

The pains of being unauthorized in the Netherlands

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journals.sagepub.com/home/pun**Mieke Kox** 

Erasmus University Rotterdam and Utrecht University, the Netherlands

Miranda Boone

Leiden University, the Netherlands

Richard Staring

Erasmus University Rotterdam, the Netherlands

Abstract

Ethnographic fieldwork amongst 105 unauthorized migrants in the Netherlands shows that unauthorized migrants suffer from the pains of being unauthorized. These migrants feel punished and are severely hurt by – amongst others – the deprivation of healthy and secure living conditions, social and geographical mobility and citizenship. These migrants' pains are caused by current restrictive migration controls, something the Dutch authorities could and should be aware of given previous research that provides similar insights. While the Dutch authorities do provide – the legally required – provisions for unauthorized migrants, we argue on the basis of Hayes' proximity model that these authorities accept the collateral consequences of (possibly) being subjected to migration controls and purposely inflict these pains on unauthorized migrants. This means that migration control is not only experienced as punishment by those subjected to it, but that it is also intended to punish. The current system of migration control has as such expanded the reach of penal power. This implies that 'punishment and society' scholarship should also look beyond the borders of nation-states and criminal laws in order to understand contemporary punishment.

Corresponding author:

MH Kox, Utrecht University, Human Geography and Planning, Vening Meineszgebouw A (room 6.90), Princetonlaan 8a 3584 CB Utrecht, the Netherlands.

Email: M.H.Kox@uu.nl

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Introduction

Why? If they give a permit after seven years, after eight years, why do you [Dutch authorities] make me all these years illegal? Why do you [Dutch authorities] treat me badly here? That is the complaint! It is allowed by the law to arrest you. You get punishment just to get... They detain you! You just do not get benefit from the socials! You are completely out of the society! You cannot do anything! And later on, they say: 'Congratulations.' Does it make sense? (R08)

This is a quote from an East African man who fled to the Netherlands in 2011 to seek asylum. His asylum application got rejected, but he stayed in the country despite the lack of a legal status. During his unauthorized residency, he got excluded from social services, apprehended for the lack of a legal status and detained in immigration detention. The Dutch authorities could not deport him, so he got released within the Netherlands. He continued his unauthorized residency until he obtained a temporary residence permit on medical grounds. He is severely upset by these occurrences and feels punished by the Dutch authorities.

This man's story is not an isolated case. Ethnographic fieldwork amongst 105 migrants without a legal status in the Netherlands reveals that these unauthorized migrants¹ feel punished and hurt by their subjection to migration controls. Their experiences show parallels with the pains of those deprived of their freedom, captured by Sykes (1958) in the *pains of imprisonment*. This pains-concept contributes to understanding (the subjective experiences of) punishment, minimalizing the suffering it causes and evaluating the realization of its aims (cf. Hayes, 2015; Sykes, 1958: 130–134). Nonetheless, we have been doubting whether to use this concept for unauthorized migrants as it is usually applied within criminal settings and we want to prevent fortifying the criminalization of unauthorized migrants by using penal vocabulary (cf. Düvell et al., 2010). However, we believe that there are three arguments in favour of using the pains-framework to analyse unauthorized migrants' experiences with migration control, especially as Sykes (1958: 66–67) drew a parallel between prisoners and people without legal citizenship himself.

First, Sykes was not solely interested in imprisonment, but wanted to study a system of total power and focused on a maximum-security prison as it represented 'a social system in which an attempt is made to create and maintain total or almost total social control' (Sykes, 1958: xiv). Also Goffman (1961) and Mathiesen (2006) show that social control mechanisms that are revealed in penal studies may have implications for other (total) institutions. This indicates that 'penal' concepts are not limited to prisons. Besides, there are similarities between the subjection to

migration control and penal institutions. Engbersen (2001: 242), for instance, believes that the irregularization of migration constitutes a panopticon as migration control functions – and is being experienced – as an open prison. This panopticon is not aimed at disciplining or correcting unauthorized migrants, but at excluding and detecting these migrants in order to guard public institutions and labour markets. Aas (2014) calls this a ‘banopticon’ as the state’s priority is on banishment and territorial exclusion. This argumentation’s value has increased given the recent irregularization of migration and the asymmetrically incorporation of criminal laws and instruments in the migration domain (Aas and Bosworth, 2013; Legomsky, 2007).

Second, the pains-framework offers an opportunity to describe the unauthorized migrants’ experiences with migration control and to study its consequences for those subjected to these controls, like Sykes (1958) did for prisoners. Sykes (1958) introduced his study at a moment that prison sentences were no longer intended to be painful and severe bodily suffering had been abandoned. He showed that imprisonment brought unintended consequences that constituted a profound and unprecedented attack on prisoners’ personality, self-esteem and feelings of security. This made imprisonment as painful as the physical maltreatment it replaced, according to Sykes (1958). He believed that these unintended – partly acceptable and/or unavoidable – deprivations and their consequences had to be explored and should play a substantial role in the discussions on the functioning of prisons. As several studies show that current migration policies negatively affect several domains of unauthorized migrants’ everyday lives (Bloch, 2014; Martinez et al., 2013), it is important to include the possible pains of being unauthorized *and* its consequences in the discussion on the functioning of migration control.

Third, examining the pains of being unauthorized may contribute to the current discussion on the boundaries of punishment. Several scholars argue that these boundaries have shifted under the influence of globalization processes while the ‘punishment and society’ scholarship tends to overlook the immigration domain (Bosworth, 2019; Bosworth et al., 2018a; Hannah-Moffat and Lynch, 2012). Punishment is supposed to consist of five elements: (a) it must involve pains, (b) in response to a violation of legal rules, (c) be directed towards the one who has breached the legal rules, (d) imposed intentionally by state authorities that are (e) acting under the authority of the breached law (Bosworth, 2019: 85–86; Hayes, 2018: 236). States usually consider the subjection to migration control no punishment as it concerns administrative laws that are not aimed at causing pains. However, the question is whether this statement is justified. Bosworth (2019), for instance, argues that it is not useful to dissociate administrative and criminal penalties given its convergence. Also Aas (2014) believes that the current focus on the absence of formal membership has changed the nature of penal interventions as these prioritize territorial exclusion over reintegration, something she calls ‘bordered penalty’. This is supposed to impact the system’s effects and rationales and reshape the nature of penal power. Applying the pains-framework to the lived experiences of those subjected to migration controls may as such contribute to this

current discussion on the boundaries, roles and purposes of punishment (Hannah-Maffat and Lynch, 2012).

These three arguments make us believe that the pains-framework is a well-suited tool to analyse unauthorized migrants' experiences with migration control. Therefore, these are central in this contribution. After notes on the pains and the methodology, we illustrate the unauthorized migrants' experienced deprivation of (1) healthy and secure living conditions, (2) social and geographical mobility and (3) citizenship. Then, we explain the differences in experienced pains. In the conclusion, we address the absolute character of migration control, its (unintended) consequences and the implications for the understanding of punishment.

The pains of imprisonment

The perceptions of those being subjected to punishment are usually framed as 'pains' (Ugelvik and Damsa, 2018). Sykes (1958) introduced these pains to illustrate that prisoners were – despite the abandoning of physical pains – still suffering but now from the deprivation of liberty, goods and services, heterosexual relationships, autonomy and security. Over the years and with changing penal systems, Sykes' list of pains has been revised (Crewe, 2011) and adjusted to specific prison populations such as juveniles (Cox, 2011), fathers (Ugelvik, 2014) and lifers (Crewe, 2011). Besides, the concept has been used to understand the experiences of those subjected to other penal phenomena or situated elsewhere in the punishment continuum including community penalties (Hayes, 2015), open prisons (Shammas, 2014) and probation (Durnescu, 2011). These studies have resulted in a long list of pains over time.

Warr (2016) and Ugelvik and Damsa (2018) reveal specific pains of foreign-national offenders who are imprisoned in 'crimmigration prisons' in the UK respectively Norway, i.e. prisons where immigration purposes are added to – or replacing – traditional aims of prisons such as punishment, deterrence and rehabilitation (Ugelvik and Damsa, 2018). This concerns the pains of certitude, hope, legitimacy, discrimination, long-distance relationships and deportability of unauthorized migrants. Both studies reveal the indeterminacy that foreign-national offenders are experiencing as they do not know if and when they will be released, transferred to immigration detention and/or deported. They are dependent of the immigration apparatus for decisions in these matters, but communication with this apparatus is complicated given language barriers and officials being located elsewhere (cf. Kaufman, 2015). Foreign-national offenders feel treated differently in comparison with regular prisoners. This decreases the experienced legitimacy of being imprisoned and hampers them envisaging their future, something that is also complicated by the lack of proper rehabilitation opportunities (cf. Boone and Kox, 2012) and little opportunity to maintain long-distance relationships. These findings are in line with other studies on the experiences of foreign-national offenders and seem to be caused by the lack of a legal status and confinement in non-inclusionary prisons (Kaufman, 2015; Kox et al., 2014; Turnbull and Hasselberg, 2017). While

these findings cover the experiences of criminally imprisoned unauthorized migrants, the question arises whether and what kind of pains unauthorized migrants experience due to their subjection to administrative migration controls.

Methodology

This question is answered in this contribution that is inspired by twenty years of research on unauthorized migrants (Kox, 2010, 2011; Staring, 2011; Staring and Aarts, 2010) although we solely illustrate our argument with ethnographic fieldwork that the first author conducted in the context of a PhD research on unauthorized migrants' experiences with and understandings of migration control. Between March 2015 and May 2018, Kox followed 45 unauthorized migrants, meaning that she observed these migrants in their everyday lives and/or during their interaction with controlling institutions; repeatedly interviewed and/or informally talked to these migrants; and/or had frequent contact by phone and/or WhatsApp. Besides, she interviewed, extendedly informally spoke or observed another 60 unauthorized migrants who wanted to be involved in the research though on a limited basis. In all interactions during the fieldwork, unauthorized migrants could recall their situation in the country of origin and their migration journey, but also discuss their everyday lives, experiences with migration control and visions on their future. All observations and informal conversations are written down in field notes while interviews are recorded and literally transcribed.² When the data were saturated, Kox ended the fieldwork.

Kox tried to create a heterogenic group of unauthorized migrants in terms of age, gender, country of origin, length of stay, migration motive and family situation given the at forehand assumed differences in their thoughts on migration control (cf. Burgers and Engbersen, 1999). Therefore, she focused on unauthorized migrants at different locations and in different stages of their unauthorized residency, including unauthorized migrants who were living out of sight of the authorities, were just apprehended by the police, living at freedom-restricted (family) locations aimed at removal and staying in immigration detention centres. I obtained contact with these migrants through support organizations, controlling institutions, and via via. The respondents were mainly based in the Netherlands, but it also includes migrants who Kox visited after their (forced) return from the Netherlands to Surinam (10), Nigeria (6) and Guyana (1). This approach has resulted in a research group of 105 unauthorized men and women who vary in age from 8 to 70.³ They cover a variety of countries from all continents. Their length of (unauthorized) stay in the Netherlands varies from almost a year to 38 years. They have all different kind of migration motives including seeking asylum, reuniting with family, looking for better opportunities or a combination of these motives. Part of them has had a residence permit which was withdrawn or not prolonged, others never applied for a legal status or got rejected.

The data are analysed using Atlas.ti (qualitative data-analysis software). During the analyses, we noticed that – despite myriad studies on pains of punishment – academics are not very specific about what constitutes a pain: some scholars

consider all hardship that only one respondent brought to the fore as pain, while others only speak of pain when it is more profound in the data. Hayes (2018: 239) defines pains as ‘a personal experience of physical, mental, or emotional suffering by a penal subject, arising from their punishment by agents of a criminal justice system’. He notes that pains include both ‘intentionally inflicted forms of suffering and unintended consequences for the offender’ (Hayes, 2015: 86). This is in line with Sykes (1958: 63–64) who used an inductive approach and mainly illustrates extreme forms of frustrations and deprivations that hurt prisoners in a maximum security prison *and* are a serious attack on one’s personality or self-esteem. We follow this approach, meaning that we focus on personal experiences of physical, mental, or emotional suffering that arose from the subjection to migration controls and were profound in the data.

This study is situated in the Netherlands. This country used to be known for its tolerance towards migrants, but its open attitude has made place for an excluding and repressive society characterised by restrictive admission policies, increased exclusion of unauthorized migrants, and extended capacity and urgency for migration control (Engbersen et al., 2006). Unauthorized migrants are excluded from formal markets and social services and only entitled to necessary healthcare, legal aid and – until the age of 18 – education. While all unauthorized migrants are legally similar and equally treated, those who have minor children, are vulnerable or willing to return are – temporarily – entitled to state shelter in freedom-restricted institutions. Others are not. They make either use of all kind of informal networks to make a living or they turn themselves to charity initiatives for their basic needs.⁴ During their unauthorized residence, these migrants may be subjected to all kind of migration controls including identity controls, police stops, return meetings and immigration detention and deportation. They are living in a constant state of deportability as they are forced to leave the Dutch territory while they are for varying reasons not actually deported nor leaving the country independently (cf. De Genova, 2002; Hasselberg, 2016; Leerkes and Kox, 2016, 2017).

The pains of being unauthorized in the Netherlands

The unauthorized migrants’ narratives revealed all kind of pains that were caused by their subjection to migration controls. Three forms of deprivations were most profound.

Deprived of healthy and secure living conditions

First, it concerned their deprivation of healthy and secure living conditions. This is mainly caused by these migrants’ exclusion from the formal labour market and social services, the administrative fines for employers who hire unauthorized migrants and controlling practices that harden the migrants’ living conditions and thrive them underground. This negatively impacts both unauthorized migrants’ health and security.

For instance, the fear of being subjected to migration controls is very salient in most respondents' everyday lives, although some respondents report that controlling policies are not as strictly executed as is being argued (cf. Aliverti, 2013). This fear is being fortified by them observing others to be arrested, hearing stories about deportations and previous experiences with migration control. Although there are no legal differences between different groups of migrants, this especially applies to two groups of respondents. The first concerns black African respondents who feel discriminated on the basis of their skin colour (cf. Van der Leun and Van der Woude, 2001: 445).⁵ The second group consists of rejected asylum seekers who are not living in a war zone and not directly subjected to violence anymore, but who fear deportation to the (assumed) unsafe situation they fled. Its impact is shown in a field note of a conversation with an Iraqi couple who live with their three children in a freedom-restricted family location:

That's scary for the kids. When they go to school, they see police to arrest families who are brought to a detention center for deportation. This damages the kids. (...) The family tells that they are temporarily safe given the current deportation moratorium, but afterwards, they could be arrested and perhaps deported like other families. The oldest daughter of sixteen has seen this before. She tells that she would open the window and jump if the police comes to arrest them. Her mother tells her not to do that because she will die, but the daughter says she will jump anyhow. The mother hasn't forgotten her remark as it really hurts her. (R36 and R37)

The father tells that their daughter has to cry a lot and is not sleeping properly because of the constant fear they are confronted with. It makes respondents – including non-asylum migrants – feel insecure. While this fear constitutes an enduring process (cf. Hasselberg, 2016), a few respondents has become numb though as they have repeatedly been stopped and detained in immigration detention while the authorities cannot deport them (yet). This mitigates their anxiety.

Nevertheless, almost all respondents prefer to stay under the radar. This withholds them reporting victimization to the authorities, despite initiatives of the Dutch police to provide such opportunities. A Moroccan woman is a case in point. She arrived at the age of 15 in the Netherlands, after which she was held inside and abused by the man who helped her to flee her abusing father. After several years, she escaped and slept some nights in the streets as she had no one around to support her. She was found by some Moroccan women who forced her to prostitute herself. She was afraid to escape and report her victimization to the police though as she thought – and was being told – that the police would arrest and deport her, something she feared given her previous experiences of violence in Morocco. More respondents said not to have reported victimization of criminal offences, labour exploitation and/or traffic accidents as they were afraid of possible consequences or found themselves in complex dependent relations. This shows that current controlling practices (indirectly) increase the

migrants' vulnerability for victimization, exploitation and betrayal and deprive them of security (cf. Timmerman et al., 2019).

Many respondents tell that these hard material and immaterial living conditions and the uncertainty that accompanies living without a legal status bring severe distress and negatively impact their health. They mention several health problems that not rarely started during their unauthorized stay or specifically in immigration detention. A mother who lives with two children in a freedom-restricting family location repeatedly narrates on the problems her daughter is – according to her – facing as a consequence of being unauthorized. Her – then potty-trained daughter – moved to this location at the age of 2. Five years later, she is very angry, sleeps late and wets her pants again. She tells her mother that she is '*constantly very busy*' in her head and cannot sleep because of that. The daughter is currently receiving treatment, but her doctor believes that the problems are caused by the lack of a legal status. This complicates recovery. Mainly rejected asylum seekers and respondents who are struggling to survive without a legal status report health issues that are – according to them – related to their unauthorized status or migration history. Also research shows that living without a legal status – and the uncertainty and stress that come with it – negatively affects these migrants' health and may harm children's' physical, emotional or social development (Martinez et al., 2013; Scherder et al., 2018).

Unauthorized migrants are entitled to necessary health care, but respondents experience several difficulties in claiming these rights. They are not only afraid to go and see a doctor given their aforementioned fear for authorities, but they also face language and cultural barriers and may be rejected by doctors who are unfamiliar with arrangements for patients who cannot financially afford care (cf. Hintjens et al., 2018). Respondents in immigration detention feel humiliated if they are referred to a specialist outside the detention centre as their hands used to be cuffed and feet tight to a stick. This was for a few respondents reason not to visit specialists anymore as they felt not seen or treated as humans. This severely hurts them. As such, current migration policies deprive unauthorized migrants – or at least makes them feel deprived – of healthy living conditions.

Deprived of social and geographical mobility

The fieldwork further shows that unauthorized migrants feel deprived of their social and geographical mobility. Respondents tell not to know what the next day will bring given the everyday risks of being controlled, let alone where they will be in five years. This uncertainty that accompanies the migrants' state of deportability hampers them visualising their future as is illustrated by the story of an Afghan rejected asylum seeker:

The future is dark to me. Like. . . Like in a room in the night when there is no light, that's it like for me. I don't know. If you think. . . if it's light, then you can see there is a computer, here is a phone, here is a window, there is a plant of a tree, there is a

painting. Yes, but if the lamp is turned off, then you don't know what exactly is where. (...) I just don't know. The future, I just don't know. (R19)

Some respondents were not foreseeing a bright future in their country of origin either given the lack of perspective or security over there. However, they believe that their current perspectiveless situation is caused by restrictive migration policies. This makes them not only feel that their lives are on hold, it also withholds them from planning their future: especially rejected asylum seekers have lost faith that better times will come and feel blocked in their mobility given the little opportunities to develop themselves. Besides, some Black Africans say to feel disadvantaged and discriminated in comparison with other migrants who – according to them – do get a status, social services and so on.

The lack of perspective can be seen in the professional domain as unauthorized migrants have little opportunities to study after the age of 18 and are excluded from the formal labour market. A 27-year-old woman who returned to Surinam after 22 years of unauthorized residency tells for instance that she really wanted to go to university after her graduation from gymnasium. However, she ended up being stuck at home, crying on the couch and struggling with how to feel towards her parents. She gets very emotional when she remembers that there were no opportunities to obtain a residence permit and that she could neither study nor have a formal job. She started to isolate herself to prevent having to answer painful questions about her life. Respondents who were unauthorized in the Netherlands at the age of 18 report similar stories and regret they have not been able to develop themselves. They are still struggling with its consequences, also after their return to their country of origin (cf. Khosravi, 2018). Something similar can be seen amongst adult respondents whose professional careers are blocked by the lack of a legal status and the exclusion from the formal labour market. These migrants are usually designated to low-skilled informal jobs such as babysitting, housekeeping or working in the catering or construction industry. For some this is not problematic as they are less educated and only concerned with sending remittances and saving for their return, others are frustrated as this exclusion deprives them of a professional career.

The subjection to migration control also affects unauthorized migrants' relationships because *'it's always about the documents'* (R07): if a potential partner finds out the respondent does not have documents, the (chance for a) relationship is over. Some of the respondents – especially labour migrants – did start a relationship after their arrival in the Netherlands though, not rarely with someone in a similar position. While respondents were open to or even longing to be in a (scam) relation given the possibilities to obtain a residence permit, this applies less to starting a family. Many respondents without a family, often young men, said that they would love to have children but only once legalized. They felt that the opportunity to become a father was taken away from them by not granting them a legal status, something they regret. For a very few interviewed men, the wish to start a family – in combination with getting older – was reason to leave or consider leaving the Netherlands. While the majority of the respondents feel limited in their social mobility, this does

not apply to all respondents: mainly female and/or labour migrants gave birth or were expecting during their unauthorized residency. On the one hand, it concerns planned births as not everyone felt hampered by the lack of a legal status, on the other these pregnancies were the result of the lack of contraceptives.

Unauthorized migrants have – in principle – the opportunity to end the pains of being unauthorized by legalizing their residency or leaving the country. However, this is more complicated in practice given current restrictive admission policies. Besides, their geographical mobility is limited as they cannot or will not return. For instance, an African migrant whose asylum was rejected wants to leave as he feels imprisoned and is wasting his time. Despite his efforts with the Repatriation and Departure Service and an NGO that offers voluntary return assistance, he has not been able to obtain a travel document that enables him to return. Consequently, this man is literally stuck in place. Although the Netherlands formally provides unauthorized migrant who cannot obtain a residence permit, it is in practice difficult to prove that one cannot return and is entitled to such a permit (ACVZ, 2013). The majority of the research group does not want to return though as they prefer staying unauthorized in the Netherlands over returning given their expectation to be subjected to even more pain in their country of origin.

Finally, the Dublin regulation⁶ hampers some respondents leaving the Netherlands and move (unauthorized) to another European country. They know that they will be deported to the Netherlands if they get caught or report themselves to the authorities. The fear of being detained and possible deported after travelling to another country makes them stay in the Netherlands. This fear is realistic given the experiences of a woman who went together with her partner and son to Austria, hoping to legalize her residency there. However, they got detained and deported to the Netherlands as they were registered here first. While some migrants do not consider leaving the Netherlands given their embeddedness in Dutch society, these rules limit the geographical mobility of part of the respondents. These respondents feel stuck in both time and place: they cannot physically move elsewhere given the abovementioned regulations and limitations while their lives are on hold. This constitutes a waste of time.

Deprived of citizenship

Finally, some respondents believed they deserved formal citizenship or at least a legal status in the Netherlands given their lengthy stay and/or socialization and did not understand that their legal status was denied/withdrawn. They considered it painful not to get what they thought they deserved. This is illustrated in the story of a 27-year-old Congolese man who came as a teenager to the Netherlands to reunite with his family. He has spent four years lawfully in the Netherlands and socialized in the country before his residence permit was not prolonged. He tells:

I went to school, I was doing some. . . I was playing football in a team, a real football team. I was in [name team], I was playing there you know. And after the four years, you

have to go back? It was a surprise for me, I didn't know about going back. I didn't know about detention, about deportation, I didn't know about all that. I didn't hear about that. I was not even like. . . my mind was even surprised, like: 'Boom, you have to go.' Ah! That was really, really, really, really the hardest moment for me. (R01)

These migrants feel that they have become 'too Dutch' to be deported to a country they do not know or familiarize with (anymore). Their feelings of being a Dutch citizen resulted in a mismatch with their new everyday reality of being controlled, excluded and possibly detained and deported.

The fieldwork reveals three partially overlapping groups of respondents that experience this specific pain. This concerns youngsters who were born or grew up in the Netherlands, respondents with lengthy (unauthorized) residency in the country, and respondents who had (temporary) legal residency and – mandatorily – integrated here. These groups have in common that they are embedded in Dutch society. They speak Dutch, sometimes better than the language of their country of origin. Youngsters have been/are going to school in the Netherlands while adults have been/are working and sometimes paying taxes, volunteering or contributing to society in other ways. These migrants are embedded in Dutch society, but their residence permits were not prolonged or withdrawn as – amongst others – they became 18, their country of origin was considered safe again or they were convicted for a criminal offense. The end of their regular residency was difficult to accept for these migrants. These respondents felt frustrated by the Dutch authorities that – according to them – pretended that they had no right to be here while they felt a Dutch citizen. For instance, a northern African man who came to the Netherlands as a child was after almost 40 years of legal residency being told that his residence permit would be withdrawn due to several convictions for – addiction related – petty offenses. He had plenty of opportunity to obtain a Dutch passport, but repeatedly postponed the application. When he was arrested and brought to the immigration police, he was very angry when the police called him '*illegal*' as he did not see himself like that. Eventually the decision to withdraw his residence permit was cancelled in court, but these experiences severely hurt him and felt like an attack on his personality (R42). This story also shows the prolonged conditionality of legal residency statuses, something that increases these migrants' vulnerability and generates different levels of membership (cf. Bosniak, 2006).

Differences in experiences explained

The above shows that some respondents are frustrated in the extreme by being unauthorized and subjected to migration controls, where other migrants seem less affected by it. Although it is – barring exceptions (e.g. Crewe, 2011; Hayes, 2018) – not common to explain differences in experienced pains, we want to offer three explanations for these differences. The first concerns the respondents' social embeddedness in society that helps them to negotiate the experienced deprivations of proper living conditions and mobility. Although all respondents

are legally equal, their social incorporation varies (cf. Burgers and Engbersen, 1999; Staring, 2001). Respondents with a relatively strong incorporation and a tight supportive network were less confronted with pains as their networks helped to arrange housing and work, obtain health care, report victimization, etc. Consequently, these respondents found themselves both materially and immaterially in an advantaged position in comparison with respondents without such a network. The latter concerns on the one hand rejected asylum seekers who usually do not have a settled community to fall back on or whose community has less opportunities to support their unauthorized compatriots in a comprehensive and structural way (Dourleijn and Dagevos, 2011). On the other, it includes some respondents from settled communities as current controlling practices have increased the migrants' dependency of their networks while these network members simultaneously are not able or willing to provide this anymore. These migrants depend – if not entitled to state shelter – on *caritas* and NGO's. Consequently, they are confronted with harder living conditions which makes them less capable of negotiating the pains of being unauthorized.

The second explanation is related to the respondents' personal aspirations. Van Meeteren (2014) distinguishes three types of aspirations. This concerns 'investment migrants', i.e. migrants who want to make money during their temporary stay abroad with which to return to the country of origin. The second group consists of 'settlement migrants' who – regardless their legal status – aspire personal gain in their destination country. The third group concerns 'legalization migrants' who aspire legalization of their residency. Investment and settlement migrants seem less deprived as they do not consider legalization a basic requirement to live their lives, meaning that they do not put their lives on hold like legalization migrants tend to do. Contrary to legalization migrants, these respondents do start relationships and/or families, they do work and often under better conditions than they used to, and they are involved in social networks. This does not mean that these respondents do not experience pains at all. However, these pains seem less intrusive as these complicate but not completely obstruct achieving their aspirations. Those investment and settlement respondents who do consider it impossible to realize their aspirations either left the Netherlands or altered their aspirations into legalizing their residency. Legalization respondents report relatively much pains as they want to settle their legalization before they continue to shape their lives. This means that they usually put their lives on hold and wait with relationships and children and that they do not work, something that negatively impacts their social mobility. Besides, they fear that leaving the Netherlands will negatively influence their legalization procedures, something that affects their geographical mobility. This negatively impacts their health, while they are relatively afraid of putting themselves on the radar of the authorities by looking for health care. As part of these legalization migrants believes that they deserve a residence permit given what they have been through, they feel not only frustrated that current migration policies hamper them realizing their aspirations, but are also hurt that they have to live under hard and uncertain conditions while wasting

substantial years of their lives. This makes the subjection to migration control more intrusive for these legalization respondents.

Finally, the respondents' perceived legitimacy of their subjection to migration control offers an explanation for the differentiation in the experienced pains. The legitimacy of current migration controls has repeatedly been questioned (Aas and Bosworth, 2013; Webber, 2012), but this study reveals a more differentiated picture than comes to the fore in the literature⁷. Next to those respondents who emphasize the illegitimacy of (the execution of) migration controls, part of the research group does consider immigration policies, its enactment and/or their subjection to these controls legitimate. These differences in the perceived legitimacy are directly related to the experienced pains as the higher the perceived legitimacy, the less experienced pains. A contrary, pains are more salient if respondents perceive their subjection to migration controls less legitimate, something that Leerkes and Kox (2017: 923) call 'the pain of perceived illegitimacy'. Those respondents who aspire legalization in the Netherlands usually consider the Dutch system of migration control – or the way it is being executed – less legitimate in comparison with investment and settlement migrants. Also because legalization migrants often believe that they deserve citizenship in the Netherlands, which results in more pains as this right is denied. They start to fight these decisions and continuously try to legalize their stay, something that severely occupies their thoughts and affects their health. Some have lost the power to fight these decisions and have withdrawn from both society and their personal networks. This makes that these migrants are frustrated in the extreme. This applies less to investment and settlement respondents who are – already before their migration – aware of the (calculated) risks of being subjected to migration controls. They understand these migration controls and, consequently, experience less pains.

Conclusion

This contribution shows that unauthorized migrants are experiencing several pains due to current migration controls of which the deprivation of healthy and secure living conditions, social and geographical mobility and citizenship are the most profound. The pains of being unauthorized resemble the pains of punishment and especially those of national–foreign offenders who have similar experiences with uncertainty, deportability and illegitimacy (Ugelvik and Damsa, 2018; Warr, 2016), especially if they did not commit a criminal offense. They live in a painful enduring state of deportability, feel blocked and have little opportunities to either legalize their residency or evade their situation. The Dutch authorities seem to attempt to create and maintain (almost) total social control over unauthorized migrants in this banopticon in the hope that these migrants will leave the territory (cf. Aas, 2014). This approach shows parallels with the expurgatory function that Mathiesen (2006: 141) reveals for the prison context and that refers to the state's use of institutions to maintain, control and conveniently forget about unproductive or non-accepted groups in society. The current migration control system seems to have a similar expurgatory function as it deprives unwanted migrants of full

membership and places them out of society, something that results in further deprivations and pains for these migrants.⁸ The impact, salience and severity of the subjection to migration controls differ though, something we explain on the basis of the migrants' embeddedness, aspirations and legitimacy perceptions. These elements influence to what extent respondents are able to negotiate the pains and determine as such the dominance of the lack of a legal status.

These constant and far-going efforts to control unauthorized migration bring several negative consequences for unauthorized migrants. First, the illustrated pains hurt and frustrate many respondents in the extreme and form a severe attack on their personality, self-esteem and security (cf. Sykes, 1958). Second, studies show that the lack of a legal status negatively influences these migrants' health while they experience difficulties with claiming the health care they are entitled to (Hintjens et al., 2018; Martinez et al., 2013; Scherder et al., 2018). Third, the unauthorized migrants' fear for authorities thrives some underground, something that withholds them from reporting victimization or exploitation to the authorities. It puts them in a vulnerable position and limits the authorities' opportunities to prosecute offenders (cf. Timmerman et al., 2019). Fourth, the far-going exclusion may thrive unauthorized migrants into the clandestine circuit (Engbersen et al., 2006). Finally, several scholars raise normative concerns on current controlling systems (Aas and Bosworth, 2013).

The question arises whether these consequences and the imposed pains are intended by the authorities. After all, there must be some pains to speak – legally – of punishment (Bosworth, 2019; Hayes, 2018). Hayes (2018) presents a model of penal severity that is based upon the proximity of the experienced pains to the state's actions and that can be used to discuss the rationale behind Dutch migration controls. He distinguishes four pains, i.e. direct pains that are straightforwardly intended by the state, oblique pains that are assumed to be indirectly intended by the state, contextual pains which are unintended but causally related to the severity of the penal intervention, and entirely unrelated pains that coincidentally come to the fore. According to Hayes (2018), policy makers have – except for specific oblique pains – the opportunity to inform themselves on these pains. If we apply his reasoning to the pains of being unauthorized, we see that the Dutch authorities could *and* should be informed on these pains given previous studies that reveal the impact of living without a legal status and the pains and feelings of punishment it causes (Burgers and Engbersen, 1999; Di Molfetta and Brouwer, 2019; Martinez et al., 2013). Indeed, the negative consequences of current migration controls are only partly new, other experiences are just reframed as pains. While the Dutch authorities do provide – the legally required – provisions for unauthorized migrants in terms of necessary health care, education until the age of 18, legal aid, state shelter for vulnerable migrants and reporting victimization, they seem to ignore these academic insights on the consequences of their migration policies (cf. Engbersen et al., 2006). This indicates that the authorities accept the collateral consequences of (possibly) being subjected to migration controls, including the pains it causes for unauthorized migrants who are subjected to these controls.

We believe therefore that migration controls are intended as punishment (cf. Bosworth, 2019; Bosworth et al., 2018a) as also other elements that are required to speak of punishment are assumed to be salient (Aas, 2014; Di Molfetta and Brouwer, 2019; Ibid.). Nation-states like the Netherlands may claim that these controls are for preventive or regulative purposes and not meant as punishment, but ‘to re-label measures as non-punitive is often nothing less than a cynical subversion of the criminal process and its human rights protections’ (Zedner, 2016: 4; see also Bosworth, 2019: 81). Besides, such a claim would deny the lived reality of unauthorized migrants who are subjected to these controls and feel punished (cf. Bosworth, 2019). The current system of migration control has as such expanded the reach of penal power and altered its justification as it is not about one’s culpability anymore, but about one’s identity (cf. Bosworth, 2019) and it is not only about punishment, deterrence and rehabilitation, but also about deportation (cf. Aas, 2014). This finding implies that the current ‘punishment and society’ scholarship is too narrow as it focuses mainly on macro-sociological or legally structured forms of punishment and tends to overlook what happens on the ground (cf. Hannah-Moffat and Lynch, 2012: 119). Penal phenomena outside the criminal domain – including the migration domain but also other (preventive) practices in the penal continuum – are largely neglected (Bosworth et al., 2018a; Hannah-Moffat and Lynch, 2012; Hannah-Moffat and Maurutto, 2012). However, states’ expanding penal strategies calls for a grounded sociological understanding of punishment that includes – and questions – the rationales behind, purposes of and experiences with the subjection to all different forms of state power. In order to understand contemporary punishment, ‘punishment and society’ scholarship should look beyond the borders of both nation-states and criminal laws.

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ORCID iD

Mieke Kox  <https://orcid.org/0000-0003-0332-5030>

Notes

1. The term ‘unauthorized migrants’ refers to all migrants without a valid form of authorisation, including failed asylum seekers, visa-overstayers, migrants whose residence permit has been withdrawn, etc. Despite the negative connotations of this terminology (De Genova, 2002), we believe this term clearly illustrates the legal construction of this group.
2. Dutch quotes have been translated.
3. Minors were only informally spoken in presence/with permission of their parents.
4. Despite the lack of legal differences between unauthorized migrants, such charity initiatives are mainly open for rejected asylum seekers.

5. Moroccans and other North Africans are – amongst others – prone to ethnic profiling (cf. Van der Leun and Van der Woude, 2011) and migration controls are supposed to have a racialized character (Bosworth et al., 2018b).
6. The Dublin-regulation (EU-Regulation 604/2013) determines which EU-member state is responsible for examining an asylum application. This is usually the state where the asylum seeker first enters the EU, meaning that asylum seekers who apply for asylum or are stopped in another member state may be transferred to the state that is held responsible for the application.
7. A paper called ‘Immoral, inappropriate and ineffective. Unauthorized migrants’ perceptions on the legitimacy of Dutch migration controls’ is currently under development.
8. We would like to thank one of the anonymous reviewers for this suggestion.

References

- Aas KF (2014) Bordered penalty: Precarious membership and abnormal justice. *Punishment & Society* 16(5): 520–541.
- Aas KF and Bosworth M (eds) (2013) *The Borders of Punishment: Citizenship, Crime Control, and Social Exclusion*. Oxford: Oxford University Press.
- ACVZ (2013) *Waar een wil is, maar geen weg. Advies over de toepassing van het beleid voor vreemdelingen die buiten hun schuld niet zelfstandig uit Nederland kunnen vertrekken*. The Hague: Advisory Committee for Migration Affairs.
- Aliverti A (2013) *Crimes of Mobility*. Abingdon: Routledge.
- Bloch A (2014) Living in fear: Rejected asylum seekers living as irregular migrants in England. *Journal of Ethnic and Migration Studies* 40(10): 1507–1525.
- Boone M and Kox M (2012) What works for irregular migrants in the Netherlands. *European Journal of Probation* 4(3): 54–68.
- Bosniak L (2006) *The Citizen and the Alien: Dilemmas of Contemporary Membership*. New Jersey: Princeton University Press.
- Bosworth M (2019) Immigration detention, punishment and the transformation of justice. *Social & Legal Studies* 28(1): 81–99.
- Bosworth M, Franko K and Pickering S (2018a) Punishment, globalization and migration control: ‘Get them the hell out of here’. *Punishment & Society* 20(1): 34–53.
- Bosworth M, Parmar A and Vazques Y (2018b) *Enforcing the Boundaries of Belonging: Race, Criminal Justice and Migration Control*. Oxford: Oxford University Press.
- Burgers J and Engbersen G (1999) *De Ongekende Stad I: Illegale Vreemdelingen in Rotterdam*. Amsterdam: Boom.
- Cox A (2011) Doing the programme or doing me? The pains of youth imprisonment. *Punishment & Society* 13(5): 592–610.
- Crewe B (2011) Depth, weight, tightness: Revisiting the pains of imprisonment. *Punishment & Society* 13(5): 509–529.
- De Genova N (2002) Migrant “illegality” and deportability in everyday life. *Annual Review of Anthropology* 31: 419–447.
- Di Molfetta E and Brouwer J (2019) Unravelling the ‘cimmigration knot’: Penal subjectivities, punishment and the censure machine. *Criminology & Criminal Justice*. Epub ahead of print 01/18/2019. DOI: 10.1177/1748895818824633.

- Dourleijn E and Dagevos J (2011) *Vluchtelingengroepen in Nederland. Over de integratie van Afghaanse, Iraakse, Iraanse en Somalische migranten*. The Hague: Sociaal en Cultureel Planbureau.
- Durnescu I (2011) Pains of probation: Effective practice and human rights. *International Journal of Offender Therapy and Comparative Criminology* 55(4): 530–545.
- Düvell F, Triandafyllidou A and Vollmer B (2010) Ethical issues in irregular migration research in Europe. *Population, Space and Place* 16(3): 227–239.
- Engbersen G (2001) The unanticipated consequences of panopticon Europe: Residence strategies of illegal immigrants. In: Guiraudon V and Joppke C (eds) *Controlling a New Migration World*. London: Routledge, pp. 222–246.
- Engbersen G, Van San M and Leerkes A (2006) A room with a view: Irregular immigrants in the legal capital of the world. *Ethnography* 7(2): 209–242.
- Goffman E (1961) *Asylums. Essays on the Social Situation of Mental Patients and Other Inmates*. New York: Anchor Books.
- Hannah-Moffat K and Lynch M (2012a) Theorizing punishment's boundaries: An introduction. *Theoretical Criminology* 16(2): 119–121.
- Hannah-Moffat K and Maurutto P (2012b) Shifting and targeted forms of penal governance: Bail, punishment and specialized courts. *Theoretical Criminology* 16(2): 201–219.
- Hasselberg I (2016) *Enduring Uncertainty. Deportation, Punishment and Everyday Life*. New York: Berghan Books.
- Hayes D (2015) The impact of supervision on the pains of community penalties in England and Wales: An exploratory study. *European Journal of Probation* 7(2): 85–102.
- Hayes DJ (2018) Proximity, pain, and State punishment. *Punishment & Society* 20(2): 235–254.
- Hintjens H, Siegmans KA and Staring R (2018) Seeking Health below the Radar: Undocumented People's access to healthcare in Two Dutch Cities. *Social Science & Medicine*. Available at: <http://hdl.handle.net/1765/113277>.
- Kaufman E (2015) *Punish and Expel: Border Control, Nationalism and the New Purpose of the Prison*. Oxford: Oxford University Press.
- Kox MH (2010) *Het leven gaat door. Een onderzoek naar de effecten van het illegalenbeleid op het leven van uitgeprocedeerde asielzoekers in Utrecht*. Utrecht: Stichting LOS.
- Kox MH (2011) *Leaving detention... A study on the influence of immigration detention on migrants' decision making processes regarding return*. The Hague: International Organization for Migration.
- Kox MH, De Ridder S, et al. (2014) Detentiebeleving van strafrechtelijk gedetineerden zonder verblijfsrecht. *Tijdschrift Voor Criminologie* 56(2): 31–47.
- Leerkes A and Kox M (2016) Pressured into deportation? Detainees' unwillingness to 'return' and the moderating influence of international relations. In: Epps D, Lamphear G and Furman R (eds) *Detaining the Immigrant Other. Global and Transnational Issues*. New York: Oxford University Press, pp. 15–26.
- Leerkes A and Kox MH (2017) Pressured into a preference to leave? A study on the 'specific' deterrent effects and perceived legitimacy of immigration detention. *Law & Society Review* 51(4): 895–929.
- Legomsky S (2007) Learning to live with unequal justice: Asylum and the limits to consistency. *Stanford Law Review* 60(2): 413–474.

- Martinez O, et al. (2013) Evaluating the impact of immigration policies on health status among undocumented immigrants: A systematic review. *Journal of Immigrant and Minority Health* 17(3): 947–970.
- Mathiesen T (2006) *Prison on Trial*. Winchester: Waterside Press (third English edition).
- Scherder E, Van Os C and Zijlstra E (2018) *Schaderisico bij uitzetting langdurig verblijvende kinderen. Een multidisciplinaire wetenschappelijke onderbouwing*. Groningen: University Groningen.
- Shammas VL (2014) The pains of freedom: Assessing the ambiguity of Scandinavian penal exceptionalism on Norway's prison island. *Punishment & Society* 16(1): 104–123.
- Staring R (2001) *Reizen Onder Regie: Het Migratieproces van Illegale Turken in Nederland*. Amsterdam: Het Spinhuis.
- Staring RHJM and Aarts J (2010) *Jong en illegaal in Nederland. Een beschrijvende studie naar de komst en het verblijf van onrechtmatig verblijvende (voormalige) alleenstaande minderjarige vreemdelingen en hun visie op de toekomst*. The Hague: Boom Juridische uitgevers.
- Sykes G (1958) *The Society of Captives. A Study of a Maximum Security Prison*. Princeton: Princeton University Press.
- Timmerman R, Leerkes A and Staring R (2019) *Safe Reporting of Crime for Migrants with Irregular Status in the Netherlands*. Oxford: COMPAS, University of Oxford.
- Turnbull S and Hasselberg I (2017) From prison to detention: The carceral trajectories of foreign-national prisoners in the United Kingdom. *Punishment & Society* 19(2): 135–154.
- Ugelvik T (2014) Paternal pains of imprisonment: Incarcerated fathers, ethnic minority masculinity and resistance narratives. *Punishment & Society* 16(2): 152–168.
- Ugelvik T and Damsa D (2018) The pains of crimmigration imprisonment: Perspectives from a Norwegian all-foreign prison. *The British Journal of Criminology* 58(5): 1025–1043.
- Van Meeteren M (2014) *Irregular Migrants in Belgium and The Netherlands. Aspirations and Incorporation*. Amsterdam: Amsterdam University Press.
- Van der Leun JP and Van der Woude MAH (2011) Ethnic profiling in the Netherlands? A reflection on expanding preventive powers, ethnic profiling and a changing social and political context. *Policing and Society* 21(4): 444–455.
- Warr J (2016) The deprivation of certitude, legitimacy and hope: Foreign national prisoners and the pains of imprisonment. *Criminology & Criminal Justice* 16(3): 301–318.
- Webber F (2012) Borderline justice. *Race & Class* 54(2): 39–54.
- Zedner L (2016) Penal subversions: When is a punishment not punishment, who decides and on what grounds?. *Theoretical Criminology* 20(1): 3–20.

Mieke Kox, MA is a postdoc candidate at the Human Geography and Planning Department of Utrecht University and a PhD candidate at the Criminology department of the Erasmus University Rotterdam, the Netherlands. Her postdoc project focuses on the everyday experiences of refugee youth and asylum seekers in public space and is funded by HERA. Her PhD research focuses on how migration control matters to unauthorized migrants in the Netherlands and is based on

ethnographic fieldwork amongst 105 unauthorized migrants. Previously, she conducted research on immigration detention, everyday lives of rejected asylum seekers, transnational prisons and national-foreign offenders.

Prof. Mr. Dr. Miranda Boone is Professor of Criminology and Comparative Penology at the Institute of Criminal Law and Criminology at Leiden University, the Netherlands. Her research focuses on sentencing and (the execution of) punishment. She uses both a social scientific and normative approach to study sentencing decision-making processes. She has published on sentencing, (transnational) imprisonment, probation and community punishment from both a national and international perspective.

Prof. Dr. Richard Staring is full professor Empirical Criminology at Department of Criminology, Erasmus University Rotterdam, the Netherlands. He is specialized in ethnographic and other qualitative research methods in the broad research field of (irregular) international migration and integration. He has published on qualitative research methods, qualitative analysis, poverty, crime, international and irregular migration flows, as well as on processes of incorporation of illegal immigrants, human smuggling and human trafficking.