The policy of Exclusion, and the Consequences

An evaluation of the Linkage Act on the municipality of Amsterdam and the Alien Police

Master Thesis (MASc)                          Global Migration
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TO MY BELOVED PARENTS AND FAMILY

Abstract
The status of the (ir) regular migrant is a social construction designed, supervised and exercised by the sovereign nation state. Other features of the sovereign state as the granting of citizenship, legal rights and duties furthermore depends and originates from this legal construction. The Dutch national policy construction aimed at combating irregular migratory flows is characterized as a restrictive policy of exclusion. The objectives are to deter people considering an irregular future or preventing irregular migrants’ illegitimate stay. The Linkage Act, which came into force in 1998 is to be seen as the ultimate tool within the policy of exclusion, links the legal status of (ir) regular migrant to the right to access and granting of social benefits. Preventing a semblance of legitimacy, which in time could evolve in a possible form of legal status of the (ir) regular migrant, is another goal of the Linkage Act. This policy of exclusion has therefore far-reaching consequences for the (ir) regular migrant who is either perceived and/or is declared as undesirable. At the same time this policy of exclusion has to be implemented and enforcement by street-level bureaucrats with assigned competences and discretion. After twelve years of the implementation of the Linkage Act, this master research questions the political consequences of the policy of exclusion; and seeks to provide an answer to the question whether the Linkage act is an effective tool in addressing the main objectives of a restrictive migratory policy, as formulated by the Dutch national government, and what the political consequences are regarding this policy of exclusion?
Foreword

Writing this thesis plus choosing the topic within international migration and in particular studying the policy of exclusion and the Linkage Act is because my raised awareness of the privileges of proper and lawful documentation. Due to my work as a cabin attendant I have been confronted numerous times with the outcomes of international migration and the restrictive Dutch migratory policies. Some examples are for instance the obligation of the airline industry of checking and bearing responsibilities for the legality or lawfulness of the presented documents of the passengers; and of course the expulsion policy. According to the Dutch expulsion policy of irregular migrants and foreigners who are not entitled to a legal stay in the Netherlands, the obligation to leave the country lies first and foremost at the person in question. However, there are also possibilities that the Royal Military Constabulary (KMar) escorts these irregular migrants or foreigner to the sending country or the country of origin. These escorts are usually done by airplane, and naturally flying with the ‘Reliable Airline’ plus often seated in my section of the airplane.

Furthermore, the mentioned expulsion policy is divided in what we call in Air France-KLM jargon the DEPU or a DEPA. These abbreviations stands for a DEPortee Unaccompanied, in other words a person is escorted by government officials until arriving on board of the plane, where the person in question is handed over to the captain and the active crew. This means that this person is traveling by him- or herself and some restrictions during the flight are taken into consideration by the active flying crew. Upon arrival at the final destination of the flight the deportee is once again handed over, this time the responsibility of the captain and the crew including the documents plus file of the deportee is given to the foreign local authorities. This is only done after signature and completion of a form stating the person is handed over to the foreign government officials. The other type of expulsion is the DEPortee Accompanied by either government officials of the KMar or foreign government officials. The number of people escorting the deportee varies; these decisions and the responsibilities are taken by the previously mentioned government officials.

Naturally, another aspect for choosing this topic is the vast numbers of people living in extreme poverty. Parents offering their children at the market place or at the entrance of the airport with the request to take them to wherever (since they usually have no clear understanding were my final destination is or Amsterdam is on the world map) is unfortunately no exception. In short, flying around the globe for over a decade as a cabin attendant has enabled me to see the outcomes and effects of many political and economical concepts around the world I have been reading in textbooks. Besides all the glitter and glamour of aviation and residing in the most expensive hotels en route I also was regularly confronted with poverty, globalization and/or democratization processes,
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(in)effective governments, corruption etc. This made me realize how fortunate we are for being able in pursuing our goals even when (occasionally) hard work is required....like for instance writing and rewriting a master thesis! For millions around the globe, unfortunately, their dreams only (can) remain a dream and perhaps one day they may find the opportunity in realizing their dreams as well. Perhaps, by seeking their fortune in a modern industrial society and by undertaking the step of international migration.

As one can see, enough reasons for choosing this master research project with the topic of international migration. Concerning the process of conducting my research and writing this thesis I would like to express my acknowledgements to a number of people. Without the help of first of all my parents, family, and my dearest friend Sara writing this thesis would not have been possible. Furthermore, I would like to thank my supervisor Dr. Doomernik for his input, knowledge and enthusiasm concerning my research topic. Of course for the process of conducting research I would like to profoundly thank the colleagues from the Alien Police of the police force of Amsterdam-Amstelland, specially officers Jaap van der Woude and Jos Wiersma (since I promised a referral in my acknowledgements; and a promise is a promise). Furthermore, I would like to thank all the distinguished persons I had the opportunity to interview and/or helped me grasp the rules of practice plus outcomes concerning the policy of exclusion. Without the help of all these peoples - in case I forgot other dear friends, colleagues and others my sincere apologies - a successful completion of this master thesis could not be realized. For this and many more, once again thank you all for the wonderful time and experience.

Well here is my master thesis and please don’t forgot to enjoy reading.

Sukran Cabur, Amsterdam the 25th of June 2010.
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Abbreviations

DEPA  DEPortee Accompanied
DEPU  DEPortee Unaccompanied
DPG  Department of Personal and Geographical Records / Dienst Persoons-en Geoinformatie
DT&V  The Repatriation & Departure Service / Dienst Terugkeer en Vertek
G4  Four Largest Cities of the Netherlands
GBA  Municipal Personal Records Database / Gemeentelijke Basis Administratie
IND  Immigration and Naturalization Service / Immigratie en Naturalisatie Dienst
IOM  International Organization of Migration / Internationale Organisatie voor Migratie
KMar  The Royal Military Constabulary / Koninklijke Marechaussee
MTV  Mobile Supervision Aliens / Mobiel Toezicht Vreemdelingen
NELM  New Economics of Labour Migration
PSHV  Police Suite Enforcement Aliens / Politie Suite Handhaving Vreemdelingen
THB  Trafficking in Human Beings
VAS  Alien Administration Database / Vreemdelingen Administratie Systeem
VP  Alien Police / Vreemdelingen Politie
VRIS  Aliens in the Criminal Law Chain / Vreemdeling in Strafrechtketen
Wav  Aliens Employment Act / Wet Arbeid Vreemdelingen
WID  Compulsory Identification Act / Wet op de Identificatieplicht
WODC  Centrum Research and Documentation Centre
ZHP  Seaport Police / Zeehaven Politie
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Chapter One: Introduction

1.1 - International migration and the policy of Exclusion

International migration and immigration are by no means new phenomena within the Dutch society or the developed industrial societies. Article 13 of the Universal Declaration of Human Rights\(^1\), which is signed by all developed industrial nations, states that: ‘1. Everyone has the right to freedom of movement and residence within the borders of each State. 2. Everyone has the right to leave any country, including his own, and to return to his country.’ However, granted these rights by the international community, several other questions remains to answer by the irregular migrant. For instance where to go, how to get there, and naturally how welcome are you whilst knocking on the door of the receiving country. Naturally this differs for each group of (irregular) migrants. Some groups of migrants such as the knowledge migrants\(^2\) are for instance more welcome than others. The challenge therefore remains for every receiving country to counter bat irregular migration by adopting effective and efficient migratory policies which are perceived as legitimate by the various authorities who must implement and uphold these polices.

Over the past decades the Netherlands, as a modern liberal democratic welfare regime, has been confronted with a large influx of irregular migration and ever since tries to postulate an adequate and effective answer within a globalized international arena. For this reason numerous policies has been formulated, which over time entails a restrictive nature, contains various expulsion mechanisms and has overarching consequences for the irregular migrants. The latest answer to international irregular migration formulated by the Dutch government is the Modern Migration Policy. On June 2008 the Blueprint for a Modern Migration Policy Document was sent to the Dutch House of Representatives. One year later this blueprint was formulated in an official law draft which was subsequently sent to the Senate for approval. One of the main aims of this renewed Modern Migration policy is: ‘...to achieve an innovative migration that will take account of the future development and that will guarantee a rapid and effective admission process for those migrants that the Netherlands needs.’ Furthermore, this renewed migration policy states that ‘...It will not become easier to gain admission to the Netherlands, except for those migrants for whom the [Dutch] Cabinet considers to be desirable.’\(^3\) Naturally, this raises once again the questions what about those migrants that are considered undesirable by the Dutch Cabinet, the previous migratory developments and...
policy, and finally of course the effectiveness of the Dutch migration policy plus the need for a renewed Migration Policy. Raising these questions are legitimate since the Netherlands knew until the mid 1970s some regulation and migratory policies. However, after this period numerous control mechanisms, such as external and internal border control mechanisms, and extensive multifaceted policies of restrictive migratory policies were created.

In general the current restrictive Dutch, which can be best described as a disencouragement migratory policy, in short entails four central elements. The first element is the exclusion of illegal migrants from public services (like benefits, provisions and supplements). The second element revolves around stricter measures to combat unlawful employment. The third element revolves around the intensification of the surveillance by institutions and government officials. The last element is the encouragement of the expulsion of apprehended irregular migrants. Furthermore, the most important internal control mechanisms are the linking and granting the right of possession of a social security number to a valid residence permit; the Compulsory Identification Act; and of course ‘ the policy of exclusion’ which can be seen as a follow up of the previous control mechanisms. The policy of exclusion refers to the ‘Benefit Entitlement (Resident Status) Act’ or the ‘Linkage Act’ which came into force in the Netherlands in 1998. This Act, which is an alteration of 26 laws of the Alien Law and the collective provisions, links the right to numerous (social) benefits, provisions, supplements and permits to the migrants’ right to reside in the Netherlands.

On the one hand the Linkage Act has overarching consequences for the irregular 4 migrants, since this Act exclude all access to benefits for those people without a valid residence permit. Furthermore, it grants merely limited rights and access to some categories of regular migrants. On the other hand the consequence of the economic globalization and irregular migration affects also the exclusive territority, sovereignty of the modern state, and finally contributes to a denationalizing of a national territory. Another feature of the (economic) globalized arena is the rise and presence of international law. 5 This holds that the Netherlands, being a founding member of the European Union, has ratified numerous international treaties, conventions and declarations. In a

4 The concept irregular or unlawful is a judicial status which entails a relation to the state. In other words the label of irregular or regular (subsequently unlawful or lawful) is provided by the state and its legislation. I use the term irregular migrants for peoples who do not possess a residence permit, and is therefore perceived as irregular by law. The regular migrants are those people holding a residence permit, and or having other legal grounds which are granted by the state for a legal stay in the Netherlands. Furthermore, the term alien is used for a person who is a foreign-born (legal) resident, who does not possess the privilege of citizenship; who is not granted citizenship by law and thus the state.

5 Modern international law can be seen as a historical artefact. In other words as a product of revolutions which has evolved in thought and practice, which has transformed the governance structure of modern European states after the French Revolution. These laws and international treaties are put forward in a later stage as a precondition of the enlargement policies for new member states of the European Union. Source: Baylis & Smith, 2008, The Globalization of World Politics, Oxford, Oxford University Press, pp. 281-287.
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liberal democracy such as the Netherlands, the State has namely an obligation to respect and to protect the human rights of those people living within its jurisdiction. These rights are documented under national constitutions and are often limited to merely the national (legal) citizens of the State. However, international and human rights conventions are universal in the sense that they protect all people under the State party, unless this is explicitly laid down that a particular right is exclusively granted to citizens only. In the latter case a distinction is made between citizens and non-citizens or foreigners within a community where exclusion or a policy of exclusion is created and is being justified. The first option, being the universality of international human rights conventions, reads that people are equal, and for that reason all people have certain basic universal human rights. Nevertheless according to the renewed Modern Migration Policy, some people and therefore some (regular) migrants are more desirable than others (the irregular migrants). Therefore effective and adequate migratory policy is required for respecting international law and conventions on the one hand, and at the same time achieving the formulated main goals of the Dutch Cabinet. Another step forward in achieving the previous postulated goals could therefore be to uphold the various internal migration control mechanisms, such as the Linkage Act.

1.2 - Research Question, Scientific Relevance and Used Methodology

Right after implementing the Linkage Act the Dutch government proclaimed an interim report for the year 1999 and an extensive evaluation to be published in 2001. For both of the evaluations the independent variables of legitimacy, effectiveness and efficiency had to be answered. The main goal of this master thesis is to re-evaluate the Dutch Linkage Act after 12 years and to answer the question of success or failure. The central dependent variables are once again the legitimacy (level of implementation), the effectiveness and efficiency of the Linkage Act in regard of the previous set goals by the Dutch government. At the same time the goal of this thesis is to address the political implications of the Linkage Act on the municipality of the city of Amsterdam and the Dutch police force Amsterdam-Amstel, since they are the ones who are confronted with the ‘undesirable’ people. I am interested in the political consequences of the policy of Exclusion on the one hand, and on the other hand how the government officials deal with the people who are perceived or declared as ‘undesirable’. After conducting my research I would like to provide an answer to the question of the effectiveness of the Linkage Act and what a (Renewed) Migration policy should entail.

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For this reason the central question posed in this master thesis is: ‘Is the Linkage Act an effective tool in addressing the main objectives of a restrictive migratory policy, as formulated by the Dutch national government?’

Furthermore an answer will be given to the question: ‘What are the political consequences of the Linkage Act, being a main part of the restrictive Dutch migratory policy, for the municipality of the city of Amsterdam and the Dutch police force Amsterdam-Amstelland?’

Naturally regarding the implications of the policy of Exclusion a distinction must be made between: economical, legal, political and social consequences for both the irregular migrants as for the Dutch State and/or the Dutch society at large.

I chose to focus on the political consequences of the Linkage Act since the extensive report of the Research and Documentation Centre of the Ministry of Justice (WODC) is leading for my thesis. Another reason is that I seek to answer the question of ‘political’ legitimacy, effectiveness plus efficiency. The other consequences will be briefly touched upon making use of the existing reports plus articles of various scholars and institutions. As stated before my research is restricted to analyse the political consequences of the policy of Exclusion. The methodology used is fourfold, namely:

- Analyzing the various existing reports regarding illegality plus irregularity with relations to the social, legal and economical consequences. Desk research into the restrictive Dutch policy of exclusion and analyzing empirical data, reports regarding the policy documents of the subject and the consequences of irregular migration.

- In-depth qualitative research in the form of interviews, which are standardized (where possible) and based on a predetermined questionnaire in order to avoid bias. I chose to interview as much people as possible who take part in the chain of migration and are for that reason confronted with the people who are perceived or declared ‘undesirable’. I had the opportunity to conduct various interviews with valued representatives from the Ministry of Justice; Municipality of Amsterdam; Dienst Persoons- en Geo-informatie; and the DT&V. The reason of not contacting IND (the Immigration and Naturalization Service), being an important institution within the chain of migration, is because they are assigned the competence of admission. My subject and main research question revolves around the political consequences of the policy of exclusion; the irregularity of migrants meaning not granted (by the IND) or bearing a legal stay in the Netherlands. Therefore, not the process of
irregularity in which the IND stages a central role, but the political consequences of this national policy of exclusion is relevant for my thesis. For this reason, I chose not to contact or interview public officials of the IND.

- I had the opportunity to conduct a one-week research at the Alien police force Amsterdam-Amstelland and witness the various consequences of the policy of Exclusion, such as a the WAV; apprehensions; the hearings and interrogations of the irregular and criminal (regular) migrants and many, many more.

- Finally, analyzing the data of the repatriation of irregular migrants. One of the main conclusion or given causation in the latest WODC report for some resistance among government officials for the implementation and enforcement of the Linkage Act (read level of implementation and degree of the legitimacy) lies in what they call the ‘failure of the repatriation policy’. For this reason in answering the ‘effectiveness of the Linkage Act’ the actual figures of repatriation of people who are perceived or are declared ‘undesirable’ is used. Another reason is that in the extensive evaluation of the WODC report the conclusion is drawn that the actual measurement of exclusion (and therefore effectiveness) proved to be very difficult. For this reason I chose to analyse the actual figures of repatriation of irregular migrants for the period of 2000 and onwards, since the WODC pre-evaluation was conducted in 1999 and the extensive evaluation in the year 2001. All the repatriation figures used are taken from the Immigration and Naturalization service (IND, up to the year 2007) and the Repatriation & Departure Service (DT&V, for the period after 2007).

The social and political relevance of this master thesis lies in the fact that it has been 12 years after the implementing of the Linkage Act. An extensive evaluation has been conducted in 2001 claiming which revolved around the central dependent variables of legitimacy, the effectiveness and efficiency of the Linkage Act. After almost a decade, a re-evaluation with respect of the same central dependent variables and analyzing the political consequences of this policy proves the political relevance. Furthermore analyzing the chain of migration, specifically at the institutions charged with uphold of law and order such as the police is of added value. Finally, looking deeper at and studying the political consequences is useful in answering the question whether the Linkage Act is an effective tool in addressing irregular migration.
1.3 - Overview

First of all in Chapter two various theories and concepts explaining the phenomenon of international migration will be given. The choice for these various theories and concepts lies in the fact that the restrictive Dutch migratory policy is a compellation of economics of migration theories (which can be diversified into the neo-classical and new economics of labour migration theory); the bifurcated labour theory; and finally the social capital theory. After explaining the main tenants of the various theories and explanatory variables for international migration, each paragraph ends with examples of current policy measures based on these theoretical frameworks. At the same time concepts and paradigms regarding Liberalism and Social Constructivism will be given. Since the Kingdom of the Netherlands is a liberal constitutional democracy trying to postulate an effective and responsive migratory policy, in a global arena, it therefore operates within the previous mentioned concepts and paradigms. For this reason the tenants of a liberal constitutional democracy will also be briefly discussed. At the same time in the second part of Chapter two the stand, position and responsibilities of the Dutch State regarding the people perceived or declared ‘undesirable’ will be touched upon. For this reason the second Chapter ends with the Human Rights Model, the Criminal Theory and the concepts of justification for the in-or exclusion of foreigners or aliens in a society or nation.

In the third Chapter the implementation of the ‘Benefit Entitlement (Resident Status) Act’ or the ‘Linkage Act’; and the various alterations plus legal consequences of this Act will be mentioned. The second part of Chapter Three discusses the use, various types and power of ‘gedogen’ plus discretionary authorization. The reason for this is that the widespread principle of ‘gedogen’, which is a typical Dutch phenomenon, proves to be a crucial factor in answering the question of legitimacy, efficiency and effectively of the Linkage Act. Another reason is that this principle was mentioned perpetually during my research by various officials as an explanatory independent variable for the failing policy of Exclusion.

Chapter Four revolves around the socio-economic and legal implications plus consequences of the Linkage Act. As stated before these are the areas which are analyzed through existing desk research, empirical data and reports. The political consequences and my conducted research are central in Chapter five. The answer to the question with regard of the implications of the policy of Exclusion for the municipality of the city Amsterdam and the Dutch police force of Amsterdam-Amstel will also be given. Finally, in the sixth Chapter my conclusions and findings of my research will be given, whereupon I hopefully will be able to contribute to some (modest) useful policy recommendations for renewed migratory policy in the last part of this thesis.
Chapter Two: Migratory Theory and Concepts

§ 2.1 International Migration Explained

International migration naturally entails various causes (the numerous so-called push and pull factors) and theories or concepts explaining these phenomena. According to the scholar Massey a full understanding of the phenomenon of international migration is only possible after answering the following four questions:

1. ‘What are the forces in sending societies that promote out-migration, and how do they operate?’
2. What are the forces in receiving societies that create a demand for immigrant workers, and how do they function?
3. What are the motivations, goals and aspirations of the people who respond to these forces…?
4. And what are the social and economic structures that arise in the course of migration to connect sending and receiving societies?’.

Within these theories a distinction is made between the initiation of international migration and the perpetuation of the international movements. The restrictive Dutch migratory policy is to my opinion linked to the various theories and concepts discussed in this Chapter. In other words, the Dutch migratory policy is a compellation of these described theories and concepts. For this reason elaborating upon these theories and concepts enhances the broader understanding of the implementation of the Linkage Act and the previous internal plus external control mechanisms taken by the Dutch national government combating irregular migration.

In the second part of this Chapter the Human Rights Model and the Criminal Theory will be discussed, and placed within a broader aspect of both the (political) liberal tradition and the liberal paradox. The liberal constitutional (Dutch) states responsibilities regarding the people who are perceived as or are declared ‘undesirable’ will be discussed versus the rights and responsibilities of the irregular migrants. Finally, all of the various theories and concepts will be provided by multiple examples of the Dutch restrictive (past or current) policy measures combating irregular migration.

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8 Naturally this selection within the theoretical framework is not exhaustive explaining the phenomenon of international migration. Relevant theories and concepts such as the network theory, the institutional theory, the migrations system theory etc are missing, because my focus on the theories and concepts which encompass Dutch migratory policy. All the theories and concepts discussed in this Chapter are provided with examples of the Dutch migratory policy and/or Alien Law plus legislature.
9 The ‘liberal paradox’ is defined by the scholar Schmidtke as the increasingly discrepancy between the universal self-understanding of liberal western democracies on the one hand, and liberal democracies’ parochial definition of the polity; in other words granting the basic socio-economic rights exclusively in national terms to those who makes up the polity. Schmidtke O. & Ozcurumez S. (Eds.), 2008, p. 6.
§ 2.1.1- Neoclassical Economics of Migration within the Liberal tradition

The economics of migration theories\(^{10}\) explains international migration flows due to economic factors as part of the initiating stage of international migration. Within the economics migration theory a distinction can be made between the neoclassical economics and the new economics of labour migration, which will be discussed in the next paragraph. In general the neoclassical economics of migration conceives migration as an individual decision in order to maximize income; whereas the new economics of labour migration views migration as a household decision to minimize risk to income or to overcome economic constraints. There is therefore a macro-economic initiation of migration due to stark income plus the standard of living differential between the developed world and developing countries. According to this theory the flow of international migration is continued until the stage of wage equilibrium is reached.\(^{11}\) At the other part of the systemic scale of the micro-level economic model, rational self-interested actors choose to migrate after making cost-benefit calculations. In this economic model which can be placed within the International Relations paradigm of Liberalism people are seen as atomized individuals who will always seek to optimize their individual utilities. Although the Liberal paradigm contains both theories of government within states, and good governance between states and people worldwide; this paradigm also contains (economic) tenants and key assumptions equitable to the economics of migration theories.\(^{12}\) For this reason the logic of reasoning explaining the initiation of migration from economic causation can be better grasped understanding the key assumptions made by the Liberalist tradition. Another important factor is that the Dutch state is defined as a constitutional liberal democracy or a liberal democratic state. In other words, explaining international migration and implementing restrictive migration policy by the national state is therefore done by the economics of migration theories within the Liberalist tradition, which will be discussed below.

The liberal paradigm provides, amongst others, an answer to the various causes for conflicts and determinants for peace. Furthermore, the liberal tradition has a strong claim to be the historical alternative to the Realist tradition, which is perceived as the most dominant theory of International Relations. Whereas the Realist tradition\(^{13}\) is anchored around the sovereign state as a key

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\(^{10}\) Both the neo-classical economics of migration and the new economics of labour migration theories, which is discussed in the next paragraph, are part of the economics of migration theories.


\(^{12}\) Baylis et al., 2008, p. 111.

\(^{13}\) The Realist tradition is divided into the Classical Realism, Structural Realism, and the Neo-classical Realism. Each of these strands provides different causes for conflict within the international political arena; the Classical Realism for instance states that human nature in essence explains why international politics is inevitably power politics causing conflict. The Structural Realist on the other hand explains conflict by the international structure, the differentiation of units and the balance of power, and/or the lack of a hegemon. Finally, the Neo-
(independent) unit of analysis and claim anarchy within the international arena, the liberal tradition is first of all anchored around the liberty of the individual. Answering the question of generating and maintaining peace, according to the Realist, is by power maximalization, state survival and self-help in the anarchic system, preferably in a unipolar or otherwise bi-polar international system of sovereign states. Therefore the best way to generate peace on the international arena according to the Realist paradigm is by the so-called ‘hegemonic stability theory’.  

On the other hand the best way to generate and maintain peace according to the Liberalist tradition is by individual liberty, national self-determination, and finally a world government with the power to mediate and enforce decisions. Naturally these determinants of peace correspond to the various strands or ‘images’ of liberalism, being the Commercial Pacifism; the Liberal Institutionalism; and the Liberal Internationalism. However, the causes for conflict differs according to the various strands, there are also a threefold set of rights within the Liberalist tradition; and a shared commitment to four essential institutions within a constitutional liberal democracy. First of all the set of rights within the Liberalist tradition are the so-called ‘negative freedoms’. Examples of these rights are for instance the freedom from arbitrary authority, the equality under the law, and the right to hold, and thus exchange property without the fear of arbitrary seizure. Obviously, there are also ‘positive freedoms’, which can be best described as: ‘those rights which are necessary to protect and promote the capacity and opportunity for freedom’. Examples of these positive freedoms are social rights, the rights and access to education, right to health care and housing, employment etc. Therefore, the well-being of individuals in general. The third and last set of rights within the Liberalist tradition is the right to democratic participation or representation. This right is seen as essential in order of the guarantee of the latter two.

Another point is the commitments towards the four essential institutions of a constitutional liberal democracy. Naturally these institutions are anchored around the proposition of the Liberalist tradition stating that: all individuals and citizens are equal by law and therefore poses certain basic rights (negative freedoms); there is the right to own property (positive freedom); the legislative assembly of the sovereign state possesses only the authority given by the people, whose basic rights it is not permitted to abuse; and finally the assumption the most effective system of economic exchange is a market-driven economy (being shaped by the forces of supply and demand) which is


14 Baylis et al., 2008, p. 99.
15 Baylis et al., 2008, p. 111.
not subordinated to bureaucratic regulations and control. 17 For this reason the Liberalist tradition and the neo-economics of migration assumes open (perfect) markets, where actions of atomized individuals are developed on based of absolute information and relevant factors aimed at utility maximalization. 18 Imperfect information occurs when atomized individuals lack the necessary information in order to make rational decisions in their own interest.

A note or a point of critique should be made regarding this neo-classical economics of reasoning within a Liberalist tradition. This theory and International Relations paradigm assumes not only agency but full agency of the individual and irregular migrants at all times. Naturally, looking at the case of irregular migration in general and access to fort Europe in particular one can argue that the assumption of full agency can to my opinion not be endorsed. The simple fact that circumstances at various stages of the international migration movements makes it impossible to gain perfect information of current situations, (alterations in) legislation and other relevant factors to make optimal costs-benefit calculations as assumed in this theoretic model. Other forms of critique are amongst others formulated by the scholar Massey who states that international migration has other costs than perceived as actual costs by the neo-classical economist such as socio-economic and physical costs. Another point of critique is that there are anomalies and shortcoming or failure to explain current tendencies of international migration such as remittances or the return of (irregular) migrants, even in the case of great wage differentials (and therefore before a wage equilibrium has occurred). 19 A possible explanation is that people should not be seen as atomized individuals, but as part of a larger interrelated entity such as a member of a family; household, firm, community, society etc. Therefore (possible) costs-benefits calculations are made in not perfect markets and collective strategies are formulated by interrelated individuals, which are explained in the next paragraph.

Finally, as stated before the economics of migration theories can be divided into the neo-classical economics of migration and into the new economics of labour migration. For this reason, the examples of legislation and restrictive policy measures applicable to the neoclassical economics of migration are the same as the new economics of labour migration, and will be given at the end of the next paragraph.

17 Baylis et al., 2008, p. 100. Also Doyle, 1997, p. 207.
18 Concerning the role and responsibilities of the constitutional liberal state there are two opposite notions, namely the supplementary or residual state and the corrective state. The first notion holds that the state should confine its responsibilities to those activities that markets cannot perform. In other words the residual state should only provide security, public order and a provision of pure public goods. The other notion of the corrective state is part of the Keynesian and the post-Keynesian analysis, which holds that the state can intervene and therefore act in a variety of other than market activities in order to correct possible macro- or micro-level market failures. Source: Howlett et al., 2009, p. 55.
§ 2.1.2- New Economics of Labour Migration

In order to provide profound answers to the previous described anomalies in the presumptions or stands taken by the neo-classical scholars the new economics of labour migration (or the NELM) was developed for explaining the phenomenon of international migration. As stated before economic theory and therefore new economics of labour migration (as part of it) explain international migration from economic factors as part of the initiating stage of international migration.

The difference between the neo-classical economics of migration and the NELM is that the latter makes the presumptions of imperfect market economies. In this line of reasoning individuals not only do not have perfect information in order to make rational decisions, but also the ‘disaster’ of market failure looms around. This is explained by the broad agreement of the occurrence of market failure in case of one or more of the following factors, namely: natural monopolies; externalities; imperfect information; the tragedy of the commons; destructive competition. Other explanations for market failure exist although these are not seen as universal or commonly accepted, such as moral hazard or informational asymmetries. 20

Another most important deviant presumption between both theories is that individuals (in sending countries) are not isolated actors but must be seen as larger units of interrelated people. Therefore, even in the case of perfect information, individuals not necessarily make decisions which results in the utility maximalization of the individual. Costs-benefits calculations and long term scenarios in the interests of interrelated groups of people are made. Explaining therefore the initiation of international migration purely by costs-benefits calculations by atomized individuals and wage differentials is seen as too simplistic failing to explain several anomalies.

One of the explanations for interrelated or a unit of group behaviour by individuals is the possibility to manage risks in developing countries. Unlike (perhaps atomized) individuals in the developed world (receiving countries) people do not have the possibility to manage risk through private markets (such as insurances) and/ or through government programmes. In the developing world this risk management is largely done in households or other forms of interrelated units by diversifying their allocation of productive resources, naturally one of which is labour. 21 Naturally, sending a member of the interrelated unit to a modern industrial society (such as fort Europe) can be lucrative for the other members of the unit. Reaching fort Europe and succeeding in finding (ir) regular labour are of course preconditions for the possibility at sending remittances back home. These remittances are at the micro-level not only beneficial for the interrelated units, but also at macro-level for the

20 Howlett et al (Eds.), 2009, p. 22.
developmental states at large. They provide states with an external source of hard currency, which therefore covers part of their balance-of-payments deficits. In this sense remittances have proved to be a stable and therefore reliable source of foreign currency for developing nations. Altogether, after foreign investment and developmental aid, remittances are the main source of external finance for developing nations. 22

As stated before, at the end of each paragraph in the first Chapter examples of national restrictive migratory policy and/or Alien Law and legislation which correspond with the described theory and concept will be given.

The first example of legislation and restrictive policy measures placed in the economics of migration perspective is that Dutch policy is aimed at providing realistic information to the people considering international migration. The assumption in this example made by the government is that there is imperfect information and after receiving all the relevant information plus factors the rational atomized individual (read migrants) will (on basis of a cost-benefit calculation) make the decision not to migrate into the Netherlands.

Another example is that the Dutch migratory policy is linked to developmental aid and cooperation with developing nations in order to improve the living conditions in developing countries, and naturally to decrease the income differential between regions. Concerning this policy aim the Dutch national government has a realistic and long-term vision and formulate this policy aim as: ‘Development cooperation in general can offer only an indirect long-term contribution to gradually reducing the need for migration, through the emphasis on sustainable development, political stability and good governance. Initially development in the poorest countries tends to lead to more, rather than less, migration.’ 23

The last example of the economic theory approach (applicable for the legal forms of migration) taken from Dutch Alien Law is the condition that anyone who wishes to bring over a spouse should at least earn 120 percent of the minimum wage. 24 This policy implies the various tenants of the Liberal paradigm, namely the atomized individual who makes a rational costs-benefit calculations whether or not to bring over a spouse to the Netherlands. Furthermore, the responsibilities about bearing the financial burden (for a period of time) are placed at the individual who makes the request (which is also known as the ‘referent’).

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22 Policy Memorandum International Migration and Development 2008, p. 32.
24 Source: IND, 1 July 2005.
§ 2.1.3- Bifurcated Labour Theory

This theory explaining international migration is also called the segmented labour market theory or the dual labour market theory. Unlike the previous theories there are not necessarily the ‘push factors’ from sending countries such as wage differentials, the relative low standard of living conditions in developing countries, instable regimes, war etc. explaining the concept of international migration. The international migratory flow is instead initiated by the ‘pull factors’ from receiving developed modern industrial societies. 25

These various pull factors are caused by the permanent demand for unskilled or low-skilled labour which is intrinsic within the structure of the modern industrial societies. Essentially, this theory reasons that it is easier for employers to promote the immigration of low-wage workers rather than increase the pay of domestic low-skilled workers. For this reason, ‘...The imbalance between the structural demand for entry-level workers and the limited domestic supply of such workers has increased the underlying, long-run demand for immigrants.’ 26 The international migratory flows (both regular as irregular) are therefore terminated after the independent variable ‘structural demand within an industrial society’ is met with the applicable supply of ‘low- or unskilled workers’. Various scholars, such as Aronowitz, conclude for this reason that (ir) regular migration is demand driven and beneficial for the receiving industrial economies. 27

This described inherent demand for the independent variable of ‘low- or unskilled workers’ stems according to the scholar Massey from four fundamental problems within the modern industrial society. 28 The first problem given is the structural inflation. This phenomenon is described as the meaning of wages which reflects social status, whereby the rise of the wages would pose a threat to the socially defined relationship between status and remuneration. In case the employers raise the wages at the bottom, other levels of the job hierarchy will inevitably follow, resulting in a structural inflation. For this reason the prospect of the structural inflation, which is describes as: ‘...the need to raise wages proportionately throughout the job hierarchy to maintain consistency with social expectations.’ 29 provides employers of the highly industrial societies a strong incentive or inherent demand for low- or unskilled workers. The second intrinsic problem is caused by the so-called social constraints on motivation, which is again inherent in the job hierarchies’ chain. The motivational constraints arise in case of a discrepancy between the expectations of a worker in the possibility of accumulating social status (assuming that this aspect also bears relevance for the worker) or the total

26 Massey et al., 1993, p. 443.
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absence of gaining social status. This problem is believed to be inevitable because the bottom of the workforce (therefore the low- or unskilled workers) cannot be eliminated from the production cycle. For this reason processes of mechanization simply culminate in a new bottom tier composed of jobs that used to be just above the bottom rug. For this reason employers in highly industrial societies have an inherent need for workers who perceive the bottom-level of jobs as sufficient and as a meaning to end, namely earning money. These employers however at the same time improve their social status in their home countries (for instance by remittances) and not in the receiving industrialized societies. This need for workers who do not perceive themselves as part of the industrialized society, but are still embedded within the status system of the sending country causes the pull-factor for international migration.

The third fundamental problem within modern industrialized societies stems from the duality of labour and capital. In modern industrialized societies there is a differentiation between various sectors, such as the capital-intensive primary sector and the labour-intensive secondary sector. This dualism indisputable yield to a segmented labour market due to the differentiation of the value of the workforce by the employers. Unlike the capital-intensive primary sector, the risk at being laid off in the secondary sector is considerable due to the relative low or no costs for the employer. This phenomenon creates an incentive for native workers to seek a job in the primary sector, which is characterized amongst others by investment in human capital, training and education. Once again, the quest for low- or unskilled workers or this apparent demand in the secondary sector is inevitably due to fundamental problems within the modern industrial society.

The last intrinsic problem is caused by the green revolution and the fundamental geographical trends within modern industrialized societies, such as the rise of the female labour-force; the rise in the divorce rates; the decline in birth rates and the extension of secondary education; and the urbanization of the society etc. All these changes has culminated in for instance women’s employment into a source of primary support and a career pursued for social status as previously described. All of these foundational problems within the modern industrialized societies cause an imbalance between the structural demand for entry-level workers, and at the same time the limited supply of domestic workers has generated a continuous demand for low- or unskilled workers from sending developing countries.

Finally, an example of legislation and restrictive policy measures from the bifurcated labour theory perspective is the New Modern Migration Policy. The statement or even one of the main aims of this new Modern Migration Policy can be seen as an example of the bifurcated labour theory ‘...to achieve an innovative migration that will take account of the future development and that will
guarantee a rapid and effective admission process for those migrants that the Netherlands needs.'

In formulating this as one of the main aims the Dutch government accepts the fact that there are and always will be the need for a workforce from abroad. In other words international migration is necessary (an intrinsic need for the migrant worker) and inevitable, due to (some extent) to the structure of the modern industrial society.

§ 2.1.4- Social Capital Theory and the Social Constructivism

The previous discussed migratory theories are theories which entail various explanatory independent variables initiating the flow of international migration. However, the perpetuation of the international migratory flow is quite different and can, amongst others, be explained by the social capital theory. This theory holds that the perpetuation of international migration must be explained by the accumulation of and the convertibility of social capital.

The concept of social capital refers to the set of features of societal organization such as trust, norms of reciprocity and networks which can improve the efficiency of society by facilitating the coordinated action in general. Furthermore, social capital can be best described as: ‘...the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition.’ This holds that the mere act of international migration creates social capital between the migrant and the people to whom the person who has migrated is related. Due to on the one hand the extended networks and the founding of migrant networks plus organizations in the receiving countries, and on the other hand the lowering of the costs of international migration of people in the sending countries; the act of international migration serves as a self perpetuation catalyst. In other words the social structure which is required for international migration is created and sustained, until according to some scholars the point of saturation has reached. This could be ‘theoretically’ be achieved in case of labour shortages and rising wages in the sending countries, which may further discourage or dampen the need for international migration.

The social (international) structure and the convertibility of such can must be placed within a broader International Relations theory of Constructivism. This theory revolves around ideas, identities and interests. Furthermore, the aim of the Constructivist theory is to study on how ideas define the international structure; in other words how this structure shapes the identities, interests, foreign

32 Definition taken from Bourdieu and Wacquant in Massey 2002, p. 18.
33 The scholars Gregory, Hatton and Williamson are mentioned in Massey 2002, p. 20.
policies of states, and finally how state and non-state actors reproduce that structures at times and possibly transform it. The convertibility is possible since (social) structures, such as institutions or family relations, are shaped by people and therefore are not given but static. The assumption of the Constructivist is that normative social structures - which can be seen as the product of social relations, are regulative plus entail material resources - shapes the identities and interests of state and non-state actors. Through a process of socialization and the previous described social structures people learn common values and behavioural patterns. According to the scholar Wendt material resources are important, but only acquire meaning through the structure of shared knowledge in which they are embedded. This means that social structures are defined, in part, by the shared understanding, expectations and / or knowledge. Furthermore, social structures are also influenced by ideas norms and the possibility of change within the existing logic of thinking. A final comment regarding the Constructivist theory is that there is a differentiation in a logic of consequence and a logic of appropriateness; the first attributes action to the anticipated costs and benefits and the latter means the degree how actors are rule-following dealing with normative issues whether their actions are legitimate.

A last note which must be made regarding the role of irregular migrants’ networks in the receiving country is that they play a substantive role in helping migrants in succeeding for instance reaching the country of destination, or the possibility to build up a livelihood in the country of destination. Important is that not the size of the networks, but the strength of the network plays a decisive role. The strongest networks or ties prove to be family ties and the weakest are the networks consisting of merely acquaintances. Therefore, a distinction can be made between different types of (ir) regular migrants and between (ir) regular migrants who possess a network. The distinctions are: the networks with the least chances for success, namely the no-network migrant; the weak network migrant; the networks with the biggest chance of succeeding, namely the strong network migrant; and the combined network migrant. 34 Of course the paragraph concludes with examples of legislation and restrictive policy measures from the social capital theory and on page 31 (Table A) a summary regarding the explanatory independent variables of international migration is given. Examples of legislation and restrictive policy measures from the social capital theory are the family re-unification policy / UN Convention on the Protection of the Rights of All Migrant Workers and their Families and the intent or strengthening the involvement of migrant organizations, which is formulated as one of the six policy priorities of the Dutch government. 35

35 Policy Memorandum International Migration and Development 2008, pp. 53-56.
§ 2.2 Stand and Position of the (Dutch) state plus society

The Kingdom of the Netherland is a liberal constitutional democracy trying to postulate effective and responsive migratory policy by on one hand respecting the international treaties, and therefore adheres to the various (universal) human rights. On the other hand irregular migration is combated by an elaboration of a response to the ‘migration-crime-security’ continuum, therefore placing irregular migration within the Criminal Theory Model. For this reason, both the human rights model as the criminal theory provides a view on how irregular migrants in the receiving country should be either treated (human rights model) or combated (criminal theory). The various tenants of a liberal constitutional democracy will be given before the two models applied by the Dutch government combating irregular migration will be covered.

The neoclassical economics and neoliberal school of thought is a theory of both governments within states and good governance between states plus peoples worldwide. Furthermore, this school of thought can be differentiated between into an economic (which is already elaborated upon previously) and socio-political set of beliefs which are both perceived as essential for development.

The second set of belief of the neoclassical school of thought first of all makes a distinction between (economic) liberalization, democratization and democracy. Democratization simply means the process leading towards in a democracy. In other words, it holds a move towards the acquiring of the requirements or tenants of a democracy, which should at least entail inclusiveness and political competition. Those essential tenants of the (liberal) constitutional democracy are according to the scholar Dahl: First, the effective participation, which holds that before policy is been adopted and implemented by the government all citizens should have had an equal and fair opportunity to participate in the electoral political system; secondly the equality of vote based on the one man one vote principle; thirdly, the equal access to knowledge. This principle implies the openness and free press, which enables all the citizens the right and the opportunity to gain knowledge of the future government policies and the consequences for them; fourthly, the control of the political agenda. All citizens should have the opportunity to control and put salient, important issues on the political agenda even between election periods; and finally the inclusiveness of all adults. This implies that all adults who live permanently in a particular country should have the rights and equal access to those rights listed above.36

Another assumption is that in order to enable citizens to engage in a political system of inclusiveness and political competition political institutions are fundamental. Concluding, one can state that this paradigm holds that a (liberal) constitutional democracy is anchored around the core beliefs and assumptions that institutional democracy entails intrinsic universal values, such as equality of humans, universalism etc. Furthermore, these intrinsic values are perceived as essential and the best conditions under which all human beings can develop and therefore causes political changes, stability, and bring economic development and prosperity. The second assumption is that is that a constitutional democracy inevitably will result in the ‘Peace of Kant’ and described as” the closest thing to an empirical law”. The democratic peace theory states that it is an empirical law that democracies do not fight each other, and therefore must be regarded as the most peaceful political systems in the world. The reason given by Kant for not fighting each other is that democracies have too much to lose and therefore the individual autonomous citizens who live in constitutional democracies prevent national liberal states engaging in a war. Simply the costs of war will inevitably outweigh the benefits of war.

Naturally, the Kingdom of the Netherlands assents to and upholds all these tenants and also has responsibilities regarding the people perceived or declared ‘undesirable’. The question remains how to perceive and effectively combat irregular migration. The variances are either the Human Rights Model or The Criminal Theory or a combination of both.

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37 Dahl list 7 essential political institutions, namely: free fair and regular elections; voted democratic leaders and government officials; freedom of speech; the existence and availability of alternative sources of information; the freedom of assembly; the concept of inclusive citizenship; and finally the existence of a constitutional democracy. Source: Dahl, 1999, pp. 84-86.

38 Universalism can be best described as: ‘all citizens or people living within a sovereign nation should be granted the same rights, political and liberal freedom, protection and respect of the human rights and are perceived as equal”. Definition taken from: Scruton R., 2007, Dictionary of political thought, Palgrave Macmillan, New York, p. 712.

39 The democratic peace thesis is described in 1887 by Emmanuel Kant and is also known as the ‘Peace of Kant’. In: Baylis & Smith, 2008, pp.112-113.

40 Concerning the ‘Peace of Kant’ thesis two critical notes can be made, namely that whilst studying the liberal western democracies one cannot argue that liberal constitutional democracies are more peaceful than other regime types. It is however correct to state that in general liberal constitutional democracies don’t wage war against each other. Source: Baylis & Smith, 2008, pp. 112-113 and Doyle, 1997, pp. 252-277. The second note concerns that the democratization process is in most cases a cause for instability or quite violent, the so-called ‘transition instability’. The explanation for this apparent oxymoron provided by the scholar Snyder lies in the role and interests of the elite, the degree in which they feel threatened and the existence of national institutions. Source: Snyder, 2000, p. 81.
§ 2.2.1- The Human Rights Model

In a liberal constitutional democracy the state has always the obligation to respect and to protect the human rights of those people living within its jurisdiction. In this sense, the state also bears a responsibility for the people they perceive as or are declared ‘undesirable’ and are for this reason irregular within the states jurisdiction. These rights are documented under national constitutions and are often limited to merely the national (legal) citizens of the State. However, international and human rights conventions are universal in the sense that they protect all people under the State party, unless this is explicitly laid down that a particular right is exclusively granted to citizens only.  

Examples of legislation and restrictive policy measures which can be placed within the human rights model is that even with the Dutch restrictive migratory policy of exclusion there are exemptions made in case of severe medical reasons and for children in the category of compulsory education. The latter revolves around article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (EVRM) and article 13 of the International Convenant on Economic, Social and Cultural Rights (Internationale Verdrag inzake Economische, Sociale en Culturele Rechten) it is not possible to withstand education from youth who fall to the compulsory education. Another aspect is that children who are unlawfully in the Netherlands also fall to the Dutch Compulsory education law of 1966. Furthermore, according to article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (EVRM) and the various jurisprudence irregular migrants always must have the opportunity or the access to legal representation or legal aid in case the migrants lacks the means. Finally, (not formulated in a treaty or law) the Dutch government feels responsible for all people falling under her jurisprudence. This holds that in case of a life threatening situation or acute situation medical help will always be offered to the person involved (irregular migrants).

Another example is that even in the case of a lack of European harmonization policy regarding the maximum detention for irregular migrants and asylum seekers at expulsion detainee centre, the common practice in the Netherlands is that after six months the case is brought before a judge. In other words, the practice shows that legal jurisprudence is followed after six months of detention. The sereneness of detaining a person (even when this person is perceived as unwanted or is unlawful in the Netherlands) is carefully weighed to all other relevant factors by an independent judge. Therefore, jurisprudence can result in dissolving of the expulsion detention for human rights aspects. Like stated before, even in the case the national Dutch government lacks the (international) legal obligation human rights considerations are outweighed by other factors and/or considerations.

41 Guild E. & Selm J.(Eds.), 2005, pp. 53-62.
§ 2.2.2- The Criminal Theory

The main element of the criminal theory is that the act of irregular migration poses a direct threat to the national security and the society at large. This model is derived from the conception that every act in breach with the criminal law is a crime and for that reason ought to be punished. Furthermore, there is an elaboration of a response to ‘migration-crime-security’ continuum and makes therefore the irregular migrants, the victims of human trafficking as those who benefits from irregular migration criminalized. This criminal theory strongly revolves around formulating the lawfulness or unlawfulness of certain acts and imposing these standards on the society at large. Naturally, uphold and protection of the law and order is another central element in order to protect the national security and public wellbeing. The main type’s legislation and restrictive policy measures which can be placed in this model are concerned around uphold of internal and external control mechanisms, which revolve around three main concepts of: exclusion, surveillance and identification.

Examples of legislation and restrictive policy measures which can be placed within the criminal model are first of all of course the Alien Act itself. In 2001 the Dutch Alien Act came into force stating that a migrant only has a legitimate stay in the Netherlands in case of: the person is in possession of a residence permit; or whilst awaiting the decision on the application (or appeal) for a residence permit. 42 This holds that all other types of stay are illegitimate, and therefore against the law. In addition to the criminalization of the irregular stay a reporting obligation to third parties (or sponsors according to the new modern migration policy), and an obligation to provide any information requested by the authorities has been introduced.43

Previously the Compulsory Identification Act (1994) was introduced, which required initially all employers to be able to identify all of their employees. Afterwards in 2005 this was extended to an obligation for persons, not restricted to merely irregular migrants or aliens, to present their identification documents under certain conditions whilst in public places. At the same time the Marriage of Convenience Act (which came into force in 1994) outlawed marriages which were contracted between couples for the main purpose of receiving a residence permit and therefore a lawful stay in the Netherlands.

The last example of the criminal model is the B-9 regulation which came into force as early as 1988 when a temporarily residence permit was created for victims of human trafficking. The B9 regulation as modified after July 1st 2009 holds that victims of Human Trafficking who cooperate with the police and the public prosecution are (after a reflection period of three months) entitled to a temporarily...

residence permit, which is called B9. In case the trafficker or other members of the organized criminal network is convicted or if the prosecution takes longer than three years (meaning the victims of Human Trafficking are longer in the B9 regulation than three years) the temporality of the residence permit (B9) is converted in an regular and permanent residence permit.  

§ 2.2.3- Justification for in-or exclusion

Due to globalization processes, and partly the international migration movements, various international relation scholars argue the declining power of the distinctive features of a nation state. These distinctive features which are perceived to be affected are the sovereignty of the nation state, the exclusive territoriality, and the notion of citizenship. In general one can argue that the globalized interconnected world caused for a decentralization of the national sovereignty, which legal obligations and duties constrains the national state. To a large extent the term deregulation or denationalization in social science is used for the (possible perceived) declining significance of the state. For the scholar Sassen however, this process is perceived differently and entails a more fundamental transformation in the matter of sovereignty. She explains that (economic) globalization has been accompanied by the creation of new legal regimes and practices and the expansion of some older forms that bypass the national legal systems. Globalization has therefore not meant the absence of regulatory regimes and institutions for the governance of international economic relations. On the contrary, globalization has resulted in the denationalization of the economic space, and at the same time a renationalization of the political discourse in most developed countries revolving around the subject of international migration, integration and citizenship. In other words, the free movements of capital and goods in the (economic) globalized interconnected world, has resulted in the denationalization (or declining power) of the sovereign nation state. However, the circulation and international movements of people (who are either perceived or declared as undesirable), meant also a renationalization of politics in the notion of the importance of sovereign (external) border control. At the same time, as mentioned before, in a liberal democracy the state has always the obligation to respect and to protect of those people living within its jurisdiction. The questions every sovereign nation has to answer are therefore: Who is part (or is perceived as part) of the society and the nation, and therefore are entitled and granted rights plus benefits from the state party? In other words, towards whom have the sovereign state far-reaching responsibilities?

44 Source: Ministry of Justice for both Articles 273f of the Dutch Penal Code. One article is effective before and the other after July 1st 2009. Before 1st of January 2005 the Article was referred as 273a and only included victims of Human Trafficking for sexual exploitation. Therefore, with the adaptation to the Articles 273f (before and after July 1st 2009) other exploitative forms (of labour) were included to the B9 regulation, like servitude, slavery and the removal of human organs. This adaptation in 2005 took place to bring the Dutch Penal Code in line with the Palermo Protocol regarding THB. Both Articles of the Dutch Penal Code are only available in Dutch.
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In order to answer these questions there are two opposing theories embracing different tenants, namely the pluralist ethics of coexistence on the one hand and the communitarianism on the other. I will first provide the most important reasons given by each theory for inclusion (according to the ethics of coexistence) plus subsequently for exclusion (the communitarianism), and provide at the end of this paragraph suitable examples of legislation and/or restrictive policy measures.

The most important scholars of both opposing theories is John Rawls as the pluralist ethics of coexistence who defends two major claims or principles of distributive justice, namely equality and the distribution of wealth is only justified in case they fall to the least privileged of society. Furthermore, he developed a global account of liberties, better known as the ‘The law of people’ (1999). These seven formulated liberties can be shortly summarized as follows: ‘1. People are free and independent, and their freedom and independence are to be respected by other people. 2. Peoples are to observe treaties and undertakings. 3. Peoples are to observe a duty of non-intervention. 4. Peoples have the right of self-defense, but no right to instigate war of reasons other than self-defense. 5. Peoples are to honor human rights. 6. Peoples are to observe certain specified restrictions in the conduct of war. 7. Peoples have the duty to assist other people living under favorable conditions that prevent their having a just or decent political and social regime.’ One must therefore conclude that the theory of the pluralist ethics of coexistence advocates a policy of inclusion and would answer the questions of ‘Who is part (or is perceived as part) of the society and the nation, and therefore is entitled and granted rights plus benefits from the state party?’, with all people living under the states’ jurisdiction in need of assistance.

The opposing communitarianism point of critique is formulated by the scholar Walzer, who believes that the primary ethical responsibility of the state is to maintain order and peace between sovereign states, and therefore not to develop a global account of justice as is propagated by Rawls. The second notion is that he strongly questions the notion of citizenship and community. Walzer, being one of most distinguished communitarian scholar argues in ‘Spheres of Justice’ (1983) that in the distributive justice revolves around closed communities and the (limited) allocation of the membership rights or access to these communities. He formulates his notion of distributive justice for instance as follows: ‘The theory of distributive justice begins...with an account of membership rights. It must vindicate at one and the same time the (limited) rights of closure, without which there

45 The two principles of justice are formulated as follows: ‘a. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of the society.’ Source: Rawls J., 2005, Political Liberalism, pp. 5-6.
46 Baylis J. et al., 2008, p. 200.
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could be no communities at all, and the political inclusiveness of the existing communities. For it is only members somewhere that men and women can hope to share in all the other social goods—security, wealth, honor, office, and power—that all communal life makes possible.  

He furthermore argues that communities have a shared culture, history, customs and practices, and most of all a shared understanding of those social goods. He successively expresses the notion that all individuals can only flourish within communities. This holds that communities are perceived as and assigned the status of the most important good to be protected from influences coming from the outer borders of the closed community. For this reason members of these communities are the ones who are entitled to exclude strangers or to build-in excluding mechanisms or to formulate policies of exclusion. Not only the distributive justice but even the existence of these communities depends therefore on the right to exclude based on the unwillingness to accept strangers or new members. Only in case the stranger accepts and fully incorporates the various specific notions of the shared social goods of the existing community, a possible inclusion could be probable. The communitarian perception therefore is that in order to protect the notion of the sovereign state (which is a larger notion of a community), and the shared understandings of social goods plus the well-being of the citizens of those nation state; an unwillingness to accept aliens and therefore a policy of exclusion is not only justified, but perceived as essential.

Finally, an example of legislation and restrictive policy measures which can be placed within the pluralist ethics of coexistence are the concepts of ‘gedogen’ or the policy of condoning and the discretionary authorization, which is described in paragraph 3.2. Of course, the ultimate example of legislation and restrictive policy measures of the policy of exclusion is the Linkage Act itself, which takes a central place in the Alien Act, and will be discussed in the following Chapter.

As stated before this Chapter concludes with Table A which contains a summary of the various migratory theories explaining international migration. The explanatory variables are given for successively: the push or pull factors; the stage of the international migration movement; the independent variables at the macro-level explaining international migration; the independent variables at the micro-level explaining international migration; the various assumptions or prepositions within the theory; and finally the dependent variable for stopping the international migratory flow.

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### Table A: The various Migratory Theories explaining International Migration

<table>
<thead>
<tr>
<th>Theory</th>
<th>Push or Pull Factors</th>
<th>Migration Initiation</th>
<th>Macro-level</th>
<th>Micro-level</th>
<th>Assumptions</th>
<th>Migration flow Stops in case of</th>
</tr>
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<tbody>
<tr>
<td>Neo-classical</td>
<td>Push</td>
<td>Initiation</td>
<td>Wage differentials; low standard of living; Supply and demand</td>
<td>Rational choice</td>
<td>Perfect markets; atomized individuals; agency</td>
<td>Wage equilibrium has been reached between the developing countries and the developed societies</td>
</tr>
<tr>
<td>NELM</td>
<td>Push</td>
<td>Initiation</td>
<td>Wage differentials; low standard of living; Supply and demand</td>
<td>Risk management in developing countries</td>
<td>Non-perfect markets; interrelated units</td>
<td>Improved standard of living and possibility of risk management in developing countries</td>
</tr>
<tr>
<td>Bifurcated Labour</td>
<td>Pull</td>
<td>Initiation</td>
<td>Intrinsic demand due to structure of industrialized societies</td>
<td>Improve status at home (by labour and remittance)</td>
<td>Fundamental structural problems</td>
<td>Balance between structural demand for entry-level workers and the supply of domestic workers</td>
</tr>
<tr>
<td>Social Capital</td>
<td>Both</td>
<td>Perpetuation</td>
<td>Social capital; private institutions and organizations</td>
<td>Migrant networks</td>
<td>Convertibility social capital; migration as catalyst for change; cumulative causation of migration</td>
<td>Will not stop due to the self perpetuation character and the lower costs of migration (Only if ‘theoretically’ point of saturation in sending countries is reached)</td>
</tr>
</tbody>
</table>
Chapter Three: Towards a Dutch Restrictive Migratory Policy of exclusion, including ‘gedogen’

Of course there are different forms and categories of international migration and therefore also different types or categories of aliens. There are for instance international migration movements stemming from economic motives, family reunification, other forms of regular motives such as study, and naturally the need for requesting the status of a refugee. A Refugee is defined as ‘Any person who is outside any country of such person’s nationality, and who is unable or unwilling to return, and is unable or unwilling to avail himself or herself of the protection or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.’ 48

This concept of refugees and a refugee status was amended on one point and updated by the United Nations Protocol of 1967 to include also persons who has fled war or other violence in their home country. 49 Until the request for a refugee status is pending, the person involved is referred to as an asylum seeker. There is an important exception for granting the status of a refugee, namely article 1F of the Refugee Convention in Dutch Alien policy, stating that there are permissible grounds (or provisions) for denying an alien the status of a refugee. Consequently, this person will also be excluded from the protection allocated to refugees. These provisions will be made in the case there are serious reasons for considering the alien was involved or has committed the following crimes:

- The alien has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments;
- The alien has committed a serious non-political crime outside the country of refugee prior to his/her admission to that country as a refugee;
- The alien has been found guilty of acts contrary the purpose and principles of the United Nations. 50

This holds that there are numerous types plus forms of international migration movements and therefore various categories of migrants to be distinguished. After implementing the Dutch Alien Act (the ‘VW 2000’), and specifically Article 1b, a clear specification between these different categories of aliens is made concerning the regular or lawful and irregular or unlawful residing in the Netherlands.

50 WODC- report ‘Evaluatie van de Koppelingswet’, p. 29.
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Only the formulated and mentioned categories of aliens in the specified Article 1b are residing lawfully. This implies therefore that all other types of migrants or aliens are viewed as irregular and unlawful. This holds that although, according to Article 13 of the Universal Declaration of Human Rights which states among others that everyone has the right to freedom of movement and residence within the borders of each State; the Dutch State only perceives the five formulated categories of aliens as lawful (these specific categories and further explanation are mentioned in paragraph 3.1.1).

Furthermore, the implementation of the Linkage Act resulted in ‘linking’ the right to reside in the Netherlands to the ‘entitlement’ or access to social benefits. The entitlement to social benefits is also withheld from some lawful residing aliens who are pending their application. In general, only the aliens falling under the first category are fully entitled to access for social benefit, whereas the other categories of aliens may in certain situations under certain conditions have access to specified services or facilities.

Naturally formulating the new Alien Act 2000, and the Linkage Act as being an important factor within this national policy of disencouragement and exclusion, took place in several stages and encompasses major adaptations in legislation. In the first part of this Chapter subsequently the legal instrumentation combating irregular migration will be discussed. Furthermore the implementation of the Linkage Act and the various legal consequences will be mentioned. The second part of this Chapter revolves around the concept of condoning or ‘gedogen’ and discretionary powers, since these proved to be central elements in the latest WODC report evaluating the Linkage Act.
§ 3.1 Legal instrumentation combating irregular migration

In general there are 3 kinds of legal instruments combating irregular migration or regulate migration; namely regulation concerning the right to stay in the country such as visa-requirements, border controls, police checks etc. The second type of legal instrument revolves around the labour market and/or the access to the various services of the welfare state. In other words, the inclusion of regular migrants versus the policy of exclusion towards various groups of (ir) regular migrants. Finally, the last type of legal instrument entails certain special facilities offered or privileges making the entry or departure more attractive (for groups of migrants perceived as valuable) or unattractive (for groups of people who are perceived as ‘undesirable’ as part of the Dutch disencouragement policy).

The current restrictive Dutch disencouragement policy of exclusion with respect to irregular migration encompasses furthermore four central elements, namely:

- The tightening and stricter measures to combat irregular labour or employment.
- The intensification of the surveillance by the police and other ‘street level bureaucrats’. A main element in the surveillance is of course first and foremost proper identification of all migrants residing within the national boundaries; lawful or unlawfully. The states aim to identify, trace, and heighten the surveillance provokes in turn a reaction of the irregular migrant. The irregular migrant stays on the one hand out of sight (where possible) and once in the vision of the police, mostly obscures his or her true identity; which was also my observation during my research at the Alien Police. Therefore the identification and surveillance strategies results in the creation of fog or ‘foggy social structures’. 51
- The exclusion of irregular migrants from public services like benefits supplements and provisions; thus the aliens residing unlawfully in the Netherlands and even some categories of aliens who reside lawfully are denied access to social benefits. 52 In the next paragraph I will look deeper in the objectives and reasoning for this policy of exclusion.
- Encouraging and therefore an effectuation of the expulsion of apprehended irregular migrants and/or the (ir) regular migrants who are declared ‘undesirable’.

Naturally one of the most important internal control mechanisms is the implementation of the Linkage Act which revolves around the exclusion of certain groups of (ir) regular migrants, aimed at preventing an illegitimate stay of irregular migrants by withholding the access to various social

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benefits. In this fashion the national restrictive policy’ objective is that (ir) regular migrants should be unable to maintain their livelihoods in the Netherlands. On the other hand the Linkage Act should prevent a semblance of legitimacy which in time could result in a possible semblance of some form of legal status. In other words the prolonged irregular stay could in theory result in a situation where over time a shadow situation is created, where there is still a non-legal status, but the irregular migrants could still claim for (or be granted due to amnesty schemes) some form of legality or ‘quasi-legal’ residence.

Irregularity is therefore a social construction; migrant illegality or unlawful residence and employment is produced as an effect of the law. 53 Further sustention of this construct happens via the implementation and/or enforcement resulting in the culmination of ‘foggy social structures’.

Regarding the various different types of legalities and/or quasi-legal’ residence there is in general a distinction between six types of irregularity to be made, since combating irregularity and the concept of irregularity revolves around the sources of entry, residence and employment. For this reason there are six types of irregularity to be differentiated, since the various sources can either coincide or can occur by each source.

The source of entry, as the source of residence, can be either regular or irregular since these sources are granted or defined by state law. For instance, in order to receive a residence permit, migrants either must have entered legal (via a granted visa application or family-reunification etc.) or the residence application after entrance (regular or irregular) is granted positively. This holds that only the source of employment depends on the ‘granted’ residence permit by the state. Therefore, only a regular residence with a legal (or regular) entry is defined as regular employment. In case the entry is irregular (for instance in case of asylum) there is a possibility that employment can also be defined regular in a later stage, which happens after granting the status of refugee.

The various types of irregularity can be summarized as follows in the figure 1 below:

**Figure 1: Six Types of Irregularity**

<table>
<thead>
<tr>
<th>Entry regular or lawful</th>
<th>Residence regular</th>
<th>Residence irregular</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employment regular</strong></td>
<td>Employment regular</td>
<td>Employment irregular</td>
</tr>
<tr>
<td>Entry irregular or unlawful</td>
<td>Employment irregular</td>
<td>Employment irregular</td>
</tr>
</tbody>
</table>

§ 3.1.1- The implementation of the Linkage Act

The Benefit Entitlement (Resident Status) Act or the Linkage Act came into force in the Netherlands on the 1st of July 1998. This Act ‘links’ or ‘entitles’ various social benefits, provisions, supplements and permits which are granted by the government to the legal or lawful right to reside in the Netherlands. Furthermore, the Act is not a law, but an alteration of 26 laws that govern the collective provisions involved. In the Appendix a table is included encompassing the alterations in the legislation, and specifying the various fields and Ministries who carried through the alterations. For this reason the Dutch Alien Act specified with the introduction of the Article 1b, as mentioned previously, who is a legal or lawfully alien and who is not. The distinction between the various five categories of lawfully residing aliens in the Netherlands encompasses the following: ⁵⁴

1. Aliens who hold a temporary or permanent residence permit, which are based on the Articles 9 and 10 of the Alien Act, including the EU-citizens.

2. Aliens who have a provisional residence permit (the so-called Vvtp-permit) based on the Article 9a of the Alien Act. This permit encompasses aliens who are not entitled to a refugee status, but are however allowed lawful residence because the situation in the country of origin is for the time-being too severe for return or repatriation.

3. Aliens who are waiting or pending the decision concerning the appeal on their application for their residence status. This category entails both aliens who are waiting for a decision on their first application as the aliens who have applied for renewal of their residence permit.

4. Aliens who are allowed to stay based on the Article 8 of the Alien Act, for a period of three months (visa requirements). This encompasses for instance tourist or family members of lawfully residing people in the Netherlands.

5. Aliens whose application has been rejected and for that reason formally should have to leave the country. However, due to (severe) medical reasons of the alien who applied for a residence permit or a relative of the alien are granted permission to reside lawfully in the Netherlands for the time-being. (Based on Article 25 of the Alien Act).

All aliens who cannot be brought under these five categories are therefore automatically declared or perceived as irregular or unlawful residing in the Netherlands by law. There is further a distinction between the various five categories of lawfully residing aliens in the temporality of the residence status and the GBA administration. ⁵⁵ The entitlement to social benefits is also withheld from legally residing aliens who are pending their application. In general, only the aliens falling under the first

⁵⁵ See the Appendix for table II concerning the various five categories lawful residing aliens and the assigned GBA registrations as used by all the municipalities in the Netherlands.
category are fully entitled to access for social benefit, whereas the other categories of aliens may in certain situations under certain conditions have access to specified services or facilities. In order to implement and enforce the Linkage Act the various information systems of the police (the so-called VAS, \textsuperscript{56} and the municipalities’ database (the GBA) had also to be linked and to be granted various codes to all categories of aliens. This proved to be necessary since all the legal residing aliens should be recorder in either the VAS and/or the GBA database. Furthermore, the assigned GBA code encompasses whether or not access to, and specify situations under certain conditions to access to social benefits. Again in the appendix table II is included specifying the distinction between the categories of lawfully residing aliens and the assigned GBA registration.

About the objectives of the Linkage Act as mentioned in its Supplement is twofold. On the one hand the Linkage Act is aimed at preventing illegitimate stay of irregular migrants by withholding various social benefits. In this fashion it is believed that the irregular migrants should be unable to maintain their livelihood in the Netherlands. On the other hand the Linkage Act should prevent a semblance of legitimacy which in time could result in a possible semblance of some form of a legal status. In other words the prolonged irregular stay could in theory result in a situation where over time a shadow situation is created, where there is still a non-legal status, but the irregular migrants could still claim for (or be granted due to amnesty schemes) some form of legality or ‘quasi-legal’ residence.

Finally, according to the pre-evaluation of the Linkage Act (conducted in the year 1999) by the latest WODC report the implementation of the Linkage Act had in its initiation phase some difficulties that arose mostly during its first year. However, no cause had been found for adjustment of the national policy and the legislation in the field or irregular migration. For this reason only practical small adjustment were carried through. The latest evaluation of the Linkage Act was as mentioned before performed by the WODC and carried out in 2001. For both of the reports the dependent variables of legitimacy, effectiveness and efficiency of the Linkage Act had to be evaluated. Naturally, the level of implementation by the municipalities and ‘street level bureaucrats’\textsuperscript{57}, depends on the degree of legitimacy of this national policy. Another factor concerning the implementation revolves around the level of discretionary authorization of municipal officials who first of all should check the status of the alien, and furthermore ‘link’ this status to access and entitlement of social benefits or provide a

\textsuperscript{56} VAS is an abbreviation for the Vreemdeling Administratie Systeem or the Alien Administration Database. GBA is an abbreviation for the ‘Gemeentelijke Basis Administratie’ or The Municipal Personal Records Database.

\textsuperscript{57} ‘Street level bureaucrats’, as defined by the scholar Lipsky (1980), refers to public officials who are assigned competence regarding the actual (national) policy implementation, such as police officers and municipality public officials. For this reason these people are to be seen as part of the policy-making community and as exercisers of political powers. At the same time Lipsky acknowledges that they are empowered to influence the system, he argues: ‘policy is actually made in the crowded offices of street-level bureaucrats’. Source: Lipsky M., 1980, Street-level bureaucracy, Dilemma’s of the Individual in Public Services.
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clear message of exclusion to access and therefore could never be granted social benefits. However, in practice as was shown in the extensive latest report, municipal officials believed that it is not their responsibility of checking the status of aliens. According to the evaluation there was a great level of legitimacy granted by the municipal officials, since they underline the principle of a differentiation between legitimate (or lawful) stay and a declared (by state institutions as the IND) illegitimate (or unlawful) stay. However, as mentioned, in practice exercising this differentiation between groups of aliens proved difficult. Most of the municipal (and other government) officials have objections concerning the social consequences of the Linkage Act. Another objection or given causation for their behavior is what they call ‘the failing expulsion policy by the national government’. They further mention their responsibilities concerning all people (also irregular migrants), and the municipalities’ responsibility concerning the well-being of the inhabitants and uphold of law and order.\textsuperscript{58} In practice, this resulted in the use of the discretionary authority by various officials and the typical Dutch principle of ‘gedogen’ was continued, which will be further described in the final part of this Chapter.

Concerning the effects (and therefore answering the question of efficiency) of the Linkage Act was difficult to answer, since the net results of the Linkage Act are difficult to isolate. In other words the objectives of the Linkage Act, being preventing illegitimate stay of irregular migrants by withholding various social benefits and the prevention of a semblance of legitimacy which in time could result in a possible semblance of some form of legal status, also depends on other variables than only excluding (ir) regular migrants from access to social benefits. The continuation of the illegitimate stay is for instance also ‘linked’ to some degree to the existence and the strength of personal networks of the irregular migrant. Where not the size of the network is the decisive factor but the strength which encompasses the level of commitment between a groups of people.\textsuperscript{59} For this reason, no final statements are made in the WODC report concerning the affectivity of the Linkage Act.\textsuperscript{60} In the past, before the implementation of the Linkage Act, the (formal) exclusion of some groups of irregular migrants also was part of the national migratory policy. These previous policies and developments were naturally important for the becoming and the implementation of the Linkage Act in the current fashion.

\textsuperscript{58} WODC report ‘Evaluatie van de Koppelingswet’, p. 11.
\textsuperscript{59} The presence of and strength of personal networks influences the migrants migratory behavior and the possibility of maintain a livelihood ones arrived at the final destination. Naturally most (ir)regular migrant prefer a final destination with existing strong personal networks. These personal networks are strongest in case of familiarly ties and the, and weakest if one speaks of merely an acquaintance or sharing the same nationality or home town. See for instance: Herman, 2006; Liempt van, 2007; Liempt van & Doomernik, 2006.
\textsuperscript{60} WODC report ‘Evaluatie van de Koppelingswet’, p. 8.
§ 3.1.2- Dutch National Assistance Act (Algemene Bijstandswet)

The National Assistance Act provides a minimum income for people falling under or experiencing inadequate resources to keep up their livelihood. In other words, this Act supplements the income of people under the social minimum level, and furthermore provides people who do not have any income at all with a social-benefit. This Act made from the start in 1965 a clear distinction between Dutch nationals and irregular migrants/aliens. The lawfully residing migrants holding a temporary or permanent residence permit were granted the same right as Dutch nationals, reading access to the Dutch National Act. Only the unlawful residing migrants were therefore excluded from access and entitlement of social benefits. For this reason this Act, providing social benefits and excluding all non-Dutch citizens, can be seen as the predecessor of the Linkage Act.

At the same time, the policy of condoning and the granting of discretion, which will be discussed in the second part of this Chapter, were also initiated during this period. This occurred due to two factors namely: by formulating of a sub article and following jurisprudence. Article 84 of this Act enabled the municipalities to provide assistance and therefore financial help for aliens who are residing unlawful in the Netherlands, stating: ‘An alien, residing in the Netherlands, can be granted assistance in the same fashion as a Dutch national.’

Therefore, in poignant cases (the so-called ‘schijnende gevallen’) or during emergency situations unlawfully residing aliens could be treated the same as Dutch nationals by law, and therefore an enormous level of discretion was granted to public officials. Naturally, the Act and its various (sub)articles did not entail a list or summary of poignant cases. Resulting that in practice the municipalities and the public officers had to define ‘poignant cases and emergency situations’. Even after almost a half century after the initiation of the policy of condoning and the granting of discretion formulating or defining ‘poignant cases and/or emergency situations’ are still a work in progress. During my various interviews at the municipality of Amsterdam I was told that a clear list or minimal standard concerning these terminologies have still not been formulated or used by the public officials. Deciding whether or not an irregular migrants or a certain cases can (or must) be labeled as ‘a poignant cases and emergency situations’, therefore, occurs by the evaluation and interpretation of the public officer. After I requested to provide some examples of cases which are perceived (or granted the label) by public officials as ‘poignant cases and emergency situations’ the following answer was given: ‘An emergency situation is an emergency situation, and everyone can see and agrees upon that it is an emergency situation. The same goes for the poignant cases!’

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61 Since the Dutch National Assistance Act of 1965 is only available in Dutch, I translated this main (sub)article and formulated it in my own words.
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The second factor, being the jurisprudence resulted that the principle of equality should and is granted to all lawfully residing people living under the States jurisdiction. Therefore including lawfully residing migrants, and again excluding the irregular migrants. The same (unchanged) principles under the Linkage Act, with the only exception that only the first category of aliens (as previously mentioned) are included and therefore are granted access to social benefits.

Finally, a further distinction was made between aliens, namely European Union (EU) nationals and non European Union nationals. According to the (European) Convention on Social and Medical Assistance the Dutch government, including other EU member states countries which ratified this convention, were obliged to provide assistance to EU nationals. For the non-EU nationals there was the granted authorization or the competence to provide assistance, as mentioned previously through the sub article 84 and the terminology of ‘poignant cases and emergency situations’.

In sum, this Act is to be seen as the first policy of exclusion, and through its provisions and jurisprudence it laid its foundation for the implementation of Linkage Act in combination or possibility of a practice of ‘gedogen’.

§ 3.2 The power of ‘gedogen’ and discretionary authorization

Discretionary powers are powers granted to executive public officials either under statute or under delegation, which do not impose a duty on the decision-maker to exercise them or to exercise them in a particular way. This discretion is not limited to the granted powers enabling to make substantive choices, but extends to for instance procedures, methods, forms, timing, degree of emphasis by the public official, and many other subsidiary factors. Due to the concept or the policy of ‘gedogen’, which can be best described as a policy of condoning, discrepancies between national policies and alike cases on lower level can occur. Furthermore, problems concerning for instance the level of implementation, the degree or perceived degree of legitimacy, and the need or ability to make use of discretion can evolve. Naturally, both concepts could influence the implementation of (national) policies, and the outcome plus effectiveness of the (national) policy of exclusion. For this reason for both concepts, various types plus functions, and the (dis)advantages are described in this final part of this Chapter. Another reason is that in the extensive WODC report differences between various executive institutions are observed and reported. 62 To my opinion, these differences can be explained by describing and looking deeper at the two previously mentioned concepts. The third and final reason is that in order to answer the question of the political consequences of the Linkage Act for the municipality of Amsterdam and the police-force of Amsterdam-Amstelland a broader understanding of these central concepts are imperative.

§ 3.2.1- Types and functions of ‘gedogen’

The concept of ‘gedogen’ is typical Dutch phenomenon and once described by the Economist as a policy of: ‘looking the other way when you must’. It stands for a policy of condoning some situations, or a group of people. In other words, it means a deviation from the previously formulated and accepted policies, prior set rules, or granting and making use of discretionary authorization in order to condole some cases, situations or a group of people. This means that in practice, the Dutch case has a tradition with a policy of condoning, which over time a differentiation between policies of condoning and various functions has evolved.

Concerning the different types of condoning, there is a distinction made between five types of condoning policy resulting in three functions of the policy of condoning. The different categories of condoning can be summarized as follows: 63

1. An official Top-down policy of condoning, such as the condoning of soft drugs and irregular migration. Previously, before the establishment of the DT&V irregular migrants and migrants who were declared undesirable were hardly ever repatriated. For this reason this type of condoning policy is described as official (since the lack of institutional organization for forced expulsion or repatriation and/or the lack of legislation) and top-down (since it concerns national policy).

2. A non-official Top-down policy of condoning such as uphold of law and order. This policy of condoning occurs for instance due to non-official agreements between parties or simply because there are capacity problems for the enforcement of law and order. This type of condoning policy is non-official (since it is not recorded in legislation or formulated as a policy), again one speaks of top-down practices, since the uphold of law and order occurs by the police under the authorization of the Ministry of Interior and Kingdom Relations and the municipalities.

3. Informal Bottom-up practices of condoning due to: impotence or incapacity caused by for instance lack of knowledge form the public officials or ‘the street-level bureaucrats’.

4. Informal Bottom-up practices of condoning due to: professional considerations.

5. Informal Bottom-up practices of condoning due to: compassion towards the applicant (irregular migrant) requesting social benefits.

Furthermore, the various functions of the policy of condoning can be first of all described as: condoning as the adjustment vehicle between ruling norms and grown practices; the second function

63 Bakker W. & Van Waarden F. (Eds.), 1999, pp. 73-75.
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is condoning as a type of remedy for the intractable problems. In other words the problems that cannot be solved are answered with turning a blind eye for the moment.

The last function of condoning is the policy of condoning as part of a broader disencouragement policy, such as irregular migration where on the one hand the policy of condoning is combined with the restrictive disencouragement policy of exclusion.

While conducting my research regarding the political consequences of the Linkage Act, one of my main conclusions is that after almost a half century of the policy of exclusion (stemming from the implementation of the Dutch National Assistance Act), perfected with the Alien Act) resulted in both a policy of condoning within the policy of expulsion. The policy of condoning can be furthermore described as the vehicle between the ruling norms and grown practice. Furthermore, it is justified and perceived by the public officials of the municipality of Amsterdam as a tool (or remedy) to counter bat the negative aspects of the policy of exclusion. By the other ‘street –level bureaucrats’, namely the Alien police, this is however perceived and judged quite differently. These discrepancies and outcomes of my research are described in subsequently paragraph 5.1 and paragraph 5.2.

Finally, there are of course also consequences or malfunctions caused by the policy of condoning. The first consequence is that the division between legality and illegality (or lawful and unlawful) gets blurred. In other words, a policy of condoning by various institutions and government officials could create overtime a faint differentiation between a lawful status and an irregular stay in the Netherlands. In case a prolonged irregular stay is made possible (partly due to a policy of condoning) a quasi-legal status could be created or claimed by the irregular migrants. This is exactly in accordance with the two main objectives of the Linkage Act - namely preventing illegitimate stay of irregular migrants by withholding various social benefits, and to prevent a semblance of legitimacy which in time could result in a possible semblance of some form of legal status – which therefore only could be successfully implemented and enforced in the absence of a policy of condoning.

The second consequence or malfunction is associated with the prior malfunction, namely a probable decrease in legitimacy of the national policy and/or the judicial system. In case a successful implementation and/or enforcement of policy of whatever kind proves in practice not possible, over time this could result in a possible decrease or perceived decrease of the level of legitimacy.
§ 3.2.2- The power of Discretionary Authorization

Discretionary powers are powers granted to executive public officials either under statute or under delegation, which do not impose a duty on the decision-maker to exercise them or to exercise them in a particular way. This holds that discretionary power or authorization (in short discretion) is permissive and not mandatory. Furthermore, discretion is not limited to the granted powers enabling to make substantive choices, but extends to for instance procedures, methods, forms, timing, degree of emphasis by the public official, and many other subsidiary factors.  

The most central characteristics of discretion are therefore the choices (given to the public official) and the institutional organization or designs within these choices are formulated. The outcomes or a decision of public officials in granting social benefits and security extends in the case where there is a great institutional freedom for public officials, and therefore resulting in automatically a large variety of choices. Naturally, this varies between institutions since their organizational design and formulated policies are different. Furthermore, institutions and organizations are manned and shaped by people. This holds that the applicable or specific cultures, values and norms at the institution can evolve or change in time.

In the literature there are four types of discretion identified, namely: ‘Khadi; Rule-failure discretion; Rule-building discretion; and Rule-compromise discretion’.  

The first type is not a characteristic of western institutions. The public official decides each case individually on the basis of ad hoc decisions involving also legal, ethical and emotional considerations. The second type of discretion, the rule-failure discretion, is build in discretion in anticipation of cases that will be very complex, varied, and hard to guide by set rules. The third type of discretion, the rule-building discretion, occurs when the public official is granted discretion in the belief that they themselves will develop better rules by their experience. The various made choices of public officials will in time become the norm or standard. The last type of discretion, the rule-compromise discretion, occurs where the legislature or other rule-making authorities cannot agree on the appropriate rule or cannot set a norm. Subsequently, the responsibility is in this case forwarded to the public officials with a great degree of freedom to man oeuvre; thus discretion.

Furthermore, the granting of discretion has in general certain advantages and disadvantages. The first mentioned disadvantage in the literature is that discretion makes it easier for public officials or decision-makers to act on the basis of improper considerations (due to the tender organizational design), and therefore encourages mistakes. The second disadvantage revolves around the possibility for the substitution of the public official or decision-makers’ personal standard for the public or legal

65 Hawkins K. (Eds.), 1992, pp. 4-5.
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standard. The final disadvantage is of course that fixed rules (and therefore little or no possibility for the use of discretion) are more likely to assist in attaining the goal of treating like cases alike. For this reason there is first of all intelligibility plus equality and therefore ‘fairness’ between cases who are Alike. On the other hand the advantage of discretion is that rules can contribute to the further legitimacy of a decision or (national) policy. This means that public officials (of the municipality) who are for instance confronted with the irregular migrants may be better equipped than (national) decision-makers to know the interest of both the irregular migrants and the public.  

Excerpts from text:

*66* Elaborating further on the important disadvantage of discretion, namely the ‘fairness’ between alike cases; there are four central elements in the quality of the administrative system such as granting access or entitling social benefits. These elements are promptness; participation in the decision-making process; accountability of the outcomes of the decision; and finally impartiality of the public official.67

Examining therefore the tenants of both concepts, namely the policy of condoning and discretion, ascertain an interesting duality between both concepts. This duality (can) originate by making use or the possibility of making use of discretion, which as mentioned before (could) result in a policy of condoning. However, some scholars argue that granting discretion contributes to further (perceived) degree of legitimacy. Whereas others believes that discretion, and even the possibility of discretion, results in a (perceived) decrease of legitimacy, due to unequal treatment of alike cases in general and specifically the policy of condoning.

The Linkage Act provide on the one hand provide clear set rules concerning accessibility and granting social benefits, as described previously, however the use of discretion by public officials may hinder in some cases the level ‘fairness’ between alike cases. Naturally, the municipalities may experience in some cases difficulties in implementing and upholding the national policy of exclusion. This results in partly conflicting objectives of the national policy of exclusion and the duties of the municipalities as the responsibilities to regard the well-being of the people living under their jurisdiction and the uphold of law and order. Whilst conducting my research I interviewed various public officials of the municipality of Amsterdam, and was told numerous times that all public officials uphold the national policy of exclusion. For this reason no discretion by public officials was used and no help was offered to the groups of irregular migrants who are not entitled to social benefits. However, at the same time, I was told via other (multiple) channels that social benefits and other types of help are provided are given on individual bases by the municipality of Amsterdam. This implies that discretion is used by public officials.

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66 Hawkins K. (Eds.), 1992, pp. 4-5.
Chapter Four: The Consequences of the Benefit Entitlement (Resident Status) Act or the Linkage Act

As stated before regarding the implications of the policy of Exclusion a distinction must be made between the: economical, legal, political and social consequences for both the irregular migrants as for the Dutch State and/or the Dutch society at large. Furthermore, there is a presumption of a (possible) link between irregularity and criminality. For this reason in this Chapter the various consequences with regard to irregularity in general (therefore not necessarily generated by or directly caused by the Linkage Act) are described. The various existing studies, reports and articles of various scholars plus institutions, with respect to the socio-economic fields and the (possible) link between irregularity and criminality, are used for this cause.

I chose to research the political consequences of the Linkage Act, which will be discussed in the next Chapter and onwards, since the latest evaluation report of the Linkage Act of the WODC (which revolved around the legitimacy, effectiveness plus efficiency of the Linkage Act) is leading in my research. After more than a decade of the implementation of and the perfection of the policy of exclusion, a renewed research into the effectiveness and political consequences for the municipality of Amsterdam and the Alien Police of the police force of Amsterdam-Amstelland, is both challenging and scientific relevant. The reason for limiting the scope of my conducted research is furthermore the constraint of time and means.

Conducting an extensive research with respect to the socio-economic fields or analyzing the (possible) link between irregularity and criminality, requires research methods I could (unfortunately) not apply at this stage. Although I was given the opportunity to analyse or consult the various police databases - such as the VAS and PSHV – I chose not to accept this offer, because these data do not provide a valid answer with respect to the independent variables of: legitimacy, effectiveness and efficiency of the Linkage Act which are posed central in my thesis. For this reason the question of ‘political’ consequences regarding the legitimacy, effectiveness plus efficiency of the Linkage Act is extensively covered in the next Chapter, after describing the socio-economic fields and the (possible) link between irregularity and criminality.
§ 4.1- Measuring and defining irregularity in the Netherlands

As stated before irregularity is a social construct and illegality is the product of immigration legislation, defining the (un)lawful status of aliens and furthermore differentiates between various groups of migrants. This status of migrants also reflects on the socio-economic fields, and to some extends to the engagement in criminal activities. At the same time enabling an irregular stay and keeping a livelihood in the Netherlands, also requires the skill of invisibleness with respect to the national supervision or the MTV (Mobile Supervision Aliens). The presence and strength of personal networks can to some extend accompany or enable the irregular stay some. This holds that an active role of the personal networks and keeping a low profile of the irregular migrant are required on the side of the migrant in order to prolong an irregular stay. On the other hand there is the role or attitude of the sovereign state. Merely construing or legally defining irregularity is obviously not sufficient in the counter bat of irregularity and irregular international migration. Until the establishment of the Commission Zeevalking (March 1991), although there were migratory policies as described in the previous Chapters, the Netherlands was marked by either a lack / inability of enforcing these policies, or there was a cleavage (discrepancy) between the formulated policies objectives and the practice of ‘gedogen’. Until then it for instance a ‘quasi-legal’ status was quite easily obtained. The application of and issuing a social security number (the so-called Sofi-number), which enabling regular employment in the labour market, was open (non-exclusive) for irregular migrants. For this reason the Commission Zeevalking was assigned to formulate effective policy aimed at combating irregular migration and the unlawful use of social benefits. Although there were already existing national policies of restrictive and exclusive nature, the analyses plus outcomes of this Commission resulted in a turning-point in the enforcement and the assigned competence of the supervision of aliens; therefore at dissolving the ‘foggy social structures’ and keeping an eye out for preventing new arrivals of irregular migrants. The main policy recommendations made are fully implemented, such as:

- Strengthening of the aliens’ supervision; resulted in the establishment of the MTV.

- Restrictive admission policy, aimed at accepting those who are in danger, and therefore are granted the status of asylum; resulted in the establishment of the IND.

- Pro-active enforcement of migratory policies and the prosecution of the employment of irregular labour; resulted in the establishment and intensification of the Labour Inspectorate Wav-checks.

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- Need of an effective (forced) repatriation scheme for those people who are not entitled to a lawful stay in the Netherlands; resulted in previously the enforcement of the Alien Police of various stages of the preparation and repatriation of the irregular migrants and/or migrants who are perceived and declared as undesirable. On the 24yh of January 2007 the DT&V came into force and these assigned competences were transferred from the Alien Police to the DT&V.

- Need for and the creation of integrated aliens supervision; resulted in the creation of the MTV (Mobile Supervision Aliens).

- The need for a check and creation of a centralized database regarding the lawful stay of aliens requesting social benefits; resulted in the establishment of the GBA database and the requirements of public officials to check legal status.

In this fashion the restrictive migratory policy of exclusion, defining irregularity were created together with the required institutions for the enforcement. As described previously, however, in practice the policy of condoning and the presence of migrants perceived or ‘socially constructed as irregular’ continued their stay in the Netherlands. According to the scholar De Genova it is: ‘...insufficient to examine the illegality of undocumented migration only in terms of its consequences and that it is necessary to provide historically informed accounts of the sociopolitical processes of ‘illegality’ themselves, which can be characterized as the legal production of migrants ‘illegality’.69 Being confidante that I complied with the necessity ‘of providing [sufficient] historically informed accounts’ I turn to the question of measuring the number of irregular migrants estimated to reside in the Netherlands various enormously.

The measurement of the number of irregular migrants is quite disputed among scholars. Some use the apprehension/detention rates or other data stemming from police contacts. However according to some scholars, since there is no valid sample, no comparison or descriptive inference to the total population of irregular migrants is possible. Since the research methods and the validity of the outcomes are disputed amongst scholars I will provide multiple reports estimating the irregular migrants.

In the WODC reports 70 the research method of ‘capture-and recapture’ is used, implying a continuation of the available data. By using this method estimation for the years 1997-2000 is made between the 65,000 and 91,000 irregular migrants residing in the Netherlands. An estimation of the

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previous years by using the same method, however, (for the period April 2005-April 2006) the estimated irregular migrants residing in the Netherlands lied between 74,000 and 184,000. This shows that estimating a group of people who are perceived as undesirable is difficult to capture in exact measurement.

According other studies \(^{71}\) making use of the apprehension rate data stemming from the Alien Police provides an estimation of irregular migrants for the G-4 cities, being the four largest cities of the Netherlands: Amsterdam, Rotterdam, The Hague and Utrecht. The calculation was furthermore based on the previously mentioned capture-recapture research method, which originates in the biological research, and has in a later stage been adapted to the sociological applications and criminological fields. The available police data (apprehension rates) were used by examining 7,000 files regarding irregular migrants who had been apprehended in the year 1995 in the jurisdiction of (in other words in the assigned competence of the Alien Police forces of the regional police of) the G4 context. The outcomes of this research shows that the minimal number of undocumented migrants (therefore irregular) in the four largest cities of the Netherlands is estimated at 40,000. The division between the cities is (estimated) as follows: Amsterdam (estimated 18,000); Rotterdam (estimated 11,000); The Hague (estimated 8,400); and finally Utrecht (estimated 2,600) irregular migrants. These apprehended irregular migrants by the Alien Police were residing for at least one year (or under the jurisdiction of the regional G-4 police forces), and in total would make up for about seven percent of the registered migrant population in the G-4 context. A final note made in this study is that EU-citizens are not included, since they are assumed to be ‘cross-border commuters’, whereas other (irregular) migrants are characterized by permanent features; are aiming for a prolonged stay in the Netherlands. However, the fact that the presence of the EU-citizens without proper documentation, is also to be perceived and treated as an irregular stay, the researchers conclude that the actual numbers of irregular migrants in the G-4 cities of the Netherlands is likely to be much higher and therefore must be estimated probably at more than 40,000.

Obviously this social construction of illegality, especially after being perceptible to some extent for others, has also (legal) consequences for the institutions due to the implementation and concerned with maintaining of law and order. These legal implications are discussed in the next paragraph, and are in comparison to the other consequences directly generated by the Linkage Act.

§ 4.2 - Legal implications of the Linkage Act and the policy of Exclusion

In order to exercise effectively the various sovereign powers of the nation state confronted with the challenges of irregular migration, numerous policies of restrictive nature had been formulated and legislature has been adopted. Concerning the legal implication first of all a clear specification came into force with the introduction of the Article 1b of the Dutch Alien Act. Only the five entailed groups of migrants are granted a legitimate stay by law and are therefore residing lawful in the Netherlands.

The distinction between the various five categories of lawfully residing aliens in the Netherlands encompasses the following: 72

1. Aliens who have a provisional residence permit (the so-called Vvtv-permit) based on the Article 9a of the Alien Act. This permit encompasses aliens who are not entitled to a refugee status, but are however allowed lawful residence because the situation in the country of origin is for the time-being too severe for return or repatriation.

2. Aliens who are waiting or pending the decision concerning the appeal on their application for their residence status. This category entails both aliens who are waiting for a decision on their first application as the aliens who have applied for renewal of their residence permit.

3. Aliens who are allowed to stay based on the Article 8 of the Alien Act, for a period of three months (visa requirements). This encompasses for instance tourist or family members of lawfully residing people in the Netherlands.

4. Aliens whose application has been rejected and for that reason formally should have to leave the country. However, due to (severe) medical reasons of the alien who applied for a residence permit or a relative of the alien are granted permission to reside lawfully in the Netherlands for the time-being. (Based on Article 25 of the Alien Act).

All aliens or groups of migrants who cannot be brought under these five categories are therefore automatically declared by law or perceived as irregular or unlawful residing in the Netherlands.

Secondly, this granted judicial status of legal stay is linked to the access to social benefits. For this reason public officials are (legally) obliged to first of all check the status of the (migrant, and either grant access (only those migrants who are defined under category number 1 mentioned above) or exclude the migrant (all other categories of migrants). 73 This holds that with the implementation of

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73 Legislation concerning for the instance the possibility to register at the municipalities of aliens and migrants was altered. For instance the GBA Article 26 and the following sub articles adopted a list of those people who can register in the database of the municipality. This implies or specifies that all people who are not enlisted or specifically mentioned cannot be registered into the database of the municipalities. Since the various databases
the Linkage Act, municipalities and the DPG (who is in charge with the GBA database) in particular adopted (were enforce to adopt) new legislature. The possibility of registration into the database, as the possibility to access to social benefits, was from now on also linked to the legality of the migrant. Before the implementation of the Linkage Act unlawful residing aliens were in some cases present in the GBA database, since the social security system did not entail many rules or conditions which had to be complied with in relation to aliens or migrants. This implied that with the implementation of the Linkage Act ‘a cleanup’ of the various databases has to exercised, again excluding or removing those who are not defined as legal by law. The implementation of the Linkage Act resulted in an alteration of in total 26 laws of the Alien Law, and the collective provisions. For an exact list concerning these alterations and affected policy areas (Ministries), see appendix Table I, on page 84.

Finally, the third legal implication revolved around the reorganization of the Dutch police force and the transfer of (some) assigned competence of the Alien Police to other institutions. This reorganization of the Dutch police force occurred before the implementation of the Linkage Act, and was completed in 1994. In an attempt to uniform the various tasks of the police (leading therefore for uniform procedures and affective outcomes), the previous so-called various ‘municipal police’ and the ‘state police’ forces merged into one police force consisting of 25 regional police forces which are assigned competence for multiple municipalities. In other words, the regional police force of Amsterdam-Amstelland for instance bears the responsibilities for the municipalities of Amsterdam; Aalsmeer; Amstelveen; Diemen; Uithoorn; and Ouder-Amstel.

The other important legal implication is the transfer of (some) assigned competence to both the institutions IND and the DT&W. The transfer of (some) assigned competences from the Alien Police to the DT&W regarding the repatriation occurred therefore from 2007 and onwards. The transfer of competence towards the other institution, the IND (Immigration and Naturalization Service), which carries responsibility of the admission policy happened in 1994.
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Before the transfer of (some) assigned competence the Alien Police’ responsibilities revolved around the following five formulated goals: 75

1. The apprehension of aliens, who both resides lawful and unlawful, and are engaged in criminal activities;

2. The enforcement of and the uphold of law and order with regard to aliens who break or disturb the law and order;

3. The coordination of various activities revolving the process of and the actual (forced) repatriation of aliens; (This competence is fully transferred to the DT&V)

4. Targeting individuals or groups of people who benefit from illegality or from aliens in general; such as the housing of irregular migrants, human traffickers, the irregular employment (of both regular as irregular migrants);

5. The enforcement of and the uphold of law and order regarding irregular migrants who came into contact with the police via research methods or checks on ground of other legislation than the Alien Act. Meaning another or a complementary breach than barely an irregular stay in the Netherlands.

After these gradual transfer of assigned competences and with the implementation of the Linkage Act the Alien Police of the regional police forces are currently assigned with the uphold of law and order, surveillance plus identification of aliens and combating migratory linked criminality. The transfer of competences and the various political consequences of the Linkage Act for the Alien Police are elaborately described in paragraph 5.1

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§ 4.3 – The Socio-economic Consequences of irregularity

The socio-economic incorporation and consequences of irregular migration can be divided into for instance the fields of housing (or accommodation), labour, education, health-care, security and criminality. In this paragraph I will barely mention the fields of housing and labour, since (compulsory) education and access to health-care is under constraints provided into the restrictive policy of exclusion. This is done via the exemptions made in the Alien Act (and through jurisprudence) in case of severe medical reasons and for children in the category of compulsory education. The latter revolves around article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (EVRM) and article 13 of the International Convenant on Economic, Social and Cultural Rights (Internationale Verdrag inzake Economische, Sociale en Culturele Rechten) it is not possible to withstand education from youth who fall to the compulsory education. Another aspect is that children who are unlawfully in the Netherlands also fall to the Dutch Compulsory education law of 1966. Furthermore, according to article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (EVRM) and the various jurisprudence irregular migrants always must have the opportunity or the access to legal representation or legal aid in case the migrants lacks the means. Although, (not formulated in a treaty or law) the Dutch government feels responsible for all people falling under her jurisprudence. This holds in short that in case of a life threatening situation or acute situation medical help will always be offered to the person involved (therefore also with respect to irregular migrants).

Obtaining an income and providing in ones livelihood can naturally occurs either from help form social structures as strong personal networks; employment and activities on the labour market; or other types of income strategies such as engagement in the criminal sector or activities. This latter and the (possible) link between irregularity and criminality will be described in the next paragraph.

As specified by the scholar Leerkes essential elements of the spatial pattern of irregular migration are threefold, being: 76

1. the embedding in (transnational) social networks;

2. labour opportunities;

3. The presence of cheap and accessible accommodation.

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As perceived as essential elements for the incorporation of irregular migrants, and already having discussed the first element of the need and presence of social networks, in this paragraph the labour opportunities and housing (being in general cheap and accessible accommodation) will be discussed.

The labour opportunities and gaining a ‘quasi-legal’ status was after the establishment of the Commission Zeevalking and the various policy changes dramatically changed. Previously, the access to the labour market and access to the Dutch social security system was simpler. Due to the lack of extensive regulation in relation to particularly aliens, implied that although aliens were excluded from unemployment benefit they were entitled to or had access to sickness or disability benefit. The possibility of attaining a social security number (until 1991) was possible, since granting these Sofi-numbers occurred without checks of lawful residence of the applicants. In this fashion irregular stay in the Netherlands could be combined with ‘quasi-legal’ forms of employment.

As mentioned, after Commission Zeevalking the Alien Police were assigned the competence and the requirement of checking all new applicants for a social security number on the presence of a lawful residence permit. This assigned competence was again with the reorganization of the Dutch police forces transferred to other institutions and ‘street level bureaucrats’. In short, irregular labour was after 1991 criminalized, rigorously enforced through Wav checks and police raids with a focus on penalizing perpetuators. Naturally, all these efforts (also partly due to the intrinsic nature of modern societies, and therefore the ‘pull-factors’ as explained in paragraph 2.1) did not result in the dissolving or eradication of irregular forms of employment.

The exact consequences of irregular employment are again quite difficult to measure, because on the one hand there is the loss of tax return of the Dutch state. On the other hand, however, the economy or some parts of the economic seems to flourish or generate extra revenues from the employment of irregular migrants. In general most studies point to the relevant factor of again the presence and strength of social networks. For instance the irregular migrants who are incorporated by or have the

77 The Dutch social security system makes a distinction between employed persons insurance schemes, the national insurances, and the national assistance (as discussed in paragraph 3.1.2). The employed people’s insurance scheme covers the financial consequences of job-related in general risks such as unemployment; disability and sickness. Furthermore, the employed persons provide the benefits to those entitled to the insurance scheme; this happened irrespective of their nationality. Therefore under the Dutch National Assistance Act aliens were excluded from receiving benefits, but with regard of covering the financial consequences of job-related in general risks they were entitled to sickness or disability benefit. A note must be made that, although being insured and having a social security number, in practice it proved to be quite difficult to have access or granted social benefits. Various causes are given for this phenomenon such as the risks of being expelled and the concept of citizenship was linked of having a valid (lawful) residence permit.

support of strong social networks, such as Turks and Chinese irregular migrants, proved to be the most active on the labour market. Those groups of irregular migrants with weaker societal ties or personal networks, such as Moroccan and particularly irregular migrants originating from Somalia are shown in the WODC reports to be placed outside the irregular labour market.

Another (possible) consequence regarding irregular labour is the risk of suppression of the regular migrants (and Dutch nationals) out of various sectors or jobs. However, studies and reports mention that there is no evidence found underscoring this claim. Contrary, the possibility of suppression (of the regular migrants and the Dutch nationals) is questioned since the regular migrants and Dutch nationals active on the labour market in most cases will not be willing to fill out the vacancies of the irregular migrants. In other words, the irregular migrants are in general forced to work under appalling conditions and are in most cases actually employed in those sectors of the economy or jobs that (most) regular migrants and Dutch nationals are unwilling to execute.

The other essential element for the incorporation of irregular migrants is housing or the presence of cheap and accessible accommodation. The various studies show that there is a long interdependent relationship between regular migrants and irregular migrants stemming from the same ethnic communities. The regular migrants are envisaged to rent out or accommodate irregular migrants who are members of their own ethnic communities and/or part of their personal network. This can imply an extra source of income for those migrants renting out the accommodation, who possibly were themselves at some point construed as an irregular migrant or a ‘quasi-irregular’ migrant.

Due to government regulations keeping the rents of the social sector deliberatively low, a link between the formal and informal housing markets can evolves overtime. This link occurs in cases of regular migrants entitled to the social housing sector rent out those assigned accommodations to the irregular migrants. Regarding the measurement of irregular accommodation in the G 4 context, there is an estimation of 40 percent for the years 1997-2003. Furthermore, this irregular accommodation was mostly encountered in the weak socio-economic areas (the so-called ‘pracht – en krachtwijken’); and in the diverse shelter accommodation offered for homeless people or asylum seekers.
§ 4.4 – The (possible) link between irregularity and criminality

Research to the (possible) between irregularity and criminality distinguishes is differentiated in the (possible) link of asylum and criminality; and irregular migration and criminality. Concerning the link between asylum and criminality, there are in the various studies made five theoretical presumptions. The first stems from the legal status and the likeliness of engaging in criminal activities. The presumption made here is that asylum seekers holding a strong legal position are less likely to be engaged in criminal activities. There are three categories of asylum seekers to be differentiated form the strongest to the weakest legal status these are: migrants of whom asylum request has been granted the status of refugee; asylum seekers who are pending their asylum request and are for the duration of their application considered to be legal/lawful; those migrants whom asylum request has been rejected and are not entitled to a lawful stay in the Netherlands. The second presumption is a direct result from the first, namely that the legal status define the type of criminal offence (once engaged in criminal activities). The assumption made is that the legal also defines the degree of social freedom of movement. The third presumption revolves around the significant variation of engaged criminal activities between ethnic lines. This variation can be explained through the level or strength of personal networks, the opportunities of various ethnic communities for cultivating and incorporating in informal economies. The fourth presumption is again a direct result from the prior presumption, stating that criminality of certain asylum seekers (or migrants) is related to criminal patters of migrants sharing the same ethnic inheritance. The size, the types of engaged criminal activities, and the level of engagement between regular migrants residing lawful in the Netherlands and asylum seekers belonging to the same ethnic community seem to correspond. The last presumption is that there is no connection between the legal status of a migrant and the type of engaged criminal activities. The provided explanation for this line of reasoning is that certain migrant groups (or asylum seekers) were already involved in criminal activities in the country of origin, or a third country.

The various studies, using different research methods, seem to agree on the fact that the level of engagement in criminal activities seem to be significantly higher of asylum seekers who are not entitles a legal stay in the Netherlands than those migrants (asylum seekers) pending their request. Once comparing the group of migrants having the strongest legal position, being a granted or permanent residence permit, they seem to be less engaged in criminal activities in comparison the other two categories of asylum seekers. For this reason there is a common understanding that the legal status of a migrant (or asylum seeker) is related to the likeliness of engaging in criminal activities.
Chapter Five: The policy of Exclusion on the municipality of Amsterdam and the Alien police

As mentioned previously this Chapter revolves around the outcomes of my research, being the political consequences of the Linkage Act on the municipality on Amsterdam and the police force of Amsterdam-Amstelland. The empirical research for these political consequences of the policy of exclusion has been gathered through the conduct of qualitative in-depth interviews with people who are confronted with irregular migrants who are considered or are already declared undesirable in the Netherlands. The interviews were predetermined and (where possible) standardized in order to avoid bias. Furthermore, the aim of these conducted interviews were to gather as much 'on the ground' information as possible from those who take part in the (ir)regular migratory chain and therefore who are the most confronted with the people who are perceived or declared ‘undesirable’.

For this reason in order to answer the political consequences of the policy of exclusion I had the privilege to interview valued representatives from the Ministry of Justice, The Repatriation & Departure Service (DT&V), the Municipality of Amsterdam and the Department of Personal and Geographical Records (Dienst Persoons- en Geo-informatie). Finally, I had the opportunity to conduct a one-week research at the Alien Police force of Amsterdam-Amstelland and witness the various consequences of the policy of exclusion. Furthermore, during this week I joined an inspection of various restaurants, corporations and other previously specified public places with a combined action of the Labour Inspectorate and the police force. During this inspection the presence of a lawful working permit were checked on basis of the Aliens Employment Act (Wet Arbeid Vreemdelingen, Wav); which provides the admission of foreign nationals to the Dutch Labour market.

The standardized (where possible) and predetermined questionnaire included at least the following:

- Words of thanks for their cooperation and the opportunity to conduct interviews
- Introduction of this master research in goal, aim and presentation of the research question
- The various (main) outcomes of the latest WODC report regarding the legitimacy; efficiency and effectiveness of the Linkage Act were discussed. Focusing on the given causation for some resistance among government officials for the implementation and enforcement of the Linkage Act (read level of implementation and degree of legitimacy), which lies in what they call or perceive as being the ‘failure of the repatriation policy’.
- After this introduction question were asked concerning their (individual and institutional) discretionary power and the possibility plus likeliness of exercising the previous mentioned.
- What are the factors for exercising or making use of their discretionary powers?
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- What are the outcomes after the implementation of the Linkage Act and their contacts or experiences concerning illegality in or the irregular migration to the Netherlands?
- The question regarding the cases of underage adolescent plus children were specifically isolated in order to analyse whether there is a distinction in approach towards underage adolescent plus children or the likeliness of exercising discretionary powers in these specific cases.
- Are there specific criteria or a specified list for ‘poignant cases’?
- How do they explain irregular migration, in other words how can the aim of national policy being the disencouragement of irregular migration is intensified and does this entangle a policy of exclusion?
- If so, how do they explain government failure at combating irregular migration. During my research I found that there are discrepancies of given explanations concerning this (perceived) government failure?
- The factors of success and/ or failure of government policy as stated by the scholar Hoogerwerf are presented. There are according to this scholar four independent variables for the measurement for the success level for government policy, namely capacity (in the broader meaning for instance manpower and technical); information; purposefulness; and finally power of both the enforcement and making adaptations in the current policy. In other words curving, bending the policy or executing discretionary power. The question was to discuss all four independent variables for the street-level bureaucrats plus public official at individual level and institutional situation.
- Finally, the question was asked how they perceive the Dutch migratory policy and which policy recommendations should be given to the new cabinet, and what adaptations in current policy should be made?

The expectations or possible outcomes before conducting research were formulated as follows:

A. There is a situation of full legitimacy regarding the policy of exclusion. This holds that the implementation of the national policies is fully enforced and therefore no additional or other policies at for instance the municipality level are believed to be necessary. In this case there are no discretionary powers exercised by government officials in the chain of migration, since there is either no possibility or a desire for exercising these powers. Hence the concept of legitimacy regarding the national policy of exclusion is applicable for this outcome. Of course even in the case of implementing the national migratory policy of exclusion (read the Linkage Act) this could result in either success or failure of government policy for various reasons. For this reason the first possible
outcome is a full implementation of the national migratory policy of exclusion (read the Linkage Act) and this is or believed to be successful.

B. There is the implementation of the Linkage Act; however this national policy is not successful, or perceived by government officials as unsuccessful.

C. The Linkage Act is not or only partly implemented and therefore the policy of exclusion is automatically not successful.

For this reason the central independent variables or main concept in this research were:

- The level of implementation of the Linkage Act (as a measurement for the degree of legitimacy of national policy).
- The actual or perceived effectiveness and efficiency of the policy of exclusion.
- The need (and causes) for the use of discretionary power (again as either a measurement of the degree of legitimacy of national policy or various causations, such as personal conviction or other considerations).
- The political outcomes and consequences of the national policy of exclusion.

§ 5.1.1 - The Alien Police confronted with irregular migration

The reorganization of the Dutch police forces and the various transfers of assigned competences radically changed for instance the means, capacity of diverse police departments, and the legal framework of the alien supervision at the same time. Under the previous Alien Act 1965 the Dutch police was assigned the competence to apprehend an alien and request for identification in case the police officer was dealing with an alien or in case there was a ‘suspicion of an alien’. Under the Alien Act 1965 aliens were obliged to: a. carry proper identification papers stating their (legal) status; b. show whenever asked to the assigned authorities, such as the police. This was called the ‘draag en toonplcht’ or ‘the carrying and demonstrating duty’ of aliens in the Netherlands. This assigned competence and legislation could, in theory, give cause to apprehension and conducting further research of individuals (who are perceived or in case there is a suspicion of an alien) based on discriminatory grounds such as ethnic profiling. In practice these assigned competences resulted for this reason into two opposing reactions. One the one hand there were (at some police forces) in some cases signals of the existence of ethnic profiling and therefore the conduct of the supervision of

79 The capacity of the Alien Police improved radically, which resulted in almost a duplication of the (national) available capacity. The executive Alien Police officers grew from 700 fte to 1,360 fte.
80 Under Article 19 (1) of the Alien Act 1965 the police in general, so not specifically barely the Alien Police, was assigned the competence to request an (supposedly perceived) alien in case there was a ‘suspicion of an alien’ (the so-called ‘vermoedelijke vreemdeling’). Source: VW2000 en het wettelijk kader voor het vreemdelingstoezicht, p. 123.
aliens based on discriminatory grounds. On the other hand, aliens’ supervision was hindered as a result of this assigned competence and legal framework. In order of preventing or raising the suspicion of conducting alien supervision on discriminatory grounds, various police officers refrained from exercising their granted assigned competence. For this reason refrained from asking identification to people them ‘know to be or have a suspicion of being an alien’.

As mentioned previously a major reorganization of the national police occurred and was completed in 1994. At the same time various assigned competences of the (newly) created regional police forces changed as well; other assigned competences were transferred to mostly the institutions of the IND and the DT&V. For instance before the implementation of the Linkage Act (in 1998) the centre of gravity of Alien Police departments of the various police forces regarding their assigned competences revolved around the admission policy, and lied less in the fields of the uphold of law and order (regarding irregular or declared undesirable migrants) plus the supervision of aliens. Subsequently, the admission policy was transferred to the IND, and the objective with regard of the repatriation of irregular migrants who are perceived as and/or are declared as undesirable was transferred to the DT&V.

Another aspect is the changed legislation with regard to the supervision of aliens; the Compulsory Identification Act (WID, Wet op de Identificatieplicht) came into force at the same time these reorganizations of the police forces were completed. Under this Act every resident (therefore aliens and Dutch nationals) form the age of twelve are obliged to carry proper identification in specific circumstances such as the workplace, whilst performing financial transactions etc. This previously ‘carrying and demonstrating duty’ which was limited to aliens was by the Compulsory Identification Act extended to all legal residents in the Netherlands.

Employers were furthermore obliged to keep a record with regard of the legal identification documentation of their employees. The (Alien) police and other street-level bureaucrats were limited in the sense of preventing possible discriminatory apprehension or the supervision of aliens exercised through discriminatory grounds. Naturally, the possibility of demanding proper identification documentation by the police remained, but was complemented with the legal phrase of ‘reasonable doubt of irregular stay’. In other words, the police officers were not anymore competent of carrying through random checks regarding aliens or people who are perceived as aliens. This ‘suspicion of alien’ has to be complemented with the dependant variables of ‘reasonable doubt of irregular stay’.

In this sense criteria or circumstances which could suggest or lay a foundation for an ‘objective and therefore unbiased reasonable suspicion’ of irregular stay had to be formulated and applied.
Some used concepts or criteria, which are (still) applied by the Alien Police of Amsterdam-Amstelland, are for instance:

- Information gathered from national institutions and databases such as the GBA database; The Labour Inspectorate; and other national institutions such as the internal revenue service;
- Information or indications obtained from either own research performed;
- Or the information obtained from performed checks during the exercise of other duties such as the uphold of law and order;
- Information obtained from a check (or raid) of a housing accommodation or company where irregular migrants were previously encountered and/or apprehended. Usually, these addresses and/or persons are placed and remain for some time under heavy or tightened supervision by the police.

These changes in legislation and transfer of assigned competence changed the nature of and the rules with regard of the supervision of aliens. What remained unchanged, however, is the non-criminalization of irregular residence or stay in the Netherlands. Under both the Alien Act 1965 as the Alien Act 2000 irregular residence is not a criminal offence. For this reason the Alien Police is not competent to pro-actively detect aliens (or as some public officials of the municipality of Amsterdam phrase it: hunt at irregular migrants) residing irregular or unlawful in the Netherlands.

For this reason in practice the Alien Police makes a distinction of irregular migrants who are simply irregular migrants; who are granted the label of ‘bold irregular migrant or ‘kale illegaal’ - implying no offences or crimes committed by this persons, since the mere irregular stay is no crime and treated as a misdemeanor - and irregular migrants who have sticking crimes and/or offences. This differentiation results in that a ‘bold irregular migrant’ in most cases is registered in the VAS database and interrogated; therefore his or her statement and personalia are recorded for the next (possible) encounter. At the same time these obtained information are compared (and shared) in the database of PSHV and Havank. Naturally this obtained information is in compliance with the

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81 The supervision of aliens had to be aimed at the counter bat of irregular stay, with a minimum of hinder of third parties. Source: VW2000 en het wettelijk kader voor het vreemdelingentoezicht, p. 127.
82 VAS is since 1995 operational and is a computerized system for the registration of foreigners. This system enables the co-ordination between the regional police forces, and furthermore the comparison of policy outcomes and facilitates effective alien supervision. Furthermore, there are complementary databases as the PSHV and the Havank. The latter is again a national database, located in Zoetermeer, and used to compare the fingerprints results, in order to obtain information of (possible) previous encounters with the police. The PSHV is divided into a HV and BVV section. HV stands for ‘Handhaving Vreemdeling’ and obtain information of criminal aliens plus aliens in breach with the law and order. Finally, the BVV stands for ‘Basisvoorziening
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previously described ...information and circumstances which could suggest or lay a foundation for an ‘objective and therefore unbiased reasonable suspicion’ of irregular stay.

However, after finishing this process of obtaining, gathering, linking, and sharing information (which is called ‘the car-wash’ by police jargon), a decision is made by the duty police officer (or called the ‘chef van dienst’) with respect to following actions; a detention of the (ir) regular migrant and therefore a transfer of the relating migrant to either the DJI or the DT&V or sending the alien back on the street. The course of action is furthermore a result of circumstantial outcomes; for instance the daily capacity, prior formulated policy goals and of course the discretionary authorization of the street-level bureaucrats.

§ 5.1.2 - The Alien Police and the concepts of discretion plus ‘gedogen’

Bureaucracies are generally associated with strict hierarchies; the police are no exception, but at the same time police officers have a high degree of discretionary authorization in the sense that they decide to either initiate and conduct research or choose not to. In other words they decide whether or not to use the various assigned competences. To some extent as described previously, these (adaptations in) assigned competences were aimed at capturing uniformity of action between regional police forces based on discriminatory grounds. However, how well formulated policy goals and definitions of for instance - information and circumstances which could suggest or lay a foundation for an ‘objective and therefore unbiased reasonable suspicion’ of irregular stay – may be at the end the individual police officer confronted with an irregular migrant or alien takes a decision which inevitably have far-reaching consequences for the alien.

With regard to the subject of the use of discretion and the concept of the policy of condoning I found during my research some reluctance towards the concept of the policy of condoning. In general the explanatory variable for the (perceived) degree of legitimacy; efficiency and effectiveness of the Linkage Act is the policy of condoning by third parties. In other words, after discussing the main outcomes of the extensive WODC report, revolving around the variables of legitimacy; efficiency and effectiveness of the Linkage, most police officers explained that the (perceived possible) failure at combating irregular migration and stay in the Netherlands is caused and perpetuated by the policy of condoning.

Vreemdeling’ and contains information used for legal ends. This means that aliens requesting a residence permit or make a visa application (which are perceived as legal ends) are registered in the BVV.

83 The DJI stands for the ‘Dienst Justitiële Inrichtingen’ and are assigned the competence of exercising the legal detention of people who are through jurisprudence sanctioned to an imprisonment. DT&V is assigned the competence of the preparation and (forced) repatriation of migrants who either are perceived as and/or are declared as undesirable; see extensive information concerning this institution paragraph 5.4.
Most police officers explicitly mentioned that they perceive irregular migrants not as criminals, since irregular stay is not criminalized in the Netherlands. Still, according to most police officers, irregular stay and irregular migrants perceived as and/or declared as undesirable should at the end be terminated and therefore be repatriated. This should occur initially by own account, since the responsibility of repatriation lies at the irregular migrant.

Furthermore, the cases of underage adolescent plus children are usually treated in most cases in a creative fashion. There is no formulated policy of such kind, but in most cases I was told that in most cases they apprehend one of the parents and supervise the other family members. This implicates that the possibilities of supervision is still possible, but the apprehension and detention of underage adolescent plus children is unnecessary. There are also no previously formulated or enlisted criteria with regard to poignant cases (schrijnende gevallen), and all decision with regard to aliens and irregular migrants are therefore taken by individual decision.

In general, I must conclude that the police officers usually comply or fully act by law; since they are (and they perceive themselves as) the officials to uphold law and order. This holds that even in the case of assigned (or authorized) discretion, the police officers I spoke during my research are (mostly) reluctant in exercising these granted discretion. For this reason a policy of condoning is perceived by the police officers as an explanatory variable for the (perceived) degree of legitimacy; efficiency and effectiveness of the Linkage Act. Although irregular stay is not criminalized the irregular status and/or the declaration of undesirable should therefore be linked to appropriate action; meaning enforcement of the law (holding repatriation) or changing the restrictive migratory policy. The need for harmonization of legislation in European context was furthermore numerous mentioned.

A final note is that whilst conducting research to the political consequences of the Linkage Act I mostly encountered the various difficulties of the police officers in conducting their work of supervision aliens; and the actual (forced) repatriation of irregular migrants perceived and/or decaled as undesirable. In the first case there is the difficulty of finding the true identity of a person; for instance during various interrogations of apprehended aliens false names and even names of heroes plus cartoon characters were given. The second case, of faced difficulties relating to the (forced) repatriation, revolves around the interdependence of the DT&V towards foreign authorities. In order of obtaining a laisser passer documents, the cooperation of the home country’s embassy (or a safe third country) of the irregular migrants is required. I was told that in most cases (of no cooperation) the authorities of home countries are reluctant or unwilling to accept their own nationals or citizens.
§ 5.2 - Irregular migrants and the municipality of Amsterdam

Comparing my findings and conducting research at both the Alien Police of Amsterdam-Amstelland and the municipality of Amsterdam proved to be very interesting, since I found a discrepancy not only in the concept of ‘gedogen’, but also in the actual use of discretion. During various interviews with public officials of the municipality of Amsterdam I was told that the Linkage Act was implemented and totally enforced. For this reason even in the case of the granted possibility of discretion, only the poignant cases and irregular migrants with severe medical life-threatening conditions were condoned or granted social benefits and/or accommodation.64 However, from multiple sources I was told that some irregular migrants are helped on a structural basis and are granted social benefits. Unfortunately, after I was made aware of the existence of those various cases, I had no opportunity to get in contact with (due to the absence of names etc.) irregular migrants who are granted or receive social benefits. For this reason I have indirect knowledge of the existence of (in some cases) granted social benefits to irregular migrants.

Furthermore, during my interviews with public officials of the municipality of Amsterdam a different explanatory variable for the (perceived) degree of legitimacy; efficiency and effectiveness of the Linkage Act was given together with a line of reasoning for the inevitable need of granting some people access to social benefits and other forms of (occasional) help. Whilst the public officials of the municipality of Amsterdam claimed that the structural access to and granting social benefits or structural help of different kind to irregular migrants are denied. This holds that the explanatory variable, and the policy of condoning, is for this reason perceived and formulated quite differently than their fellow street –level bureaucrats, namely the Alien Police officers.

These differences in perception, which consequently influences the behaviour of public officials, stems partly from friction between national law and the perceived responsibilities of the government officials regarding the irregular migrants. The public officials of the municipality stresses that they are dependent on the central and provisional government, in particular since a large part of the municipalities finance (about eighty percent) comes directly from The Hague, the Municipalities Fund. At the same time, in recent years the national government has delegated more duties and responsibilities to the municipalities, retaining the right of supervision. For this reason, the national government can annul or suspend decisions by a municipality in case it is considered in breach with law or against the interest of the public. Therefore, the implementation of the Linkage Act, being national legislation, has been realized and the GBA databases have been ‘cleaned’ at the time of

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64 A further condition of the national policy of exclusion is that the granted or given help (such as social benefits, accommodation, health-care etc) should consist a structural nature, implying that only acute conditions or cases should obtain help on ad-hoc basis.
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implementation. At the DPG (Department of Personal and Geographical Records), where all people irregular of their nationality have to register in order to become of a legal resident falling under the jurisdiction of both the municipality of Amsterdam and therefore indirectly of the regional police force of Amsterdam-Amstelland, the various public officials explained how the registration occurs; which documents ought to be checked; the various equipment they have at their disposal for checking the authenticity of the identity documents; the linked or shared database with other institutions within the chain of migration; the various implications of a registration etc. All underlining that the DPG and the other departments of the municipalities of Amsterdam have fully implemented and are enforcing the Linkage Act. Therefore no discretion at the DPG is granted or assigned, since there are strict guidelines for registering and for denying or prohibiting lawful registration.

The next step in my research was to interview public officials who actually decide to grant or deny social benefit applications with respect of irregular migrants or aliens. After studying the official website of the municipality of Amsterdam, and in particular their administrative section or department, I searched for policy documents, reports, council meetings etc. with respect to or by search of: irregular migration; Linkage Act; policy of exclusion; failed asylum seekers; consequences of the Linkage Act. The various documents and reports mentioned in the bibliography issued by the municipality of Amsterdam are the result of this desk research.

Furthermore, I found that there is a workgroup established with the objectives to: document the national legislative changes or restrictive migratory policy; analyses the consequences of the policy of exclusion; administer the annual budget of approximately 500,000 euro provided to the working group to counter bat these negative consequences; formulate future policy with regard to the exclusion policy and the Linkage Act. This workgroup is therefore called: ‘Werkgroep Niet-rechthebbende Vreemdelingen’. Since the names of these officials were not mentioned in the issued reports, and or other identification tools were missing the localization occurred again indirectly. In the end I had the opportunity to interview public officials of the DPG, ‘Werkgroep Niet-rechthebbende Vreemdelingen’, and shelter providing ad hoc accommodation (where no status is asked; and therefore no policy of exclusion is exercised).

After completed the interviews the following explanatory variable for the (perceived) degree of legitimacy; efficiency plus effectiveness of the Linkage Act, and line of reasoning for the need of granting people access to social benefits or other forms of helps was given.
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The explanatory variable for the (perceived) degree of legitimacy; efficiency and effectiveness of the Linkage Act stems, according to the public officials of the municipality of Amsterdam I spoke, of the ‘ineffective or failed repatriation policy and the enforcement of the police’. This is exactly the opposite explanatory variable seen from the perspective of the Alien Police and the DT&V. Those institutions perceives the policy of condoning by third parties as (possible) failure for national restrictive migratory policy. Furthermore, there is a (some) mistrust/ or a reluctance to cooperate on a full scale between the public officials of Amsterdam towards the street-level bureaucrats assigned the competence of supervision and enforcement [the Alien Police and the DT&V].

This mistrust was expressed by the Alien Police officers as: ‘They [referring to public officials of the municipality of Amsterdam] only report or seek our help in case the municipality wants to get rid of the person in question. They see it as, you want to get rid of, need to deport, call the police’.

On the other side (from the public officials of the municipality of Amsterdam) there were complaints about the police force holding in their perception raids or are actively ‘chasing’ after irregular migrants and ineffective supervision or exercising assigned competences. Examples were given of a police intervention in Amsterdam Zuid - Oost, which gave cause in their opinion to extra negative consequences of the implementation of the Linkage Act. Officials of the police force of Amsterdam-Amstelland stressed numerous times, after this incident, that the aim of this specific police action was the apprehension of a criminal gang, which naturally occurred in accordance with the public prosecution. Furthermore, the public officials of the municipality of Amsterdam I spoke told me that the Linkage Act and the policy of exclusion is not necessarily a false one, but should be complemented with effective enforcement [such as supervision and repatriation]. Until the irregular migrants are not repatriated, the public officials of the municipality of Amsterdam feel the duty to have to regard the welfare of all of their residents (lawful or unlawful).

For this reason the use of discretion is to my opinion exercised, although I could verify this only indirectly. Due to the lack of a clear formulated definition or list of poignant cases (which I was told is still in progress) and the belief that ‘(some) people on your doorstep needed to be helped’. I was assured that even after completion of the poignant cases criteria; this would be not published or distributed, because of the fear that some irregular migrants or others could confer legal rights.

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85 Actively ‘chasing’ after irregular migrants (as formulated by the public official) is against the signed (on October 10th of 2008) agreement ‘Convenant Politie Vreemdelingentaak 2009-2011’ between the ‘Raad van Hoofdcommissarissen’ and the Minister of Justice. Stating that the focus of combating irregularity, and irregular stay, should be exercised through the focus on criminal (ir) regular migrants; (ir) regular migrants breaching the law and order; and failed asylum seekers who are not entitled a legitimate stay in the Netherlands.
§ 5.3 - Expulsion in Practice & Figures

The final component of the used methodology in answering the effectiveness of the Linkage Act, is analyzing the data of the repatriation of irregular migrants. The reason of analyzing these figures is that one of the main conclusion or given causation in the latest WODC report for the resistance amongst government officials for the implementation and enforcement of the Linkage Act lies in what they call the ‘failure of the repatriation policy’. Another reason is that in the extensive evaluation of the WODC report the conclusion is drawn that the actual measurement of exclusion (and therefore effectiveness) proved to be very difficult. For this reason I chose in answering the ‘effectiveness of the Linkage Act’ by the actual figures of repatriation of people who are perceived as or are declared ‘undesirable’. Furthermore, I chose to analyse the actual figures of repatriation of irregular migrants for the periods of 2000 and onwards, since the WODC pre-evaluation was conducted in 1999 and the extensive evaluation in the year 2001. All the repatriation figures used are taken from the IND (up to the year 2007) and the DT&V (after 2007). With respect to the (enforced) removals there is a distinction between the administrative and supervised removals. After explaining this distinction, Table B provides the numbers of total influx of asylum seekers; and Table C provides the actual numbers of (forced) repatriation.

* The Administrative Removals holds that either the irregular migrant is not found at last known address (during a check) or holds a notification of removal following after the release from detention and Mobile Supervision of Foreign Nationals. In other words, either the irregular migrant is untraceable or the person in question has been notified or has pledged the authorities to voluntarily (on own means) leave the country. In practice, however, the question can be raised whether the irregular migrant has actually left the country or escaped in illegality.

**The Supervised Removals is the sum of the enforced plus the controlled removals. Furthermore, The Supervised Removals holds the number of irregular migrants that are known or actually have repatriated from the Netherlands by the authorities. These figures are not mentioned as such in the various Annual Reports. In these reports there are the figures given for the removals and the enforced removals. The enforced removal holds that the foreign national is taken abroad under supervision of government officials (which stands for KLM-jargon as a DEPA). Furthermore, the definition for removal is that the foreign national is required to hand over his passport (or other travel documents) until he has crossed the border (which stands for KLM-jargon as a DEPU). I chose for this reason to analyze the Supervised Removals figures, because those figures actually provides/gives the exact number of irregular migrants who have been repatriated, which could be interpretive for an effective expulsion policy.
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### Table B: Total numbers of the Influx of Asylum seekers

<table>
<thead>
<tr>
<th></th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td>41,082</td>
<td>32,579</td>
<td>18,667</td>
<td>13,400</td>
<td>9,800</td>
<td>14,465</td>
<td>9,750</td>
<td>15,300</td>
<td>16,200</td>
<td></td>
</tr>
</tbody>
</table>

### Table C: (Forced) Repatriation from Annual Reports of the IND

<table>
<thead>
<tr>
<th>(Forced) Repatriation of Asylum Seekers and Regular Migrants</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Enforced Removals</strong></td>
<td>2,027</td>
<td>2,112</td>
<td>1,537</td>
<td>2,200</td>
<td>1,500</td>
<td>1,400</td>
<td>900</td>
</tr>
<tr>
<td><strong>Controlled Removals</strong></td>
<td>3,188</td>
<td>1,253</td>
<td>2,276</td>
<td>1,700</td>
<td>2,400</td>
<td>2,000</td>
<td>1,500</td>
</tr>
<tr>
<td><strong>Supervised Removals</strong></td>
<td>5,215</td>
<td>3,365</td>
<td>3,813</td>
<td>3,900</td>
<td>3,900</td>
<td>3,400</td>
<td>2,450</td>
</tr>
<tr>
<td><strong>Administrative Removals</strong></td>
<td>11,407</td>
<td>12,658</td>
<td>17,442</td>
<td>18,000</td>
<td>11,000</td>
<td>9,100</td>
<td>7,750</td>
</tr>
<tr>
<td>Total Removals Asylum Seekers</td>
<td>16,662</td>
<td>16,023</td>
<td>21,255</td>
<td>21,900</td>
<td>14,900</td>
<td>12,500</td>
<td>10,200</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Removals of Regular Foreign Nationals</strong></th>
<th>NB 1</th>
<th>NB 1</th>
<th>NB 2</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Enforced Removals</strong></td>
<td>7,500</td>
<td>8,800</td>
<td>7,700</td>
</tr>
<tr>
<td><strong>Controlled Removals</strong></td>
<td>9,700</td>
<td>9,700</td>
<td>10,800</td>
</tr>
<tr>
<td><strong>Supervised Removals</strong></td>
<td>17,253</td>
<td>17,200</td>
<td>18,500</td>
</tr>
<tr>
<td><strong>Administrative Removals</strong></td>
<td>7,629</td>
<td>11,900</td>
<td>15,300</td>
</tr>
<tr>
<td>Total Removals Regular Foreign Nationals</td>
<td>24,882</td>
<td>29,100</td>
<td>33,800</td>
</tr>
</tbody>
</table>

**NB 1.** In the IND Annual Statistics of 2000, 2001 and 2002 (Rapportage Asielketen: jaarrapportage 2000, 2001 and 2002) there is no specification or differentiation between asylum removals data and regular removals data. For this reason the field for the year is left blank. The data for the year 2001 is taken from the site (see the final remark below). Furthermore, the data for the year 2002 is taken from the IND Annual Report 2003, since from that year and onwards the differentiation between ‘Departure Asylum Seekers’ and ‘Departure of Regular Foreign Nationals’ is been introduced in the IND Annual Reports.
NB 2. These figures are taken from the IND Annual Statistics 2003 because there was no specification or differentiation between asylum removals data and regular removals data in the IND Annual Statistics 2002.

A final remark concerning the figures of repatriation is that when consulting the website of the IND, it is possible to download the various IND Annual Reports. However, there is also a possibility to click on the link for the period 2001-2003 and see a compellation of the repatriation figures, which again are not specified between a forced and controlled departure for both groups of irregular migrants (asylum seekers and regular foreign national).

Whilst studying the various IND Annual Reports however, I discovered a small deviation in the figures mentioned on the website and the figures in the various IND Annual Reports. I believe that the explanation for this deviation lies in the possibility that the most actual figures concerning the removals of irregular migrants are placed in a later stage on the website. In other words the actual figures must have been updated after publication of the Annual Reports. Since there is no differentiation between the various groups of aliens (and because there is only a small deviation in the figures) I chose to use the various Annual Reports of the IND (PDF-files). Only for the year 2001 and the ‘Departure of Regular Foreign Nationals’ I used the figures mentioned on the website, because in the Annual Reports of 2000, 2001 and 2002 there is no differentiation made between ‘Removal of Asylum Seekers’ and ‘Removal of Regular Foreign Nationals’.

For this reason, I used the data for the repatriation of the ‘Removal of Regular Foreign Nationals’ mentioned on the website for the year 2001 AND the figures of the ‘Removal of Regular Foreign Nationals’ for the year 2002 is taken from the IND Annual Report 2003. Finally, I studied the IND Annual Reports Rapportage Vreemdelingenketen 2000, 2001 and 2002 in Dutch and from 2003 and onwards in English.

Reports concerned the (Forced) Repatriation Figures from the DT&V

The DT&V, which is the implementing body of the Ministry of Justice, came into force on the 24th January of 2007, and is responsible for the supervision plus assisted voluntary and forced repatriation of irregular migrants or foreign nationals who are not allowed to stay in the Netherlands. This means that the DT&V coordinates the actual departures of irregular migrants and foreign nationals who are for various reasons not entitled to stay in the Netherlands. Furthermore, this institution focuses on two main target groups, being:

1. The irregular migrants who have been detained within the framework of the National Mobile Supervision (MTV) and foreign nationals who have been refused entry within the framework of border surveillance (therefore by the KMar and ZHV). There is also the so-called the Integrated Border Management, which encompasses the KMar, ZHV (Seaport Police) and the Customs.

2. Asylum seekers who have exhausted their appeal procedures and who are for that reason obliged to leave the country.

Generally speaking the irregular migrants and foreign nationals have the obligation or are summoned by the Dutch authorities to leave the country on own account. However, in case there are clear indications that the person in question may resist the (forced) repatriation the DT&V can request the Royal Military Constabulary (KMar) to escort the person to the sending country or the country of origin. This leaves that the various processes (of access; admission; supervision; and repatriation) differentiated in the chain of migration are enforced or exercised by various institutions with various assigned competences. The process of access or entry is performed by both the Seaport Police (ZHP) and the KMar (Royal Military Constabulary); The admission process by the IND; The process of Supervision by both the Alien Police and the KMar; And finally, the process of repatriation is exercised by again the KMar and the DT&V.

Whilst compiling, filing out this table and comparing forced repatriation figures, it proved in practice quite difficult to compare the Forced Repatriation figures between the IND and the DT&V. Since the latter institution makes first of all a distinction between the various influx process and the outflow of the various processes. The various process which are described by the DT&V and used in their reports are the entry, admission and uphold of law and order processes.
The entry process holds the uphold of the two distinctive features of the modern state, namely the sovereignty and the exclusive territoriality. Furthermore, the influx from Entry as mentioned in the table D holds the irregular migrants who are stopped at the national Dutch borders by the KMar plus the ZHP and who do not makes an asylum request. For this reason these person in question has to return immediately to either the country of departure or the country of origin or another third country where (legal) entrance is guaranteed.

The second variable is the influx from the admission process. These are the irregular migrants who received a negative asylum request from the IND or another negative decision from the IND for a residence permit. However, those irregular migrants seeking for an appeal against the negative decision of the IND are lawful until the final decision of the appeal. For this reason not all people are directly ‘removable’ as the DT&V states in their reports.

The third variable are the irregular migrants influx to the repatriation process due to uphold of law and order. The irregular migrants are in this case handed over to the DT&V by the various institutions who carry out uphold of law and order, such as the Alien Police, KMar, Labour Inspectorate etc. For this reason there are cross sectional influx and outflow from and to the various processes, which makes forced repatriation comparison quite difficult.

Another relevant point is that the DT&V became institutional at January the 24th of 2007 and the first extensive reports issued by this institution stems from the second part of 2008 and onwards. For this reason, Table D on the next page contains data concerning the (forced) repatriation starts with the second part of 2008.

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86 The scholar Sassen perceives these to be two distinctive features of the modern state. Furthermore, the term sovereignty has a long history beginning with Aristotle. From being the sovereignty of the ruler it became the will of the people as contained in the nation-state, which is popular sovereignty. Sovereignty often was ‘an attribute of a powerful individual whose legitimacy over territory rested on a purportedly direct or delegated divine or historic rule.’ By the end of WWII the notion of sovereignty based on the will of people becomes established as one of the conditions of political legitimacy for a government. Source: Sassen, 1996, pp. 1-2.
Table D: (Forced) Repatriation Annual Reports from the DT&V

<table>
<thead>
<tr>
<th>Influx &amp; (Forced) Repatriation of Asylum Seekers and Regular Migrants</th>
<th>Second part 2008</th>
<th>First part 2009</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Influx to Repatriation Process</strong></td>
<td>7,300</td>
<td></td>
</tr>
<tr>
<td>Influx from Entry *</td>
<td>1,100 NB 2</td>
<td></td>
</tr>
<tr>
<td>Influx from Admission**</td>
<td>2,750 NB 3</td>
<td></td>
</tr>
<tr>
<td>Influx from Law and Order *** MTV</td>
<td>1,750</td>
<td></td>
</tr>
<tr>
<td>Alien Police/KMar</td>
<td>2,650 NB 4</td>
<td></td>
</tr>
<tr>
<td><strong>The (Forced) Repatriation Process</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Handover to the Admission Process NB 1</td>
<td>1,161 (18%)</td>
<td></td>
</tr>
<tr>
<td>Removals on own account, with or without help from the IOM</td>
<td>1,400</td>
<td>1,300</td>
</tr>
<tr>
<td>Enforced removals</td>
<td>3,150</td>
<td>3,500</td>
</tr>
<tr>
<td>Administrative Removals</td>
<td>4,550</td>
<td>4,850</td>
</tr>
<tr>
<td>Supervised Removals</td>
<td>3,100 NB 5</td>
<td>3,500</td>
</tr>
</tbody>
</table>

*The number of Influx from Entry holds the irregular migrants who are stopped at the national Dutch borders by the KMar plus the ZHP and who do not make an asylum request. For this reason these persons in question have to return immediately to either the country of departure or the country of origin or another third country where (legal) entrance is guaranteed. Technically, these people should not be included to the influx of the Repatriation Process, but since they are mentioned or included by the DT&V I chose to include them in this table.  

** The number of influx of Admission holds the number of negative asylum request of the first asylum application of the IND; applications resulting from ‘the Agreement Regarding the Inheritance of the Old Alien Law’88; and other types of residence permits rejected by again the IND. In case of a negative decision concerning a first asylum request, however, the person in question has the right to

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88 This Agreement Regarding the Inheritance of the Old Alien Law came into force on the 15th of June 2007 and is ended at January the first 2009. The Agreement holds that asylum seekers who made their first application before April 2001 and who lived successively in the Netherlands can make a claim for a permanent residence permit, which is naturally to be issued by the IND. The exceptions are persons who fall under the so-called 1F Article (people who are believed to have committed or are suspected to have committed crimes against humanity or war crimes) or people who are believed to pose a threat against the national security or the national law and order.
appeal against the negative decision of the IND. During this legal procedure the asylum seeker is temporarily residing lawful in the Netherlands and therefore as the DT&V states ‘not removable’. The number of asylum seekers in appeal procedure for the second part of 2008 is 2,750.

*** The influx from Law and Order are the people who are handed over by either the Alien Police or the KMar during checks of the MTV, WAV or other forms of (labour) controls or inspections. The (ir) regular migrants from the VRIS (Vreemdelingen in Strafrechtketen) are for this reason included in these figures.

**NB 1.** Handover to the admission process (read the IND) is possible due to the categorical protection policy to certain groups of asylum seekers, which is formulated and frequently updated by the Ministry of Foreign Affairs. Other reasons or given explanations are: medical condition of the foreigner (as formulated in article 64 of the Alien Law); renewed admission request; or the acquirement of a residence permit on basis of an asylum request or on regular residence permit request. As mentioned in the second (NB 2.) note 600 persons came from the entry influx or uphold of the so-called outer Schengen - borders.

**NB 2.** The influx to the Repatriation process from Entry was for the second half of 2008: 1,700 persons. However, 600 of whom chose to immediately request for asylum and are for that reason transferred to the IND admission procedures.

**NB 3.** These persons are not immediately removable for the Netherlands, because they some of them have the possibility to the right to appeal against the negative decision of the IND.

**NB 4.** The total influx to the Repatriation Process is 7, 300. However, according to the number of the DT&V the figures for the influx from entry is 1,100 (1,700-600) and the figures for the influx from the admission process is 2,750. For that reason the net figures for the final part of the influx figures should be 7,300-1,100-2,750. There is as shown a discrepancy in the figures due to the reason that partly the influx from uphold of law and order comes from both the MTV as the Alien Police and the KMar. There is for this reason not a clear distinction to be made between the Alien Police plus the KMar on one side and the MTV on the other side. The reason for mentioning this separately in this table is because this distinction and these figures are mentioned in the DT&V report.

**NB 5.** The total Forced Removals are according to the DT&V 3,100 for the second half of 2008. In these figures are however the influx from entry (people who are denied entry at the national borders) and the influx from law and order (MTV) included, subsequently 1,100 and 1,750 irregular
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By including the figures for the entry the number of forced repatriation successively grows, and to my opinion this is not truly comparable to the IND forced repatriation figures for the years 2001 up to 2007. Since the IND figures make a clear distinction in a controlled and forced repatriation where active involvement of Dutch government officials is required for the physical removal of the irregular or the irregular migrants who are perceived undesirable. For this reason I believe the total Forced Repatriation figure should be the total Forced Repatriation figure minus the number of the influx from entry, namely: 3,100-1,100, being 2,000 for the second half of 2008.

Comparing these (forced) repatriation figures of the various data from the IND and the DT&V I must state that it proved quite difficult to draw a comparison or make a clear statement. With respect to the data from the IND; they had very little distinction between the outflow figures between the various categories of: enforced; controlled; administrative; and supervised removals. Whereas the data from the DT&V started measuring the various processes and with respect to each other: meaning the processed of entry; admission; law and order. This leads that comparing data and draw a sound conclusion with respect of the effectivity of the repatriation process is not easy.

Another aspect is that whilst looking at the supervised removals of the data from the IND and the data of the DT&V analyzed separately, I conclude that there is not a substantive rise in the forced repatriation figures of irregular migrants or foreign nationals who are not entitled to stay in the Netherlands.

For this reason I conclude that the variable of ‘effective expulsion policy’ since the implementation of the Linkage Act (1998) and the latest evaluation of the WODC (2001) have not been achieved. For this reason regarding the measurement of the ‘effectiveness of the Linkage Act’ being the forced repatriation I conclude that the Linkage Act and the policy of exclusion has not been a decisive factor in achieving the main goals as formulated by the national Dutch government whilst implementing the Linkage Act.

89 Rapportage Vreemdelingenketen periode juli - december 2008, p. 29.
Chapter Six: Conclusions concerning the policy of Exclusion

The central question posed in this master thesis is: ‘Is the Linkage Act an effective tool in addressing the main objectives of a restrictive migratory policy, as formulated by the Dutch national government?’

Global processes as globalization, international migration and in particular irregular migration shows according to some scholars the diminishing role or the denationalization of sovereign states. However, combating irregular migration and the various consequences have generated in most western countries in a process of renationalization. In general there are 3 kinds of legal instruments issued by sovereign states combating irregular migration or regulate migration; namely regulation concerning the right to stay in the country such as visa-requirements, border controls, police checks etc. The second type of legal instrument revolves around the labour market and/or the access to the various services of the welfare state. Finally, the last type of legal instrument entails certain special facilities offered or privileges making the entry or departure more attractive (for groups of migrants perceived as valuable) or unattractive (for groups of people who are perceived as ‘undesirable’ as part of the Dutch disencouragement policy).

The Dutch state acting in a global environment reacted by the gradual development of a restrictive migratory policy of exclusion, which laid its foundations in the Dutch National assistance Act, and was to perfection with the implementation of the Linkage Act which came into force in 1998. This current restrictive Dutch policy, which can be best described as a disencouragement migratory policy, in short entails four central elements. The first element being the exclusion of illegal migrants from public services (like benefits, provisions and supplements), which is the main principle of the Linkage Act. About the objectives of the Linkage Act as mentioned in its Supplement is twofold. On the one hand the Linkage Act is aimed at preventing illegitimate stay of irregular migrants by withholding various social benefits. In this fashion it is believed that the irregular migrants should be unable to maintain their livelihood in the Netherlands. On the other hand the Linkage Act should prevent a semblance of legitimacy which in time could result in a possible semblance of some form of legal status. In other words the prolonged irregular stay could in theory result in a situation where over time a shadow situation is created, where there is still a non-legal status, but the irregular migrants could still claim for (or be granted due to amnesty schemes) some form of legality or ‘quasi-legal’ residence. This status, which must be perceived as a social construction makes a distinction between five categories of lawfully residing aliens in the Netherlands, and has overarching consequences on various fields for the irregular migrant.
During my research I analyzed the political consequences of the policy of exclusion, and focused on the municipality of Amsterdam and the police force of Amsterdam-Amstelland. Since the WODC report provides an extensive evaluation of the Linkage Act was the starting point in my research, I tried to analyse the same variables (used in the previous report) of effectiveness, efficiency and the degree of legitimacy for the Linkage Act.

The (perceived) degree of legitimacy is linked or related to making use or the likeliness of making use of assigned competences. In case a (national) policy or legislation fail to internalized or to be perceived as legitimate, actions of undermining lure around. The use of discretion can furthermore result in a policy of condoning where large discrepancies between (national) policy and legislation could also lead to a decrease in the degree of legitimacy. For this reason the degree of legitimacy is important in achieving the other two dependant variables, namely the effectivity and efficiency of the policy of exclusion.

While conducting my research regarding the political consequences of the Linkage Act, one of my main conclusions is that after almost a half century of the policy of exclusion (stemming from the implementation of the Dutch National Assistance Act), perfected with the Alien Act) resulted in both a policy of condoning within the policy of expulsion.

The policy of condoning can be (amongst others) described as the vehicle between the ruling norms and grown practice. Furthermore, it is justified and perceived by the public officials of the municipality of Amsterdam as a tool (or remedy) to counter bat the negative aspects of the policy of exclusion. By the other ‘street –level bureaucrats’, namely the Alien police, this is however perceived and judged quite differently. The institutions assigned competence for supervision and enforcement perceives the policy of condoning by third parties as the explanatory variable for (perceived) ‘failure’. These discrepancies in perception results in different explanatory variables for a (perceived) ‘failing repatriation policy’. The explanatory variable for the (perceived) degree of legitimacy, efficiency and effectiveness of the Linkage Act stems, according to the public officials from the municipality of Amsterdam, from the ‘ineffective or failed repatriation policy of enforcement of the police and other officials’. This is exact the opposite explanatory variable provided by the police officers and the DT&V. Those officers and institutions perceives the perpetuation of the policy of condoning by third parties as the explanatory variable for the national restrictive migratory policy of exclusion.

In the previous WODC report, stemming from 2001, the same outcomes from public officials were given. However, the Alien Police and the police organisation were not included in this extensive report. According to this report the lack of (perceived) legitimacy regarding the implementation of
the Linkage Act, and therefore to some extent the unwillingness to enforce the policy of exclusion, laid at what they called the ‘failed repatriation policy’.

For this reason the final component in this master thesis is the analysis of the repatriation figures of initially the IND and successively the DT&V. All the repatriation figures are used starting in the year 2000 until 2007 from the IND, and from the DT&V for the years 2008 and 2009. A distinction is made in these figures between the administrative and supervised removals. The latter form of removals are analyzed since those figures provides the exact number of irregular migrants who have been repatriated; which could be to my opinion in a sense be interpretive for the previously described ‘effective expulsion policy’. In practice, however, comparing these expulsion or repatriation figures proved quite difficult. With respect to the data from the IND; they had very little distinction between the outflow figures between the various categories of: enforced; controlled; administrative; and supervised removals. Whereas the data from the DT&V started measuring the various processes and with respect to each other: meaning the processed of entry; admission; law and order. This holds that comparing data and successively draw a sound conclusion with respect of the effectivity of the repatriation process is in this stage not possible.

After studying the various actual data from the IND plus the DT&V, and conducting my research at the municipality of Amsterdam and the Alien Police, I must conclude that almost a half century of the initiation of the policy of exclusion and twelve years of perfection (Linkage Act itself): there is a situation where the Linkage Act has been implemented, therefore the variable for the degree of legitimacy is complied with.

However this (national) policy of exclusion is not successful or perceived by (some) government officials as unsuccessful (main expectation or hypotheses B) due to either the policy of condoning and/or the ‘failing repatriation policy’. Concluding that both the efficiency and the effectiveness are not met due to different explanatory causations.

Further research is therefore required and could expose the relation between the different given explanatory variables with regard to the previous set of goals by the Dutch government and the (political) outcomes of this policy of exclusion.
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Appendix A: Methodology

The empirical research for the political consequences of the policy of exclusion has been gathered through the conduct of qualitative in-depth interviews with people who are confronted with irregular migrants who are considered or are already declared undesirable in the Netherlands. The interviews were predetermined and (where possible) standardized in order to avoid bias. Furthermore, the aim of these conducted interviews were to gather as much ‘on the ground’ information as possible from those who take part in the (ir)regular migratory chain and therefore who are the most confronted with the people who are perceived or declared ‘undesirable’.

For this reason in order to answer the political consequences of the policy of exclusion I had the privilege to interview valued representatives from the Ministry of Justice, The Repatriation & Departure Service (DT&V), the Municipality of Amsterdam and the Department of Personal and Geographical Records (Dienst Persoons- en Geo-informatie). Finally, I had the opportunity to conduct a one-week research at the Alien Police force of Amsterdam-Amstelland and witness the various consequences of the policy of exclusion.

For the other consequences- being the social, legal and economical- existing reports regarding illegality and irregularity in the Netherlands are been used. This holds that desk research into the restrictive policy of exclusion and analyzing empirical data, reports regarding the policy documents of the subject and the consequences of irregular migration have also been conducted.

The standardized (where possible) and predetermined questionnaire included at least the following:

- Words of thanks for the acceptance for the interview
- Introduction of the master research in goal and aim
- The various (main) outcomes of the latest WODC report regarding the legitimacy; efficiency and effectivity of the Linkage Act were discussed. Focusing on the given causation for some resistance among government officials for the implementation and enforcement of the Linkage Act (read level of implementation and degree of legitimacy), which lies in what they call the ‘failure of the repatriation policy’.

- After this introduction question were asked concerning their (individual and institutional) discretionary power and the possibility plus likeliness of exercising these.
- What are the factors for exercising or making use of their discretionary powers?
- What are the outcomes after the implementation of the Linkage Act and their contacts or experiences concerning illegality in or the irregular migration to the Netherlands?
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- The question regarding the cases of underage adolescent plus children were specifically isolated in order to see whether there is a distinction in approach or likeliness of exercising discretionary powers.
- Are there specific criteria or a used list for ‘poignant cases’?
- How do they explain irregular migration, in other words how can the aim of national policy being the disencouragement of irregular migration is intensified and does this entangle a policy of exclusion?
- If so, and how do they explain government failure at combating irregular migration. There are discrepancies of given explanations concerning government failure?
- The factors of success and/ or failure of government policy as stated by the scholar Hoogerwerf are presented. There are according to these scholar four independent variables for the measurement for the success level for government policy, namely capacity (in the broader meaning for instance manpower and technical); information; purposefulness; and finally power of both the enforcement and making adaptations in the current policy. In other words curving, bending the policy or executing discretionary power. The question was to discuss all four independent variables for the individual and institutional situation.
- Finally, the question was asked how they perceive the Dutch migratory policy and which policy recommendations should be given to the new cabinet, and what adaptations in current policy should be made?

The expectations or possible outcomes before conducting research were formulated as follows:

A. There is a situation of full legitimacy regarding the policy of exclusion. This holds that the implementation of the national policies is fully enforced and therefore no additional or other policies at for instance the municipality level are believed to be necessary. In this case there are no discretionary powers exercised by government officials in the chain of migration, since there is either no possibility or a desire for exercising these powers. Hence the concept of legitimacy regarding the national policy of exclusion is applicable for this outcome. Of course even in the case of implementing the national migratory policy of exclusion (read the Linkage Act) this could result in either success or failure of government policy for various reasons. For this reason the first possible outcome is a full implementation of the national migratory policy of exclusion (read the Linkage Act) and this is or believed to be successful.

B. There is the implementation of the Linkage Act, however this national policy is not successful, or perceived by government officials as unsuccessful.
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C. The Linkage Act is not or only partly implemented and therefore the policy of exclusion is automatically not successful.

For this reason the central independent variables or main concept in this research are:

- The level of implementation of the Linkage Act (as a measurement for the degree of legitimacy of national policy).
- The actual or perceived effectiveness and efficiency of the policy of exclusion.
- The need (and causes) for the use of discretionary power (again as either a measurement of the degree of legitimacy of national policy or various causations, such as personal beliefs).
- The political outcomes and consequences of the national policy of exclusion.

Table I: The 26 Alterations after implementation of the Linkage Act

<table>
<thead>
<tr>
<th>Ministry or Departments</th>
<th>Alterations in the following Legislation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministry of Justice</td>
<td>VW or the Alien Law</td>
</tr>
<tr>
<td></td>
<td>Wet on de Rechtsbijstand</td>
</tr>
<tr>
<td>Ministry of Education, Culture and Science</td>
<td>Wet op het Basisonderwijs</td>
</tr>
<tr>
<td></td>
<td>Wet op het (Voortgezet) Speciaal onderwijs</td>
</tr>
<tr>
<td></td>
<td>Wet op het Voortgezet onderwijs</td>
</tr>
<tr>
<td></td>
<td>Wet Educatie en Beroepsonderwijs</td>
</tr>
<tr>
<td></td>
<td>Wet op het Hoger Onderwijs en wetenschappelijk Onderzoek</td>
</tr>
<tr>
<td>Ministry of Social Affairs and Employment</td>
<td>Algemene bijstandswet</td>
</tr>
<tr>
<td></td>
<td>Wet inkomensvoorziening oudere en gedeeltelijk arbeidsongeschikte werkloze werknemers (IOAW)</td>
</tr>
<tr>
<td></td>
<td>Wet Inkomensvoorziening oudere en gedeeltelijk arbeidsongeschikte gewezen zelfstandigen (IOAZ)</td>
</tr>
<tr>
<td></td>
<td>Wet inkomensvoorziening kunstenaars (WIK)</td>
</tr>
<tr>
<td></td>
<td>Wet voorzieningen gehandicapten (WVG)</td>
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<tr>
<td></td>
<td>Werkloosheidswet (WW)</td>
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<td>Ziektewet (ZW)</td>
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<td></td>
<td>Toeslagenwet (TW)</td>
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<td></td>
<td>Wet op de arbeidsongeschiktheidsverzekering (WAO)</td>
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<tr>
<td></td>
<td>Wet op de arbeidsongeschiktheidsvoorziening jonggehandicapten (WAjong)</td>
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<tr>
<td></td>
<td>Algemene ouderdomswet (AOW)</td>
</tr>
<tr>
<td></td>
<td>Algemene nabestaandenwet (AKW)</td>
</tr>
<tr>
<td>Ministry of Health, Welfare and Sport</td>
<td>Ziekenfondswet</td>
</tr>
<tr>
<td></td>
<td>Algemene Wet Bijzondere Ziektekosten</td>
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<tr>
<td></td>
<td>Wet op de toegang tot ziektekostenverzekeringen</td>
</tr>
<tr>
<td>Ministry of Housing, Spatial Planning and the Environment</td>
<td>Huursubsidiewet</td>
</tr>
<tr>
<td></td>
<td>Huisvestingswet</td>
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</tbody>
</table>
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Table II: Five Categories of lawfully residence and the GBA code (s)

<table>
<thead>
<tr>
<th>Category alien</th>
<th>Differentiation in permit</th>
<th>GBS code issued by the municipality</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Aliens who hold a temporary residence permit, including EU citizens</td>
<td>Admitted alien with full rights and EU citizens</td>
<td>11, 12, 13, 15, 16, 19 and 20</td>
</tr>
<tr>
<td>2 Aliens who have a provisional residence permit **</td>
<td>Provisional admitted alien holding a Vtv permit</td>
<td>14</td>
</tr>
<tr>
<td>3 Aliens who are waiting or pending the decision concerning the appeal on their application for a residence permit</td>
<td>Asylum seekers and non-asylum seekers in procedure for both the first application as for the renewal of their residence permit</td>
<td>Asylum seekers, code 17. Non-asylum seekers, code 18</td>
</tr>
<tr>
<td>4 Aliens who are entitled to stay for a maximum of 3 months</td>
<td>Alien during free period</td>
<td>Are generally not registered in the GBA database</td>
</tr>
<tr>
<td>5 Rejected application, but circumstances obstruct repatriation</td>
<td>Granted temporarily permission to reside in the Netherlands due to obstruction of repatriation</td>
<td>Are not registered in the GBA database, or no code has been assigned.</td>
</tr>
</tbody>
</table>

** This permit encompasses aliens who are not entitled to a refugee status, but are however allowed lawful residence because the situation in the country of origin is for the time-being too severe for return or repatriation. However, only the first category of aliens is entitled fully access to social benefits.