In the previous section I provided an exposition of the layered, constitutive nature of the constructivist reality. Because this 'middle ground' approach deconstructs the taken-for-granted nature of detention and simultaneously reconstructs its transformation as a fixed object in immigration policy, constructivism is apt for answering this paper's research question. I now unearth the migration control layer that detention is embedded within, and further, address this control as non-innate to the state's identity. This completes the second prong of this paper's research agenda by theoretically destabilizing the normativity of detention and embedding it within once-subjective migration control and securitization layers. This sets a foundation for operationalizing the entrenchment and expansion of detention in the subsequent chapter.

Risse (in Wiener and Diez (eds) 2004: 168-169) demonstrates that the mutually constitutive relationship between detention and its underpinning control and securitization layers can be analysed through several patterns. He provides three configurations: "nesting," "cross-cutting," and a "marble-cake model." The first implies a core–to–periphery hierarchy. Detention exists within migration control, and migration control within securitization. The second indicates multiple and shared identities. States may identify simultaneously with detention, migration control, and securitization, though valuing certain identities over others. The third entails inseparability. Detention, migration control, and securitization are so integrated that they cannot be individually distinguished. Each of these patterns offer distinctive constructivist contributions to address the constitutive nature of migration control. I will use Risse's core-to-periphery nesting methodology. It is most suitable for this paper because it probes increasingly concealed social facts, analytically moving through the deeper layers detention is embedded in.

4.4.1 Theorizing Detention as a Regime

Originating in rationalist theories, a regime is a body of norms and practices that transcend state borders, regulating a certain arena (see for example Nye

1987: 371-374). Already stated in the introduction and made clear through conceptualizing and contextualising detention, a detention as a 'regime' connects its entrenchment within the Netherlands to its expansions beyond Dutch borders.

Detention as a regime through constructivist theory, however, means that its norms, practices and institutions not only regulate, but actually constitute the identity of the structures and agents it interacts with (Risse in Wiener and Diez (eds) 2004: 162). Its interests and identities are endogenized not only within immigration policy, but in the migration control identity of the states it belongs to.

Firstly, the detention regime is nested in the broader set of constitutive crimmigration norms, practices, and institutions. Crimmigration is thus also a regime. Distilling from the Dutch and EU context in chapter three, it is clear that the endurance of the detention regime is connected with the rapid intensification of the crimmigration regime. As a taken-for-granted social fact, the crimmigration regime determines ideational and structural boundaries of reality (see Adler 1997a: 326-7). The detention regime is thus an expression of policy imagination exercised within the constraints of a crime-centred migration control framework. Crimmigration is fertile ground for detention. In this context, incarceration becomes a logical next step for addressing irregular migration concerns (Mommers 2013a, personal interview).

As the detention regime is constituted by crimmigration norms and practices, the former simultaneously feeds back into this deeper crimmigration layer (see Risse in Wiener and Diez (eds) 2004). Visibly concretizing the criminal-immigration union, the detention regime can be understood to uphold the state's interest to maintain a 'strict' appearance to irregular migrants and the populace. Its symbolism perpetuates the perceived necessity of such 'strictness' (Leerkes & Broeders 2010). In this way, the detention regime reconstitutes the crimmigration regime by imposing an expectation that crimmigration maintain dominance in defining social reality.

The crimmigration-detention interaction that constitutes the detention regime and re-constitutes the crimmigration regime, however, does not answer where crimmigration itself comes from. This is found in the deeper layers of control and securitization that the detention regime is nested within. I will unearth these in the next sections.

4.4.2 The Detention Regime Embedded in the Migration Control Regime

The detention regime, and the broader crimmigration regime within which it is nested, are tools that the state uses to control migration. Migration control has already been conceptualized as states' aim to control completely against irregular migration. Now theorizing migration control as a regime means that its institutions, practices, and norms extend across states. Further, it shares a mutually constitutive relationship with these states identities. It also shares a mutually constitutive relationship with the detention and crimmigration regimes nested within it. The migration control regime thus sets subjective and objective constraints that constitute the reality within which the detention regime evolves.

"'We owe it to our constitutional state to evict illegal aliens,'" a leading Dutch politician pronounced at the rise of crimmigration and detention policies in the Netherlands (*NCR Handelsblad* in Schinkel 2009: 784). The state's migration control identity is defined by the return of irregular migrants. This identity is shared across the EU through its "fight against illegal immigration" (EU 2007a). This "fight" occurs through multiple discursive and non-discursive practices. The migration control regime is the shared battle amongst EU states for sovereignty over migration. Through this, it enlists the efforts of both crimmigration and detention.

Feeding the relationship between the state and the migration control regime through constructivism sees that this interest is not exogenous. Rather, it reconstitutes the state's identity. Further, as detention becomes taken for granted as a means of migration control, it also feeds back into the state's migration control identity. This reshapes and reifies the migration control regime.

Though institutionalized (hence, behaving objectively), the migration control regime is but one thread of techniques for managing migration. How the migration control regime becomes taken for granted in comparison to other measures is nested in the securitization of migration.

4.4.3 The Detention and Migration Control Regimes Embedded in the Securitization of Migration

Securitization, like the state's migration control identity, is neither static nor given. The study of securitization analyses how security issues "emerge, evolve, and dissolve" (Balzacq in Dunn Cavelty and Mauer (eds) 2010: 56). Concerned with the constitutive nature of evolution, constructivism contributes greatly to understanding now-objective constraints securitization imposes on the entrenchment and expansion of detention.

At its base, securitization emerges through the social field. A 'field' compares to the 'regime' in that the former is the various "struggles between [agents]" (Bigo 2006: 394) over defining the parameters of what is secure and what is insecure. Bigo (2006) argues, therefore, that one framework of security necessarily entails that other frameworks of security are left out.

For constructivism, this struggle depends on the intersubjective interpretation of the reality of migration within constraining structures and identities, particularly of the state. How the 'threat' of irregular migration shapes the securitization of migration is dependent upon actor's interpretations of the 'threat' (see Adler and Barnett 1996: 72). Actors' interests must therefore be recognized in order to understand their perceptions of this 'threat' (Bigo 2006: 402). These identities (and hence, interests) constitute the way what is 'secure' is understood and eventually taken for granted.

Contextually adapting from Bigo's (2006) analysis of post 9/11 global securitization, this means that the institutions, norms, identities, interests, and so forth that enact securitization are as vital to defining securitization as the flows of irregular migration are itself. As such, they constitute the meaning of (in)security itself. Furthermore, they not only deem irregular migrants as threatening, but their institutions crystallize this. States' legal institutions actually constitute this category as 'illegal' altogether. This category has only been

made possible through "the [necessary] judicial apparatus [that is] less than a century old" (Plender, Ngai in Cvajner and Sciortino: 390). Thus, irregular migration should be understood as a political category rather than an inherent outsider to the 'secured' state (Walters in Geiger & Pécoud (eds) 2010).

We therefore see the securitization of migration as it functions through the migration control, crimmigration, and detention regimes, as a particular framing of irregular migration as threatening to the state. Institutional arrangements and interests reify this particular framework. As such, the securitization of migration functions as the ultimate 'hegemonic' layer that constitutes the reality in which the migration control, crimmigration, and detention regimes operate.

4.5 Conclusion

In this chapter, I have completed the second prong of this paper's research agenda by destabilizing the normativity of detention in relation to migration control. I did so by unearthing the constitutive layers within which the detention regime is embedded.

Through constructivism, I theorized that the migration control regime has a mutually constitutive relationship with its layered reality. The detention regime is understood to have evolved ultimately from a particular securitization framework that is exercised through the migration control regime. The detention regime is constituted by the state's interest to assert complete control over irregular migration. Yet these control ends are neither innate nor benign, but reconstitute the identity of those actors and institutions that construct it.

No longer an externality to immigration policy or the state, detention is active in influencing migration control (Silverman and Massa 2012). It both reifies the structures and ideas that it emerges from, and constrains current and future migration policy transformations. I will now operationalize this constitutive relationship to illustrate the entrenchment and expansion of the detention regime within the Netherlands and across the EU.

5. THE ENTRENCHMENT AND EXPANSION OF THE DETENTION REGIME

Throughout this paper, I have gradually deepened understanding of the relationship between detention and migration control. Chapter two began with a skeleton of concepts that locate the relationship between detention and migration control. I then placed these concepts into the context of the Netherlands and the EU in chapter three. This achieved the first research objective, confirming the necessity to understand detention in its relationship to migration control. In chapter four, I then theorized the constitutive nature of migration control through constructivism. This concluded that detention, crimmigration, and migration control are regimes that mutually (re)constitute one another. By unearthing these layers, I achieved the second objective of this paper, destabilizing the normativity of detention.

We have now reached the depth of the constitutive reality that detention is embedded in within the limitations of the scope of this paper. I will now operationalize this constitutive reality to activate the entrenchment and expansion of the detention regime. This will answer the constructivist agenda of

> "how and why … certain collective expressions of human understanding, neither valid nor true *a priori,* develop into social practices, become firmly established within social and political systems, spread around the world and become reified or taken for granted" (emphasis in original, Adler 1997a: 337).

1.1 Structure of Analysis

There are multiple means to operationalize constructivism. Variations in methodology depend on the (im)balance between discursive and non-discursive practices (Adler 1997a; Balzacq in Dunn Cavelty and Mauer (eds) 2010). Examining the detention regime through constitutive discursive practices alone misses unarticulated practices and assumptions that also shape transformations (Balzacq in Dunn Calvelty and Mauer (eds) 2010).[2] I have therefore selected to operationalize the entrenchment and expansion of detention through constructivism's security communities and epistemic communities. This accounts for both the discursive and the non-discursive. Here, non-discursive interactions expose how objective constraints interact with the detention regime. Discursive communication reveals how actors identify themselves with the meaning of practices and institutions (Risse in Wiener & Diez (eds) 2004: 164-166). To explain how I operationalize this, in the first section of this chapter I translate

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[2] See for example Rygiel's (2012) analysis of the detention regime through the Copenhagen School's Speech Act.

the meditative method of constructivism (delivered in chapter four) into an operative methodology.

I then apply this methodology in the second and third sections. Together, these sections argue that through the mutually reinforcing interactions between the state, the EU, and human rights interests, the detention regime has become entrenched within Dutch policy. This entrenchment has also expanded across EU states. This argument tests and builds on Flynn (2013a; 2013b; 2012; Flynn and Cannon 2010; in Silverman 2012: 1145-1147). He sees that human rights norms can (unintentionally) contribute to the entrenchment and expansion of the detention regime.

In the second section, I analyse the entrenchment of the detention regime through security communities, focusing on the practice of voluntary return. In the third section, I analyse the expansion of the detention regime through epistemic communities, focusing on the power and trust with which experts reproduce voluntary return practices across the EU. This analysis completes the third prong of this paper's objective operationalize the entrenchment and expansion of the detention regime through its mutually-constitutive relationship with the migration control regime.

1.2 Transposing Method To Methodology

I have clearly established constructivism as a theory for analysing the entrenchment and expansion of the detention regime. The interactions between the detention, crimmigration and migration control regimes mutually reinforce their normativity and increasingly tighten constraints on future policy development. Policy evolution reifies and reproduces these regimes' otherwise subjective norms and institutions. I will now transpose this into an operational methodology to verify its explanation of the entrenchment and expansion of detention.

5.2.1 Identifying the 'Return' Constraint of the Migration Control Regime

In the introductory chapter of this paper, I introduced the primary dataset that informed this research. Annex A can be referred to in order to recall a listing of these informants. This interview dataset developed a rich, holistic picture of the interplay of interests that interact with detention in the Netherlands. As already mentioned, only a small fraction of this dataset could be used in this paper in order to maintain its scope.

This paper's theorization of control is premised on the constitutive nature of the taken-for-granted underpinning layers of the detention regime. I thus analysed the interview dataset to identify the constraints imposed on actors' engagement with the detention regime. I identified these in two ways. Firstly, the interests and norms actors assume as innate expose taken-for-granted constraints. They act as constraints because they impose on policy imagination. Thus, they limit actors' perceptions of how they can engage with detention. Secondly, constraints are revealed through issues relating to detention that actors intentionally choose not to engage with and/or recognize they

are unable to address. This also illuminates how these constraints impose on actors' interactions with detention.

Because the dataset is comprised of such variation of actors, informants operate within the constraints of their own unique identities and interests. The constraints imposed on actors therefore vary. However, these actors also all operate within the shared constraints imposed by the detention, crimmigration and migration control regimes. Points of convergence thus provide extremely strong insight into the constraints within which the detention regime functions.

Through this methodology, I identify one dominant point convergence as an overarching constraint within which the detention regime operates. Already introduced in the first chapter of this paper, this is the migration control regimes' mandate for effective returns. The Dutch state and the EU's interest for effectively returning irregular migrants constitute the transformation of the detention regime.

Actors' engagement with detention is limited and shaped by its authority. Though once conceived subjectively, it is now acts objectively, limiting actors' imaginative capacity. This means that "return is very dominant," though it need not be the only means of addressing migration (van Dooijeweert and Severijns 2013, personal interview). For policymakers, the question regarding irregular migration pressures is "how tough do you need to be in order to impose a return?" (van Krieken 2013, personal interview). Because of this, policy is limited to circulating innovation around means to achieve return (van Krieken 2013, personal interview).

To interact with the detention regime, human rights and legal interests are confined to function within the prevailing political constraints of the migration control regime. Engagement from a human rights perspective seeks to lessen the negative impact detention has on migrants, and to provide alternative measures to facilitate returns (Mommers 2013a, personal interview; Busser and Ricci Ascoli 2013, personal interview). Legal engagement also takes place within these confines. Its success is case-dependent (van Kempen 2013, personal interview). Its need therefore grows as the migration control regime heightens (Oosterholt 2013, personal interview). These constrained interactions profoundly shape both the detention and migration control regimes. This will be the focus of this chapter's analysis.

5.2.2 Illustrating Constrained Interactions with the Detention Regime through the Practice of Voluntary Return

This analysis is concerned with how interactions within the constraint of 'effective returns' constitutes the entrenchment and expansion of the detention regime. I have thus defined one intersection within the detention regime that illustrates its transformation within these impositions. At this intersection lies the EU, the state, and human rights obligations. I have selected the 2008 EU Return Directive (henceforth, 'the Directive') to specify interactions at this intersection. In the primary dataset, this was one of the most consistently referenced turning points for scale backs in Dutch detention practices. As a legal document shared across states, the Directive institutionalizes the connection between the entrenchment of the detention within the Netherlands and its expansion across the EU.

I further narrow analysis by selecting the practice of voluntary return. Voluntary return exists at the axis of the Directive's interactions with the state and human rights obligations. Voluntary return was not a focal point of any interview, but is a growing practice within both the detention and migration control regimes. It provides insightful illustration for the entrenchment and expansion of the detention regime through these interactions.

After identifying this intersection, I conducted two brief semi-structured interviews over the phone to gather and verify specific data. Mommers (2013b) was also an informant in the initial primary dataset, whose phD studies relate to voluntary return. Carpier (2013) was an added informant. Carpier is a project manager at the International Organization for Migration (IOM) for Assisted Voluntary Return programmes. Carpier's spoke on behalf of the IOM, not on her own behalf. These informants' profiles are also listed in Appendix A.

I triangulate the initial primary interview dataset and secondary literature, with data from this second set of brief interviews, with a selection of reports and academic literature specific to voluntary return. This serves to substantiate and verify analysis of the mutually constitutive interactions that here take place.

5.2.3 Operationalizing EU-State-Human Rights Interactions Through Security and Epistemic Communities

In this chapter I have thus far identified the migration control regime's mandate for 'effective returns' as a dominant political constraint imposing on the detention regime. This constraint now constitutes the way in which the EU, the state, and human rights obligations interact with the detention regime through voluntary return. These interactions illustrate the constitutive relationships that shape the entrenchment and expansion of the detention regime. The detention regime in turn feeds back into, or reconstitutes, the migration control regime.

The following analysis now feeds these constitutive interactions through constructivism's 'security communities' and 'epistemic communities.' I will briefly outline security communities and epistemic communities, but will develop these as I move through the analysis.

Constructivism's security communities posit that "community exist[s] at the international level, [and] that security politics [are] profoundly shaped by it" (Adler and Barnett 1996: 63). Shared identity and knowledge binds together the security community (Adler 1997b: 250). In the first analysis, I will argue that this community is constituted by a shared migration control identity across EU states. As human rights interests promote voluntary return within the political constraints of migration control, the detention regime becomes more deeply entrenched in state's shared migration control identity. Expert knowledge relating to voluntary return is then shared across the community. This forms an epistemic community. It reproduces the entrenchment of the detention regime, hence, accounting for its expansion. I will now activate this analysis.

5.3 The Entrenchment of The Detention Regime Through 'Softened' Approaches To Return

The EU purposed the Directive for shared and effective Member State policies regarding the return of irregular migrants (Canetta 2007: 436). It was formalized in 2008 and to be effectuated in national policies by 2010, though the Netherlands failed to meet this requirement on time. Setting institutional and normative precedence for EU Member States, however, it can be understood to have played a constitutive role even during its drafting phases.

As the first and only EU legal document governing the return of irregular migrants, the Directive should be understood as one of the migration control regime's most crucial institutions. As such, it marked a fundamental shift for the detention regime in the EU. It was consistently referenced in the primary interview dataset as a turning point for improving Dutch detention practices because it imposed human rights limitations on the detention regime.

However, by imposing restrictions on detention, the Directive institutionalized the detention regime as a normalized fixture in state's identification with the migration control regime. Though migrants' rights are increasingly weighed alongside effectiveness, this is still within the constraints of effective returns (Mommers 2013a, personal interview). The ensuing transformations of the detention regime can be understood to thus manoeuvre within the Directive's expectation on constituent states to achieve effective returns.

The most recent period of scaling back detention in the Netherlands is thus actually characteristic of its deepening entrenchment in policy. Simply put, the Directive made improvements of the detention regime possible, but also reinforced its practices (see also Flynn 2012: 2; Flynn and Cannon 2010: 4-5). This section now argues that the human rights limitations the Directive imposed contribute to more deeply rooting detention in the state's returns toolbox. This tests Flynn's (2013a, 2013b, 2012; Flynn & Cannon 2010; in Silverman 2012: 1147) thesis that human rights restrictions can (unintentionally) contribute to entrenching detention in policy. He sees that human rights norms address detention "without calling into question the state's sovereign right to detain or expel them" (2013a: 4). States adapt to these pressures so that their control is neither lost nor gained (Flynn 2013a). I build on this by moving beyond its neoliberal institutional roots in state's strategic adaptation to actualize innate interests. Instead, the state's migration control identity (hence, interest) is actually reconstituted by these pressures. This reconstitution contributes to the seeming permanence of the entrenchment of detention in policy.

5.3.1 Europeanization, the State, and Human Rights: Constructing A Migration Control Security Community

The Directive institutionalized the crossroads within the detention and migration control regimes between the EU, the state, and human rights obligations. Their interactions (re)constitute the identity of the community of states the Directive binds together. This shared identity is what Adler & Barnett (1996) define as the 'security community.' As an institution, the Directive spreads shared norms and expectations, which are the basis of the community (Adler

1997b: 250). The mutual expectations for effective returns that the Directive imposes on states' immigration policies formalize a community identified by a shared migration control interest (see Adler and Barnett 1996: 76). The shared meaning, interactions, rules, and interests relating to migration control create a collective identity amongst constituent states. This acts as a security system because members can expect mutually-supportive migration control behaviour from one another (see Adler and Barnett 1996). In turn, these expectations act as constraints on the interaction between constitutive interests (see Adler 1997a). They reshape member state's identities: "security, in short, is becoming a condition and quality of these communities" (Adler and Barnett 1996: 64). These expectations confine behaviour within the state to operate according to this shared identity. This is shown through the assumptions and limits expressed in the dataset regarding the ascendancy of return. The security community's political environment thus contributes to explaining why human rights engagement through the Directive is confined to improve rather than dismantle the detention regime.

While both the state and the EU hold longstanding immigration-related political interests, human rights norms engage with immigration policy because of human costs incurred through specific policies. In this way, human rights norms are apolitical, or confined by prevailing political constraints. These varying interests bear crucial implications on the identity of the detention and migration control regimes they shape. The following paragraphs will detail these interests, and the subsequent sections will substantiate the outcome of their interactions. Reference can be made back to Figure 3.1 in order to visualize and recall this context.

Harmonizing (or Europeanizing) EU Member States' immigration policies stems back to the 1992 Treaty of Maastricht. This was intended to integrate EU Member states and placed immigration as a third (of three) pillar issue. The only supranational pillar is its first, titled 'The European Communities' (Maas 2008: 15-17). The later 1997 Treaty of Amsterdam moved immigration and asylum to this first pillar.

"Amsterdam meant that the policy area of immigration and asylum, originally belonging to the sovereignty of the individual member states, now fell under the competence of the [European] Community" (Maas 2008: 18).

During this time, the Netherlands began intensifying its own crimmigration and detention measures. It was then through The Hague Programme of 2004, and its successor, the Stockholme Programme of 2010, that the return of irregular migrants became a priority within Europeanization of immigration policies. Hence, the Directive evolved jointly from states' increasingly strict policies and the EU's harmonization process.

Europeanizing immigration and asylum policies is by no means a homogeneous process (see for example Levy 2005). Each state has its own context-specific interests. Accordingly, states are both burdened and enabled through EU politics (van Krieken 2013, personal interview). Negotiating harmonized return policy through the Directive, understood as institutionalizing a shared migration control identity, was severely resisted by EU Member States. European Parliament for the first time ever proposed to "blackmail" states by withholding related funding in order to coax European Council's approval of the

Directive (Canetta 2007: 448). To generate agreement, minimum standards are thus often formalized. Maas calls this "dirty communitarization" (2008: 20-27). This bears crucial implications for the outcome of the interactions between the EU, the state, and human rights.

The creation of the Directive is one such "dirty communitarization" process. Expressed through European Council, states did not react favourably toward proposed human rights restrictions on detention (Canetta 2007). These human rights interests originated through pressures mostly from European Parliament (Canetta 2007). Canetta documents that during the development of the Directive, EU Member States perceived limits on detention "as interfering with the discretion of national authorities and [were] thus opposed" (2007: 446). She notes that their reasoning against balancing migrants' rights with the states' interest was unaffected by international human rights standards (2007: 440-441).

These human rights obligations instated legal proportionality as a limit on the detention regime. Coercive measures, including detention, may be used exclusively to prevent migrants from absconding (Canetta 2007: 443, 445). Within these parameters, the Directive applied the *ultimum remidium* principle. Detention may only be used as a last-resort measure when all other options for securing return have been exhausted.[3] The Netherlands' detention practices came under unprecedented scrutiny from a broad spectrum of governmental and non-governmental actors (Busser and Ricci Ascoli 2013, personal interview; see for example NJCM 2013: 4). Scale backs of detention indicate these constraints increasingly reconstitute state's conduct (see for example pilot projects for alternatives to detention in Verhoef et al 2012).

The limitations the Directive's human rights obligations imposed on the detention regime reshapes states' structures and behaviour in order to maintain membership in the security community (see Adler and Barnett 1996). Building on Flynn (2013a), beyond navigating around its constraints, both the detention and migration control regimes are reconstituted by these interactions. This is a "wellspring of shared identity" (Adler and Barnett 1996: 84) that defines the security community's migration control regime within which detention entrenches and expands.

These obligations also serve to reconstitute the identity of the detention regime. States' interpretation of migrants' interests as a "burden" (Canetta 2007: 440) only partially accounts for the constitutive effects human rights obligations have on the detention regime. Endorsing human rights limitations legitimized states' detention practices at the supranational level. Effectively, the Directive's human rights constraints cemented the detention regime within state policy (Flynn 2012a: 1-2). By maintaining the bottom-line for effective returns, the Directive's human rights obligations act as a conduit for softening the detention regime whilst embedding it within states' migration control identity and interests.

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[3] Though preceding limitations on detention existed in international human rights law, preceding the Directive, the *ultimum remedium* principle instated in European Council guidelines was "hardly used" (Schinkel 2009: 788-789).

5.3.2 Voluntary – Forced Returns Nexus

This section now examines the practice of voluntary return to illustrate how and how the Directive's intersection between the EU, the state, and human rights obligations entrenches detention in the migration control regime. As voluntary return operates within the constraints of the security community's expectations for effective returns, its human rights interests contribute to reinforcing, and thus entrenching, the detention regime in states' migration control identities.

Voluntary returns now outnumber deportations in the EU (Morris and Salomons 2013: 6). Voluntary return is a softened means for implementing the ends of the migration control regime in that migrants are given opportunity to return with dignity rather than by force. The Directive prioritizes voluntary return for achieving returns. Providing for one- or two- step processes to effect return, voluntary return means

> "the time period during which a third-country national, once he [or she] has been issued with a return decision (one step process) or a return decision/removal order (two step process) could organize autonomously the trip back" (Canetta 2007: 442).

Voluntary return is only limited when there is a risk of absconding (Canetta 2007: 442). However, it is now also offered after states have enforced detention to prevent absconding. This blurs distinctions between an already questionable voluntariness and hard coercive measures to effect return. Though placing the responsibility of return on the migrant, the emphasis on voluntary return in the Directive imposes an expectation on the state and the EU to provide means to alternatives to deportation.

However, voluntary return shares the same root as involuntary return. This means that together they reinforce the migration control regime's end goal. Embedded in an end goal of effective returns, policy makers recognize that voluntary return is not truly derived from migrant's free will (van Krieken 2013, personal interview). Voluntary return is not a genuine choice when crimmigration measures leave migrants without viable means to remain in the host country (Webber 2011; van Krieken 2013, personal interview). "At the end of the day, it's about 'manipulating' people into voluntary return. But it's not voluntariness, because these people have come … to stay" (van Krieken 2013, personal interview). Rather than offering alternatives to migration control, it simply diversifies the means by which control can be implemented. In effect it enriches the breadth of the migration control regime. This reconstitutes the regime's processes through the security community's human rights constraints and expectations.

5.3.3 Voluntary Return Through Detention

In recent years, voluntary return programmes have promulgated throughout the EU (Koch 2013). Both states and human rights actors prefer voluntary return because it incurs less financial and human costs than forced return

(Carpier 2013, personal interview).[4] While there were only 5 programmes in 1995, by 2011 there were over 35 (Koch 2013: 65). Many have sub-sets of context-tailored variations. The Directive facilitates voluntary return programme development through funding that promotes these practices. I address this funding in this chapter's subsequent analysis, as a means also to the detention regime's expansion.

Voluntary return is executed primarily by the IOM. Their Assisted Voluntary Return (AVR) programmes help expand states' toolbox for effecting returns. Simultaneously, they appease the Directive's human rights obligations of legal proportionality and detention as an *ultimum remidium*. The IOM and its AVR practices thus intersect the political and moral interests that circumscribe migration control behaviour within the security community. The IOM states that they implement AVR programmes because they serve both the state and the migrant's interests (Carpier 2013, personal interview). Hence, as human rights obligations legitimate voluntary return, they (indirectly and unintentionally) validate the state's migration control ends.

The softened means of AVR for effecting migration control ends permeates the detention regime. Simultaneously this reconstitutes the identities of each contracting party. Most pertinent to this paper, this entrenching the detention regime in migration control policy. A verifying statement from practices in the United Kingdom (UK), "detention has been described by one government official as 'the stick which we need to push people into AVR'" (Morris and Salomons 2013: 8).

The Netherlands is one of the states that pioneered this entwinement. In 1992, prior to the upsurge of the detention regime, the Dutch branch of the IOM began Return and Emigration of Aliens from the Netherlands (REAN) programmes. REAN was intended to provide return programmes as alternatives to detention. In 1998, at the wake of the expansion of detention, the Dutch State Secretary for Justice acknowledged the importance "to stimulate [this form of] (cooperation with) return" also from inside detention (Job Cohen as cited by van der Aalst in Groenhuijsen, Kooijmans, de Roos (eds) 2010: 3). This initiated possibilities for the IOM to facilitate voluntary return through detention. The IOM began soliciting voluntary returns from detention in 2002 (*Kamerstukken II* in van der Aalst in Groenhuijsen, Kooijmans, de Roos (eds) 2010: 3).

In 2007, the IOM Netherlands formalized an AVR programme specified to the detention context. This is the Assisted Voluntary Return from Detention (AVRD) programme. AVRD was formalized as part of the Dutch government's initiative to centrally manage return, streamlining cooperation between voluntary and involuntary return practices (Government of the Netherlands 2009: 7-8). The Dutch Repatriation and Departure Service ('Dienst Terug Verkeer en Vertrek') body responsible for deportations refers migrants to the IOM. This moulds AVR into simply a less coercive means to

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[4] Some human rights actors, however, do not favor AVR because they do not believe in its voluntariness (Carpier 2013, personal correspondence).

return. The IOM is now available to all migrants in all detention centres in the Netherlands, promoting migration's cooperation with their return.[5]

Through such practices, the line between alternatives to the detention regime and alternatives through the detention regime has become blurred (Mommers 2013b, personal interview). Like all evolving institutions, AVR/D "reflect[s] and build[s] upon previous institutional designs and structure[s]" (Risse in Wiener & Diez (eds) 2004: 161).

> "In the absence of AVR[/D] programmes, states would be inclined to introduce more draconian measures to prevent the arrival of asylum seekers and to expel them by force" (Morris and Salomons 2013: 6).

It can be understood that its operators juggle the problem of ignoring the relationship between the detention regime and migration control, or reinforcing this relationship but softening its means. The former disengages actors from the security community, whilst the latter entrenches detention deeper into shared migration control interests. This emphasizes Flynn's (2012a: 1) argument, that a focus on improving detention, can justify its practices. Yet by partaking in the entrenchment of the detention regime, its underpinning interests become endogenized in its constitutive actors' identities. This constrains choices available for their own actions and interactions (see Risse in Wiener & Diez (eds) 2004). It is through internalizing state's interests in practices such as AVR/D that the IOM gains an increasingly controversial reputation amongst actors seeking the interest of the migrant (Ashutosh and Mountz 2011). Yet actors lose traction with being able to engage *with* the political constraints but instead act with*in* them.

I have now established the constitutive relationship between the migration control and detention regimes through security communities, operationalizing the entrenchment of the detention regime. I will now bridge this entrenchment to the expansion of the detention regime across states.

5.4 The Expansion of the Detention Regime Through Communities of Migration Control Expertise

The previous argument established a security community premised on a shared migration control identity. In this way, the migration control regime can be understood as structural and ideational glue between states. It binds them together through a mutual understanding of reality, sharing expectations and constraints for policy development and behaviour (Adler and Barnett 1996). The argument concluded that by manoeuvring within the community's political constraints, human rights interests contribute to entrenching the detention regime within state policies. Ultimately this reinforces the state's identification with the migration control regime.

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[5] See for example the IOM Netherlands' short video shown to give a "realistic view" to migrants of their situation and choices in detention (*'Caged'* 2009)

I now connect these conclusions to the expansion of the detention regime. I operationalize the expansion of the detention regime across the community through constructivism's epistemic communities. By building within the architecture of the security community, this argument not only explains the expansion of the detention regime through its constitutive relationship with the migration control regime, but also links this expansion to its entrenchment. While Flynn (2013a; 2013b; 2012; Flynn and Cannon 2010) explains the expansion to the EU's peripheral internal and external borders, I limit my analysis to its expansion within the internal borders. I focus particularly on Greece. Recalling from chapter three, Greece faces the largest influx of irregular migrants in recent years (Frontex 2012). Meanwhile the population of irregular migrants in the Netherlands has decreased. Greece's "substandard" detention practices are one means of seeking to control this population (Amnesty International 2010). The EU, through the Directive, thus aids border states like Greece to improve their detention practices (Flynn and Cannon 2010: 5), which is the trend of 'expansion' I limit my analysis to.

5.4.1 Epistemic Communities

One of the ways constructivism offers that transnational institutions reshape the security community's identity is by developing knowledge that states share and cooperate with each other through (Haas in Ripsman 2005: 674). This defines the epistemic community. Epistemic communities were first identified by Haas in 1992 as "networks of experts who persuade others of their shared causal beliefs and policy goals by virtue of their professional knowledge" (in Davis Cross 2013: 142). I use Davis Cross's (2013) work, however, because it re-introduces and sets a new research agenda for epistemic communities.

Epistemic communities are understood to diffuse the framework of reality defined by the migration control regime across institutions (particularly across states). They do so by sharing knowledge across states and institutions within the confines of the migration control regime (Adler 1997a). Because detention is embedded within the migration control regime, epistemic communities defining the reality of migration control carry the practices of detention across states and institutions as well. This creates and reproduces the normativity of the detention regime (Alder 1997a). Hence, it contributes to its expansion (see Adler 1997a: 336). Emerging as the authority and expertise regarding migration control, the epistemic community also continually perpetuates the reinforcement of both these migration control and detention regimes.

To show how an epistemic community expands the detention regime within the migration control regime, this argument is principally an exercise in mapping levels of migration control experts and analysing the transformations that emerge from their interactions. Knowledge evolves into structures (such as norms and institutions) within the confines of the migration control regime's expectations (see Adler & Barnet 1996). This develops expertise bound to these constraints, ultimately strengthening the state's power in migration control. Accordingly, I will henceforth refer to the epistemic community as a community of experts.

This section now feeds constructivist notions of power and trust through epistemic communities in order to operationalize the expansion of detention through the reproduction of expert knowledge. Power and trust are

crucial to developing ideas that become taken for granted; it is not the truth of the ideas that matter, but instead, their quality (Adler & Barnett 1996: 83). Power and trust imbue knowledge of migration control and detention with the quality that makes it authoritative (see Adler 1997b; Davis Cross 2013).

5.4.2 Forming Expertise Through Power

In the security community, power has "the authority to determine [the] shared meaning that constitutes [its] 'we-feeling'" (Adler and Barnett 1996: 83). Power thus binds together states' shared migration control identity. It is primarily institutional (Williams in Adler 1997a: 336). In this paper, 'power' has therefore already been illustrated (just not labelled) through the mutually constitutive EU-state-human rights interactions that entrench the detention regime in the migration control regime. The community of experts is comprised of these powerful actors who constitute the regimes. As such, the community of experts is "a major means by which knowledge translates into power" (Davis Cross 2013: 138).

The IOM holds primary power in the migration control community of experts. The IOM is an intergovernmental organization established to act on behalf of states to manage migration. Its predecessor, the Intergovernmental Committee for European Migration (ICEM), was established alongside the United Nations High Commissioner for Refugees (UNHCR). The UNHCR was mandated as non-operational, while the ICEM was to carry out tasks for the state (Elie 2010: 346). The ICEM was established because the UNHCR's humanitarian interests were unsuccessful in gaining necessary financial backing from the United States. The ICEM therefore distinguished its purpose to "encourage emigration from Europe," an American Cold War-related security interest at the time (Elie 2010: 350).

The IOM later evolved out of the ICEM. Its operations and interests have since expanded. From 1998 to 2009, member states jumped from 67 to 127, and the annual budget surpassed US$1 billion (IOM in Ashutosh and Mountz 2011: 27). The IOM can thus be considered one of the most powerful migration-related institutions in the world. Yet its state-interested foundations still contribute to its controversial identity today. It remains a radically understudied organization given its prominence in immigration policy worldwide (Elie 2010).

Though a worldwide intergovernmental agency, the IOM does not belong to the United Nations. It has no guiding human rights mechanism, overall or in the area of return (Human Rights Watch 2003). Existing in the space between (and beyond) state's international legal boundaries, the organization can be understood as "a novel form of neoliberal governance" for migration management (Ashutosh and Mountz 2011: 22). States increasingly rely on the IOM for managing migration because of this ability to extend beyond state limitations (Ashutosh & Mountz 2011: 22). Also, because of its unmatched capacity in global migration management (Carpier 2013, personal interview).

Consequently, the IOM profoundly shapes the securitization of migration as it links practices and interests across states and other institutions. It enables and promotes the transactions and shared interests the migration control

regime depends on (see Adler & Barnett 1996). As it does so, it makes the expansion of the detention regime across states possible.

5.4.3 Sharing Expertise Through Power and Trust

In order for knowledge to render power, trust between transmitting actors is imperative (Adler 1997a). Trust fuses the security community together. It is a key variable for states to maintain mutual identification with the migration control regime. Cooperating within the framework of shared knowledge contributes to the security community's enduring trust and cohesion between states (see Adler 1997a). This far outlasts states' competitive or strategic state collaboration in rationalist paradigms (Ripsman 2005: 675). Davis Cross (2013) highlights the imperative role actors' professionalism plays in the community of experts. This emphasizes the prominent role the IOM plays in facilitating trust within the migration control regime.

I now apply the community of experts' transition from knowledge to power, through trust and cooperation, to the expansion of the detention regime. It do so by building on the interactions between the EU, the State, and human rights. I carry forward the previous illustration by representing the EU through the European Return Fund (governed by the Directive), and human rights through AVR programmes.

5.4.4 Expanding the Detention Regime Through the Diffusion of AVR

The European Return Fund (henceforth, 'the Fund') acts as a medium of the community of experts for expanding the entrenched detention regime. Because the Fund is a powerful transacting agent for AVR (within which detention is embedded), it invokes trust amongst expert actors. This diffuses the entrenchment of detention across states.

The Fund is a primary financier for AVR (Morris and Salomons 2013: 6). It is guided by the Directive, which the previous argument established as one of the migration control regime's pillar institutions. Together, these are "the two main building blocks of the EU return policy" (EU 2011: 27). The Fund's supranational political authority and financial means endow it with power. Transactions that occur through it then facilitate trust between constituent institutions, including states. Together, this power and trust enables the transmission of practices that are exercised within the constraints of the migration control regime. Hence reinforcing the regime's limited definition of reality. As it has already been established that detention is embedded in this migration control regime, the scope of this argument is to operationalize explanation for detention's expansion across states.

The Fund originates in The Hague Programme of 2004. This initialized the Europeanization of return policies regarding irregular migrants. The Fund became part of the later EU-wide 'Solidarity and Management of Migration Flows' programme, expiring in 2013. It is now central to effectuating the Directive's voluntary return priority (EU 2008). The purpose of the Fund is to provide "financial solidarity mechanisms" that deepen migration control cohesion amongst member states (EU 2008). Though it promotes AVR, it also finances forcible returns. The Netherlands, for example, allots portions of the

Fund to Frontex-operated charter flights for deportation (Government of the Netherlands 2009: 10). As has already been argued in this chapter, institutionalizing AVR alongside such measures brings into question the nature of AVR itself, and ultimately underpins the detention and migration control regimes that facilitate it.

Within the Netherlands and across Europe, the IOM is the principal recipient of the Fund's AVR financing. The IOM is written into the Fund's guiding legal document, alongside the UNHCR, as the

> "relevant stakeholders [with which states should cooperate with to] offer return schemes focusing on effective and sustainable returns through various measures" (EU 2007b: 47).

States appeal to the IOM to make voluntary return arrangements for migrants (Carpier 2013, personal interview). The IOM in turn depends on the state in order to maintain a prominent role (and maintain funding) in migration management (Mommers 2013b, personal interview). The state and the IOM thus share interest in effective AVR programmes, creating the trust that is required for instilling the IOM's AVR expertise with power.

Enabled by this power and trust, the IOM diffuses its migration control expertise across states identified with the migration control regime. The IOM has been particularly prominent in the voluntary return schemes in the UK, Belgium, and the Netherlands. To establish Dutch AVR programmes, the IOM Netherlands connected with partner offices in Belgium and UK (van der Aalst in Groenhuijsen, Kooimans, de Roos (eds) 2010: 7). The IOM's AVR practices in both the UK and Belgium's practices have history with their intertwinement with detention and other controversial practices (Morris and Salomons 2013; Webber 2011). Nonetheless, they facilitated the development of the AVR for the IOM in the Netherlands. The Netherlands then used the Fund to develop its AVRD programmes (EU 2011). The IOM's bundle of AVR projects in the Netherlands now carry authoritative capacity and expertise (Carpier 2013, personal interview).

As migrant influxes rise in states at the EU's periphery, expertise is required for adapting migration control to enable states to cope. The Fund introduced AVR as a means of coping with the influx (EC 2013). Part of the Fund's aim is "the development of pilot projects and/or the introduction of an assisted voluntary return programme" in such states without permanent projects (EU 2011: 16). The Fund enables the expertise that contributes to entrenching detention in the Netherlands to be transmitted to these states by trusted and powerful actors. Expertise is transmitted within the constraints of the migration control regime. Thus, Dutch practices intended to soften return but actually reinforce detention are replicated to new frontiers where detention can also be perpetuated. I now illustrate these interactions with focus on the IOM Netherlands' exchanges with the IOM Greece.

Greece is one of the six major beneficiaries of the Fund (EU 2011). In Greece, the IOM was the only body that responded to the Fund's request for an AVR programme proposal, and thus, is the Fund's sole beneficiary in Greece (EC 2013: 8). This makes the IOM an extremely powerful actor in shaping Greek migration control policy.

Capacity development for the Greek project was sought through IOM Netherlands (EC 2013). Training exchanges for AVR programmes, financed by the Fund, were made between the Netherlands, the UK, and Greece (EC 2013). Though effecting returns both from in and outside of detention, the IOM's pilot project used detention as a means to inform migrants of AVR possibilities (IOM 2013). The Dutch state has effectively transferred the normalization of a softening detention regime to a state needing to diversify its migration control means. The Greek authorities' intention is to bolster public support for future AVR programmes (EU 2011). This forecasts future policy development as one that maintains the constraints of the migration control regime and reinforces the necessity of detention within it.

5.4.5 Reinforcing Migration Control Through Proliferating Expertise

This analysis has so far narrowed the parameters of the community of experts pertaining to AVR to only account for the IOM's engagement with states through the Fund. One of the reasons, however, that the AVR is so powerful in reproducing detention's normativity across states is because AVR has attracted multiple levels of actors in recent years. Though this invites ingenuity in AVR practices, it also proliferates a shared interest in the migration control regime, further concretizing its interests. I will briefly capitulate consequences of such diversification as related to expanding the detention regime's entrenchment.

A major landmark for expanding AVRs community of experts was through cooperation between the IOM and the UNHCR. The UNHCR, whose mandate is for the protection of refugees and asylum seekers, now takes interest in the return of irregular migrants because they see an effective return practices as crucial to maintaining quality asylum systems (Morris and Salomons 2013).

Meanwhile, AVR also permeates civil society, attracting a growing number of non-governmental organizations (NGOs) in recent years. In Austria for example, the Fund financed four NGOs to counsel over 6,000 migrants in- and over 6,000 migrants out-side of detention for voluntary return (EU 2011: 19). The emerging trend found by the UNHCR is that NGOs' prior opposition to AVR has decreased, and in turn their direct involvement with its various programmes increased (Morris and Salomons 2013). This is often premised on the imminence of other harsher measures if NGOs do not engage in less invasive ways (Morris and Salomons 2013).

By attracting a growing number of stakeholders, the legitimacy of AVR swells. Through sharing authority on AVR, these institutions reproduce the migration control regime's normalization to new, formerly opposed, interests (see Adler & Barnett 1996). Expanding interest in AVR shields the community of experts from intersubjective criticism, effectively accentuating their power for engaging with states for the effective return of irregular migrants.

I have argued that the detention regime has expanded through the security community's community of experts. This growing community of experts effectively underscores the migration control regime and thus empowers the state. I will now summarize my analyses before concluding this entire paper.

5.5 Summary of Analysis

By operationalizing the constitutive relationship between the migration control and detention regimes, I have effectively answered this paper's guiding research question, and completed the third and final prong of this paper's research objectives.

In the first analysis, I activated the relationship between the EU, the state, and human rights norms through the security community. This section argued that the detention regime is reconstituted through interactions with the shared expectation for a migration control regime that effects returns but abides by certain human rights standards. The political reality of the migration control regime is its dependency on repressive control measures, such as detention, in order to cajole cooperation through softer and less invasive means such as AVR. Human rights obligations interact within the political constraints of the control regime. As such, they reinforce the legitimacy of detention as a means to the ends the migration control regime. In so doing, states' migration control identity is reified, and the detention regime becomes more deeply entrenched within it. This affirms Flynn's argument that human rights norms can (unintentionally) contribute to entrenching and expanding the detention regime (2013a, 2013b, 2012; Flynn and Cannon 2010; in Silverman 2012: 1147). It also adds constitutive theoretical insights to deepen its conjectures.

In the second analysis, I examined the community of experts that reproduces these 'softened' detention practices across the EU. This means that the development of a community of experts who expand knowledge within the constraints of the migration control regime reify and reproduce such limited definition of reality. As such a powerful actor as the IOM socializes AVR in relationship detention, other potential measures lose their legitimacy (see Adler 1997a). Through this, practices in the Netherlands that soften the migration control regime whilst reinforcing the detention regime are replicated across the security community to new contexts that then also reinforce detention.

6. CONCLUSION

I began this paper by introducing detention as a rapidly-proliferating means to securitize migration. The current evolution of detention is one of entrenchment within and expansion across states (Flynn 2013a; Flynn 2013b; Flynn 2012; Flynn & Cannon 2010). Alongside these trends is a prominent intensification of restrictive migration control policies throughout the globe. However, there is no clear explanation for this evolution. I therefore asked why and how a theory of migration control contributes to explaining the entrenchment and expansion of detention. I answered this question by analyzing the constitutive relationship between the detention and migration control regimes through constructivist theory.

I began with a skeleton that conceptualized the relationship between migration control and detention. I then brought this to life by gradually deepening understanding of this relationship throughout the paper. I placed this 'skeleton' into the context of the Netherlands and the EU, the illustrative case I have used to answer the research question. Having completed a picture of the interrelationship between migration control and detention, I then theorized their interactions as mutually constitutive regimes. In doing so, I argued my selection of constructivist theory as an improvement on both rationalist and post-structural paradigms. Embedding detention within its crimmigration, migration control, and securitization layers successfully destabilized the normativity of detention. I then operationalized these mutually-constitutive relationships to activate the entrenchment and expansion of detention through a constructivist theory of control.

Through constructivism's security communities, I argued that the migration control regime embodies a set of ideational and structural constraints that restrict policy development for dealing with migration concerns through any means but diversifying return processes. Human rights innovations within the security community's political constraints effectively concretize the detention and migration control regime's otherwise subjective norms, identity, and interests (see Adler 1997a: 338-340). As such, the structural constraints the detention and migration control regimes impose on the community are "both the medium and the outcome" of their reification (Adler 1997a: 325). The epistemic community then reproduces these constraints across the community. In doing so, it expands the detention regime as a normalized, yet softened, means to effect the return of irregular migrants.

Contra-rationalist paradigms, the interactions that reshape the detention and migration control regimes reconstitute state's migration-related interests, rather than simply constraining available choices (see Risse in Wiener & Diez (eds) 2004)). And contra-post-structuralism, the detention regime cannot be 'un-thought,' stripped to its guiding ideologies. The objective constraints within which the detention regime operates now necessitate it. Instead, the migration control and detention regimes continuously reconstitute one another. As they do so, their constituent actors and institutions are also reshaped. By analysing this through a constructivist theory that examines the constitutive nature of control, this explains the transformative process states, organizations, and the EU also undergo. These mutually constitutive transformations deepen

insight into understanding detention's apparent permanence in immigration policy.

Clearly, the reality defined by the migration control regime is but a fraction of the grander reality defined outside of the constraints of the migration control regime. Yet encroached in this objective social fact, depoliticizing, or de-securitizing irregular migration seems highly unlikely. As the relationship between the control regime and the detention regime seem to indicate, this also means that detention is highly unlikely to dissipate in the near future. We therefore must continue to seek to understand this reality as it is evolving. As we do so, we must be aware of the constraints imposed by these policies and practices we seek to understand. For as they constitute the reality within which we operate, they set parameters for our understanding of their meaning and implications.

Future research can contribute to this project by analysing migration control and detention through new theoretical lenses. This helps to bring coherence to rapidly changing immigration policies across the globe. We can ask, what lacunae are created through such a narrow view of securitization? How does control seek to close these gaps? In doing so, what new sets of norms and institutions dominate future migration policy evolution? As states replicate these modes of securitization, what more elusive constraints are shared across these security communities?

It is possible to continue to circle around narrow, but reified, ideas of how migration should be controlled and securitized. But it is also possible to free policy imagination from the 'secure' constraints of control. Indulging the latter is the road less travelled; but doing so may widen the path for both the state and the migrant.

Annex A

LIST OF INFORMANTS

Informants for Primary Dataset

Mommers (2013a) – phD Candidate, Institute of Immigration Law at Leiden University; migration-related work experience in the Netherlands includes with intergovernmental and nongovernmental organizations.

Van Krieken – former policy advisor, Ministry of Security and Justice for the Government of the Netherlands; also with extensive work experience at the United Nations High Commissioner for Refugees.

Olujic – Executive Director at the Dutch Section of the International Commission of Jurists (NJCM)

Van Kempen – Lawyer (and member of the immigration law department), Böhler Advocaten (A Human Rights Law Firm);

Oosterholt – Legal Coordinator for LegalAid ('Raad voor Rechtsbijstand') Application Centre at Schiphol-Oost Detention Centre.

Busser and Ricci Ascoli – Dutch Section of Amnesty International

> Busser – Department of Programmes: Refugees and Migrants

> Ricci Ascioloi – Policy Officer

van Dooijeweert and Severijns – Advisory Committee for Migration Affairs ('Adviescommissie voor Vreemdelingensaken' (ACVZ))
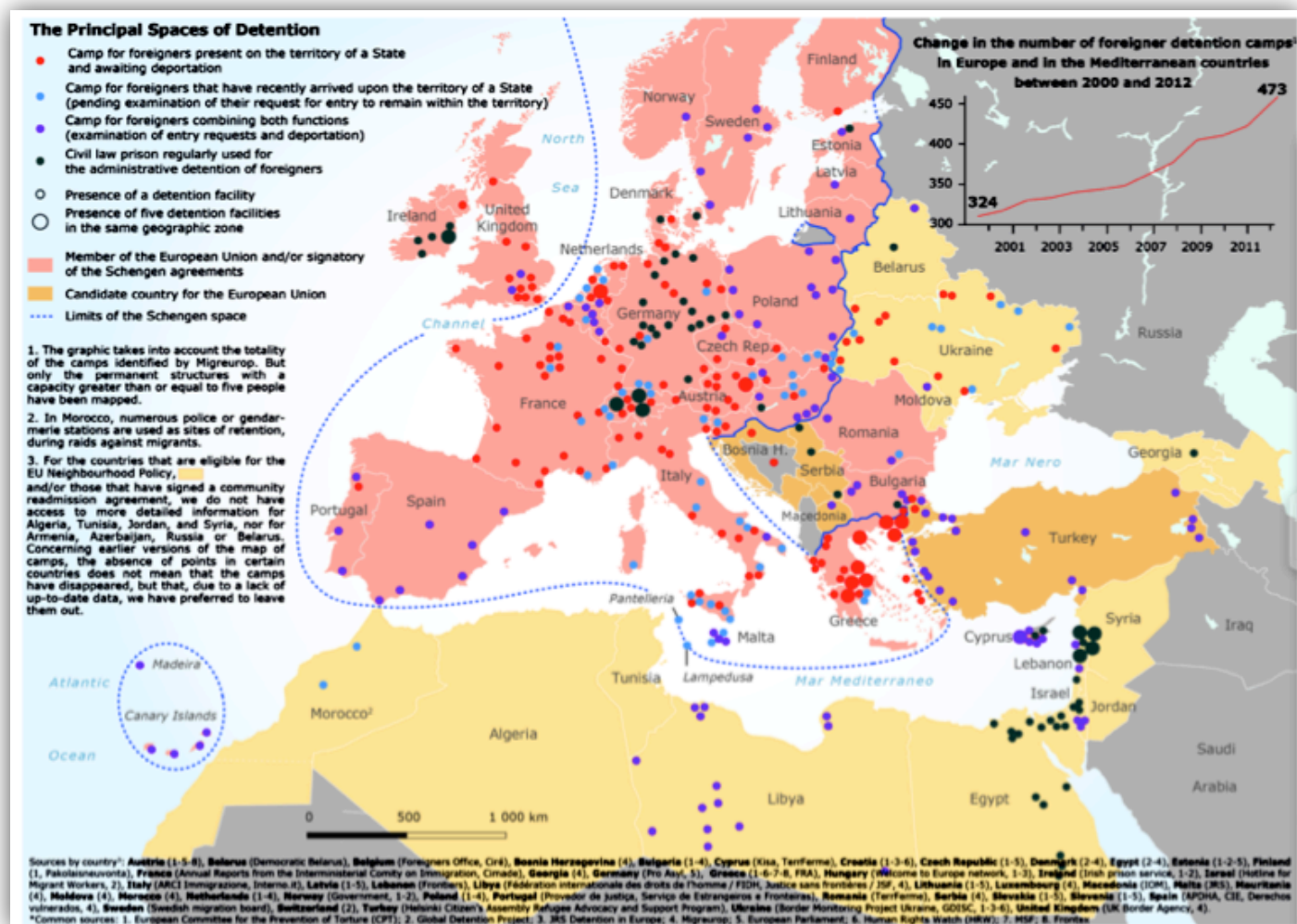
> van Dooijewert – Chair

> Severijns – Advisor

Informants for Triangulating Analysis in Chapter Five

Carpier – Project Manager for Assisted Voluntary Return, International Organization for Migration (IOM) The Netherlands

Mommers (2013b) – same as above

Annex B

MAP OF DETENTION CENTRES ACROSS THE EU AND ITS PERIPHERAL BORDERS

Map B.1

Source: Migreurop (2012)

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