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# 'Illegal Aliens' and the State, or: Bare Bodies vs the Zombie



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**abstract:** This article focuses on the opposite poles of what Agamben, following Schmitt, calls the state of exception: the irregular migrant as *homo sacer* and the sovereign state. It takes the practice of detaining 'illegal immigrants' as a starting point for reflection on two central features of debates about globalization: (1) the declining relevance of space and (2) the declining relevance of nation-states. The author argues that both may be taking place, but they are being countered by states adapting themselves to the condition of globalization. By turning itself from welfare state into penal state, the state seeks new ways of defining itself in a globalizing world. This involves the detention centre for 'illegal immigrants' as a space of exception. The author uses three notions in order to capture the nature of the space occupied by the detention centre, which escapes traditional social scientific notions of space. Ranging from the more 'formal' characteristics of the spaces in question to their full political substance, they are Augé's notion of the non-place, Foucault's notion of the heterotopia and Agamben's notion of the camp. The author argues that the global is networked through localities, and that the exceptional space of the detention centre for 'illegal aliens' is a political node in the global network. The incarceration of irregular immigrants as *homines sacri* is part of a response to the global by means of an absolute relevance of the local: the detention centre, which is at once the model of binding locality and the site of a space 'outside' regular social space.

**keywords:** globalization ♦ *homo sacer* ♦ irregular migration ♦ space ♦ the state

## Introduction: The State and the 'Illegal Immigrant' in an Age of Globalization

Hannah Arendt once said that refugees would determine the face of the 20th century. Today, the figure of the 'illegal immigrant',<sup>1</sup> a frontier-case that defies existing categories, is the best candidate to determine the face of immigration issues in the 21st century. The 'illegal immigrant' is

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located at the crossroads of debates about globalization, the state, justice, human rights and citizenship, to name a few. The categorization and subsequent incarceration of 'illegal immigrants' in Western Europe is a prime illustration of Giorgio Agamben's thesis that 'the camp' is not a historical anomaly, but the 'hidden matrix of our times', 'the *nomos* of the political space in which we still live' (Agamben, 2002: 178). The 'illegal immigrant' marks a state of exception that runs parallel to the state of exception embodied by the sovereign state. According to Agamben, these juxtaposed figures are two extremes of a relation that is fundamental to the modern democratic state. In this article, the 'illegal immigrant' is therefore analysed in his or her relation to the state, threatened in its sovereignty by the process of globalization, of which the occurrence of irregular migration is one exponent.

Current world migration is comprised of second- or third-wave migrants joining their families, of refugees and of migrants from the 'second' or 'third world' seeking improvement of their life chances (Albrecht, 2002; Sayad, 2004). The latter are born on the 'dark side of the earth' that is opposed to the centre of the current world economy, where, as Fernand Braudel says, 'the sunshine of history brings out the bright colours' (Braudel, 1977: 89). There, the Occident lures. Its tentacles reach everywhere: the glamour of the Italian TV shows in Tunisia, the BBC immaculacy in Tirana, the dream of an American way of life in Mexico . . . 'The West' is to many a world attractively different from the sending countries of irregular migration (see Sayad, 2004). Apart from a steady flow of regular migration, a significant number of migrants crosses Europe's borders 'irregularly' (Albrecht, 2002; Engbersen et al., 2002b). Western European states respond to the appearance of irregular migrants – which are in this process termed 'illegal migrants'. 'Illegality', a label attached to a state of *being* instead of a state of *acting*,<sup>2</sup> becomes the basis of incarceration and forced repatriation. This article takes the practice of detaining 'illegal immigrants' as a starting point for reflection on some central features of the current debate about globalization. It specifically deals with two such features: (1) the declining relevance of space and (2) the declining relevance of nation-states. I argue that both may be taking place, but they are being countered by states adapting themselves to the condition of globalization. Nation-states declining in relevance, in part due to the declining relevance of space, can reinvigorate themselves by exercising a more repressive control over their territories, which is what is taking place in the case of (irregular) migration. In the case of the incarceration of 'illegal aliens', this takes the form of a specific localization that can be seen as a response to globalization. The creation of detention centres for irregular migrants turns local spaces into sites that have a complex matrix. I approach the character of the space of the detention centre by

means of the notions of the camp as described by Agamben, of Foucault's notion of heterotopia and Augé's idea of 'non-places'. These concepts are utilized here in order to get a grasp of the ambiguity in which localities such as these detention centres are shrouded. Only through the legal ambiguity that marks its *state of exception* can the state gain increasing control over national space.

## Globalization and the Zombie State

The 'first wave' of globalization theorists largely rejected the continued relevance of space (see Bauman, 1998, 2002b; Giddens, 1990; Robertson, 1992; Waters, 1995). For instance, as Robertson has shown, Giddens marginalizes the spatial component of globalization by privileging the opposition between tradition and modernity and by subsequently stating that globalization is a consequence of modernity (Robertson, 1995). Thus, Giddens indeed sees space as less relevant, but time as of crucial importance. The renewed relevance of the local in times of globalization has been signalled by Robertson as what he terms 'glocalization' (Robertson, 1994, 1995). Time and space are in his analysis highlighted by a focus on universalism vs particularism, which is also present in studies of the deterritorialization of culture (Appadurai, 1990; McLuhan and Powers, 1989; Pelto and Pelto, 1985; Watson, 2003). Other cultural aspects in stressing the importance of the local exist (Bauman, 1998; Maffesoli, 2000), as well as economic aspects (Sassen, 2000; Wallerstein, 1984) and political aspects (Falk, 1999; Hardt and Negri, 2000). Although a 'spatialization of social theory' (Featherstone and Lash, 1995) or a 'spatial turn' (Thrift, 2006) has occurred in what may be called the 'second wave' of globalization theory, the focus on local space remains vulnerable to Doreen Massey's critique that social and political theory, in dealing with space, reduces space to a category of stasis, pitted against the category of time, which is in the end privileged (Massey, 1992). Moreover, Massey argues, many theorists 'effectively depoliticize the realm of the spatial' (Massey, 1992: 66).

The appearance of post-Cold War (irregular) migration is in a sense a prime example of the lifting of spatial constraints in an age of globalization. The state is thought to be at least threatened or challenged and at most is turned into a chimera (Schinkel, 2009). It is argued that welfare states, given this current situation, will have to close their borders to 'economic immigrants', since they cannot afford to take them in (Engbersen, 2003). While, traditionally, state membership has been one of the most effective tools of inclusion and exclusion, international irregular migration threatens to undermine this mechanism, since the very presence (without 'membership') of irregular immigrants is a challenge to nation-state sovereignty (Brubaker, 1989). Irregular migration thus becomes what

Bauman has called 'the revenge of the nomads' (Bauman, 2001: 35). Next to regular migration (e.g. Falk, 2003) – which is by some thought to compromise the 'community of reference' of the nation-state – and next to other factors such as global neoliberal capitalism (e.g. Mann, 1997) – which economically threatens the reach and relevance of the nation-state – specifically irregular migration constitutes a challenge to western nation-states. Several sociologists and political theorists have argued that, as a consequence of phenomena such as global capitalism and migration, the very notion of the 'nation-state' may have become obsolete. In Ulrich Beck's words, it has become a 'zombie-category' (Beck, 2002a: 47; cf. Beck, 2002b). Likewise, Zygmunt Bauman has argued that nowadays 'tribal flowers sprout and flourish on the nation-state grave' (Bauman, 2002a: 9). Other authors observe that neoliberal capitalism has made the modern notion of the state obsolete (Robinson, 1998), or has at least diminished its relevance in providing 'the legal encasements for economic activity' (Sassen, 2003a, 2003b; cf. Beck, 2002b; Falk, 1999; Mann, 1997). For yet others, the mere scale of global transactions threatens to render traditional notions of the state obsolete (Albrow, 1996). Migration is an important factor in the supposed demise of nation-state autonomy: 'there is a diminished state-autonomy of host countries as a consequence of immigration of extended families' (Heisler, 1997). In addition to being a threat to nation-state identity and to welfare state expenditures, migration leads to questions concerning citizenship (Brubaker, 1989). Citizenship beyond 'membership of a state' is sometimes regarded as favourable (Bauböck, 1991). All these threats to the nation-state can be summarized under the heading of 'globalization', which in this respect is taken to be a process of increasing irrelevance of space threatening the existence of the nation-state (Mann, 1997).

The response of nation-states to one such perceived threat comes down to: a 'green light for the tourists, red light for the vagabonds' (Bauman, 1998: 93). The central question is whether or not this kind of immigration really threatens the state or rather poses one illustration of a chance for that state to reassert itself by reorienting itself and by reallocating resources in shifting from a *welfare state* towards a *penal state*. I argue that the state is not a sitting duck waiting to be replaced by an institution for the organization of collective wants more effectively adjusted to an age of 'liquidness' (Bauman, 2000) or 'mobilities' (Urry, 2000). While globalization is said to lead to a diminishing relevance of both 'space' and of the nation-state, the case of the illegal immigrant illustrates that states are able to redefine themselves and turn challenges into chances. The way in which they redefine themselves furthermore illustrates the persisting relevance of space, and of space as a *political category*.

## 'Illegal Aliens' in Western Europe and in 'Administrative Detention'

Irregular immigrants can be regarded as a byproduct of modernization and its remnants of former exploitation or current 'free market' policies mainly in what is known as the Third World. They are the byproducts of the difference in standards of living between the self-proclaimed First World and other parts of the world. Zygmunt Bauman (2004) has aptly named their actual existence and treatment 'human waste'. There currently exist globalized versions of a 'reserve workforce', as well as a 'shadow economy' in which most irregular migrants find work (Albrecht, 2002). In the Netherlands, which is my main case, it was the Zeevalking Report of 1992, drafted by a former secretary of state, on informal workers that really got the discussion concerning 'illegal aliens' started in the Netherlands. This was picked up especially by right-wing politicians such as conservative leader Bolkestein, who called for a harsher policy of expulsion.<sup>3</sup> In the West, people in 'real' trouble (i.e. refugees) are helped; those in economic trouble are not. As one Dutch politician put it: 'I believe 85 percent are economic refugees, and they shouldn't be here'.<sup>4</sup> Similarly, the former Dutch minister of alien affairs proposed 'harsh measures against illegals and profiteers'.<sup>5</sup> The paradox is that Western European economies, in the form of private businesses, welcome the cheap labour and the 'flexibility' (i.e. the fact that irregular immigrants can be legally maltreated, since they don't 'exist' as civilians before the law) that irregular immigrants provide. Many businesses actually profit from a reserve workforce of irregular immigrants consisting of what Balibar calls *proletaires modernes* (Balibar, 2005: 23). Yet in all Western European countries, asylum requests have decreased while the number of asylum seekers detained has increased, that is, not counting non-asylum seekers detained awaiting deportation (see van Kalmthout and Hofstee van der Meulen, 2007). Many irregular migrants are not registered, and hence their numbers are based on estimates. The Schengen Information System (SIS) is a database designed for the registration of irregular immigrants, but can only be effective once an immigrant has been detained, which then allows for future 'reidentification'. According to estimates of the International Organization for Migration (IOM), more than 4 million people are trafficked per year (Aronowitz, 2001). Europol, however, estimates an irregular immigration rate of 500,000 per year (Albrecht, 2002). Latest estimates of the Dutch population of irregular immigrants are 77,077 in 2003 (Leerkes et al., 2004: 35). Researchers conclude that the yearly number of irregular immigrants in the Netherlands varies between 75,000 and 125,000 (Leerkes et al., 2004: 41). In 2003, 20,787 were police registered, which does not mean that these were detained or repatriated. Some came into contact with the police on several occasions.

In the Netherlands, as in nearly all European countries, migrants captured on account of their being 'illegal' are incarcerated and, if possible, repatriated. On the side of surveillance, the SIS (of which part II is currently being developed), is used, since the European Action Plan to Control Illegal Immigration 2000, to collect information on 'illegal immigrants' (Broeders, 2007). It is the only database explicitly geared towards 'illegal immigrants'. In addition, in 2000, the Eurodac database was developed in order to collect information on asylum seekers. A Visa Information System (VIS) is currently being created, which has a broader scope, pertaining especially to registration of all issued and refused visas, but also containing biometric information and sponsoring information in visa applications. Both Eurodac and the VIS contain or will contain information on irregular migrants, since many refused asylum seekers enter 'illegality', and many irregular migrants overstay on regular visa. 'Reidentifying' is possible by means of the digital trace asylum seekers and/or irregular migrants leave once registered. Although officially, data sharing between the SIS and the future VIS is not possible, the VIS database is housed in a large bunker in Strasbourg, next to the bunker that houses C-SIS, the SIS database. Both systems operate on exactly similar structures (Broeders, 2007). The French initiative in 2000 led to numerous proposals to tighten criminal law in combating 'illegal immigration'. Yet the fact remains that 'being illegal' is not a *legal* category, and incarcerated irregular immigrants are not convicted of a crime. Yet Europol, for instance, does rate 'facilitated illegal immigration' among its 2005 top priorities (Europol, 2005). Human smuggling and trafficking, and assisting migrants in irregular migration is illegal by law; irregular migrants are 'illegal' by decree. In 2007, an EU plan devised by Franco Frattini was aimed explicitly at more thorough checks by linking databases, as many irregular migrants initially enter the EU through legal means (visa).

In the Netherlands, several detention centres exist to house irregular migrants prior to their forced return home. As the Dutch head of state has said: 'Persons of whom it has been established that they do not legally reside in the Netherlands, should, as soon as possible, leave the country.' And a leading politician: 'We owe it to our constitutional state to evict illegal aliens.' Interestingly, as early as 1991, this was justified (for instance by Prime Minister Wim Kok) with reference to an association between 'illegal immigrants' and 'crime'.<sup>6</sup> Ten years later, debate raged over the 'dangers' of criminal 'illegal immigrants' being released by the Amsterdam police, and the secretary of state (Kalsbeek) urged police not to release such persons – who, she added, were not serious criminals – who were detained on the basis of criminal law.<sup>7</sup> The incarceration of irregular migrants is indicative of a shift in policy from welfare state to penal state. Since publication of reports on illegal employment numbers, emphasis

has shifted from *gedogen*<sup>8</sup> (allowing what is strictly speaking illegal) to legalistic repression, from 'integration' to penalization. Through penalization, a tighter control over the stateless inside the state becomes possible, or so it is hoped by policy-makers. The materialistic base of the incarceration of the irregular migrant is the detention centre; its superstructure is made up of procedures. Incarcerated immigrants await either repatriation (in 45 percent of the cases) or (in all other cases) release from detention into 'illegality' and the immediate risk of being reincarcerated. The irregular immigrant thus exists as a modern-day *homo sacer* between the forces of globalization and the state action that responds to threats to the nation-state emerging from globalization. That state response comes down to detention of irregular migrants, yet European countries differ widely in the ways and extent of detention. Detention of irregular migrants is not equivalent to criminal incarceration. It is detention without court trial and is thus called 'administrative detention'. Detention can be defined in numerous ways (JRS, 2005). The United Nations High Commissioner for Refugees (UNHCR) defines it as 'confinement within a narrowly bounded or restricted location, including prisons, closed camps, detention facilities or airport transit zones, where freedom of movement is substantially curtailed, and where the only opportunity to leave this limited area is to leave the territory' (UNHCR, 1999: 3). However, 'leaving the territory' is, in certain cases, impossible, since receiving countries have to be available and a *laissez passer* needs to be obtained. In the Netherlands, failure to obtain such guarantees leads to release within the Netherlands, which entails the risk of being detained again. Conditions of detention vary widely throughout Europe (see van Kalmthout and Hofstee van der Meulen, 2007).

Different definitions of 'detention' exist within the EU. In practice, the European Commission distinguishes between 'accommodation centres' and 'detention centres'. The first are reserved for asylum seekers and their families and house people collectively. The latter is 'used for housing applicants . . . in a situation where their freedom of movement is substantially curtailed'. Detention centres are, according to the Commission, 'any place used for housing, in a detention situation, applicants for asylum and their accompanying family members; it includes accommodation centres where the applicants' freedom of movement is restricted to the centres' (cited in JRS, 2005). However, detention centres are often used to detain persons not requesting asylum but residing illegally in a certain country, as well as for persons to whom asylum has been denied. The only EU legislation on detention (EU Council Directive 2003) covers asylum seekers, not irregular migrants.<sup>9</sup> Detention centres exist either in transit zones, i.e. in airports as 'international zones', or in special prisons on the territory of some state. Time of detention varies significantly between countries.

Worldwide, Australia and the US have the longest periods of detention (Gibney and Hansen, 2003). Article 5 of the European Convention on Human Rights guarantees the right to liberty of asylum seekers, yet, as in the US, where asylum seekers are by definition detained since 'Operation Liberty Shield' (Welch and Schuster, 2005a), in practice not only persons awaiting 'removal' are detained in detention centres (Bloch and Schuster, 2002: 408; 2005; Schuster, 2000). Within Europe, differences exist between countries as to the legal period during which persons can be detained. In Belgium, it is five months in theory; in practice cases of over one year have been recorded. In France, a maximum period of 32 days exists, in Germany of 18 months, in Italy and Portugal of 60 days, in Poland of one year, in Ireland of eight weeks, in Austria of two months (in practice up to six), in Denmark of 72 hours, and in Sweden of 10 days on average, although indefinitely renewable. In the Netherlands and the UK, no such limit exists. In Malta, no limit existed up to 2005, when a maximum period of 18 months was set. However, in practice stays can be longer, moving towards the 2005 average of 22–24 months (Cachia and Montebello, 2007). In 2007, the European Parliament agreed on a shared maximum of 18 months, while the European Commission proposed six months. Also proposed was a judicial review every three months. Such a synchronization of detainment policies has yet to be effectuated. In practice, the Northern and Southern European countries have the shortest periods of detainment. There appears to be a band through central Europe, from the UK, the Netherlands, to Germany and Poland, where relatively long periods of detainment occur. While official statistics are the most prevalent source of information on the length of detainment, Amnesty International has critiqued such statistics, for instance in the case of the UK (Hammond, 2007).

### **'Solving the Problem': The Penalization of the Poor**

Global inequality results from the plain but compelling fact that, in Bauman's observation, 'the tourists travel because *they want to*; the vagabonds because *they have no other bearable choice*' (Bauman, 1998: 93) The prevailing motive for migration is economic (Albrecht, 2002; Aronowitz, 2001). This, however, should not be taken to mean that more elaborate welfare states attract migrants. There is no empirical evidence for such a relationship, though it is nonetheless often used as a political ploy (Bloch and Schuster, 2002). Once the vagabonds are on the move, Western European welfare states do not seriously attempt to solve the problem of global economic distribution (nor could they in all likelihood), but they respond by categorizing, turning the 'economic immigrant' into a new kind of 'enemy of the state'. There is a modern *hors la loi* declaration by

means of which this kind of immigrant is reduced to an 'illegal'. 'Economic refugees' are not allowed to stay in the West, and if they do, they are 'illegal'. In their case, the immigrants' actions are not the prime focus in the discourse of illegality. Rather, their *being* is. The totality of the personhood of the irregular migrant is reduced to the instrumental label of 'illegal alien'. Since the regular laws do not apply to him or her due to lack of citizenship or even 'humanitarian status', this alien can be incarcerated for an indefinite period of time. Behind the curtains of normal social life, yet in part constitutive of the normality thereof, are waiting-rooms, in-between areas at airports, detention centres housing irregular migrants. Agamben's (2002) comparison to the concentration camp perhaps sounds perverse, yet a biopolitical differentiation between *zoè* (bare life) and *bios* (the life form of a group) is already common practice. What Agamben draws attention to is the comparison between the sovereign and the *homo sacer*, excluded from the community. As in Hobbes's *Leviathan*, the sovereign retains something of the 'state of nature' as he or she stands within and at the same time above (and thus outside) the commonwealth which finds its fixation in him or her. Similarly, the *homo sacer* is excluded from the law. Agamben thus draws attention to the possibility of creating a 'camp' in which the politicization of 'bare life' takes place, and in which bare life (*zoè*) is explicitly separated from life in the community (*bios*). In the case of irregular migrants and their detention as 'illegal aliens', this is precisely what is at stake. The state tries to preserve a precarious balance between inclusion and exclusion, between *bios* and *zoè* (Agamben, 2002: 14; cf. Bauman, 2002a: 225–6).

Irregular migrants are these 'bare bodies' imprisoned, of whom bone scans are taken to determine their age if doubt exists. They are what Agamben understands by the Roman concept of *homo sacer*: they cannot be sacrificed or killed (since they are never really 'inside' – 'integrated'), but can be treated as existing outside the law in 'zones of exemption' (since they are always already 'external' – excluded) (cf. Rajaram and Grundy-Warr, 2004). Agamben has for instance mentioned those interned at Guantanamo Bay as modern-day *homines sacri* (Agamben, 2005: 3–4). Agamben uses Foucault's notion of biopolitics to describe the reduction to 'bare life' of the *homo sacer*. Western politics is characterized by an *exception*, an exclusion of 'bare life' that is at the same time an inclusion (cf. Schmitt, 1996). In (bio)politics, life is included through its exclusion, and the sovereign retains the possibility of raising a ban on life at any time. It is, Agamben says, the exclusion of bare life on which the *polis* rests (Agamben, 2002: 13). The holy life of the *homo sacer* fulfils a political function (Agamben, 2002: 113).

The parallel between the sovereign state and the *homo sacer* lies in their juxtaposition as opposite poles of the state of exception. Both sovereign

and *homo sacer* are partly inside, partly outside the law. One might argue that incarcerated immigrants are not exempt from law because they are citizens *somewhere* and fall under some countries' law, but that is for many not the case, because the reason for prolonged detention often lies in the fact that 'sending countries' are not prepared to issue a *laissez passer*, acknowledging that the person in question is a citizen in their country (which may be due to lack of registration, such as for instance in Somalia), thus effectively rendering detainees stateless and hence lawless. The state and the irregular migrant furthermore coincide the moment 'national security' is used as a legitimation of detention, as happened in the US after the 'Patriot Act', and specifically after Attorney General Ashcroft in 2003 explicitly stated that 'national security considerations clearly constitute a reasonable foundation for the exercise of my discretion to deny release on bond' (cited in Welch and Schuster, 2005b: 336). Administrative detention of Palestinians in Israel takes place on similar grounds, and can be ordered by military officials. Something similar happened in the UK after the Terrorism Act (which broadens possibilities of detaining undocumented migrants), and in the Netherlands where, since 2006, intelligence directives became sufficient reason for expulsion of unwanted foreign persons. This bears close similarities to the ways in which western states have, on numerous occasions in the 20th century, used security reasons to effectively bypass the law and thus enter a state of exception (Agamben, 2005).

Thus, the relationship between nation-state and detained irregular migrant forms a crucial node in contemporary dynamics of globalization. Both embody a 'state of exception', and the exceptional state of both is a consequence of the uncertainties of globalization. The detention of irregular migrants, however, is indicative of an adaptive response to globalization on behalf of nation-states. The irregular migrant is a contracted symbol of contemporary global threats to the nation-state in terms of territory and citizenship. Fortress Europe has shifted from a focus on external migration control (which remains essential to the EU: Mitsilegas, 2002) to an internal control by means of exclusion from welfare arrangements (Engbersen, 2003). A correlation has been noted between the number of asylum seekers entering EU countries (seeking asylum being one of the main ways of entering for irregular migrants [Albrecht, 2002]) and the degree to which receiving countries implement restrictive measures limiting access to welfare provisions (Jordan and Düvell, 2002). Melossi (2003) has argued that, because of the high number of undocumented immigrants, in Southern European countries the penal system is in many cases the only welfare system. This is in line with a development from welfare state to penal state in conventional criminal policies (Garland, 2001; Petersilia, 2003; Wacquant, 2009), except that, this time, it is not criminal detention that is at stake. This detention is an exceptional measure, the

*ultima ratio* or a principle of *ultimum remedium*. That means that if the same effect can be reached by lesser means, detention should be avoided. In practice, that possibility is not taken into consideration. The European Council's 'Twenty Guidelines on Forced Return' are, in practice, hardly used (van Kalmthout, 2007: 92).

Detention of 'illegal migrants' is notoriously ineffective when its goal, repatriation, is taken into consideration. For the period 2000–3, it is unknown of about 40 percent of registered irregular immigrants in the Netherlands whether or not they have been effectively repatriated (Leerkes et al., 2004: 37). Of those detained for longer periods, only 45 percent are repatriated according to official numbers. In 2003, 10,331 persons were 'effectively repatriated'.<sup>10</sup> Many travel weekly in small buses that can be discerned early in the morning for instance in the Hague (Leerkes et al., 2004). An important proviso in the case of all official numbers is indeed that they are not very accurate. Even the categories 'effectively repatriated' and 'ineffectively repatriated' are in reality not that clear-cut. They signify the difference between cases in which an identity and location is known and in which such is absent. In the case of undocumented migrants detained, a procedure to investigate the identity of the person in question is started and a *laissez passer* is to be obtained from the supposed country of origin. This is often difficult, since many countries of origin lack databases of registered citizens and births and therefore do not easily consent to giving persons a *laissez passer*. In some cases, as has been revealed in the last few years, the Dutch government pays countries to take back their nationals, and there have even been cases in which third countries (such as Nigeria) were financially compensated for taking in foreign nationals residing 'illegally' in the Netherlands. All the while, the political rhetoric evoked to compensate for the lack of efficiency lays heavy emphasis on the free will of immigrants. As the former Dutch minister said: 'Aliens who want to go back, can go back.'<sup>11</sup> And to add to the 'size of the problem': targets have been contractually set for police to arrest, in 2007 alone, 11,882 irregular immigrants in the Netherlands. Police districts that make their quota receive a bonus of €240,000.

### **Leviathan the Exorcist? Nation-State Identity and the Problem of 'Illegality'**

The detention of 'illegal migrants' marks the difference between bare life and the life of the community gathered under law. It marks the reduction of life from *bios* to *zōē*. But it would be misguided to take political discourse on 'illegality' literally, in thinking that the fundamental problem that is at stake here is 'illegality' and its costs for society – this problem then demanding a solution in the sense of immigration procedures efficient

enough to diminish 'illegality'. Rather, the so-called 'problem of illegality' is but one expression of a problem of self-maintenance of the society/nation-state dichotomy in times of globalization. In fact, 'illegality' is not what the supposed solutions to its problem 'solve'. From that point of view, the procedures designed to deal with illegality are vastly inefficient 'solutions': as indicated, only 45 percent are in the end repatriated, and of those an unknown number return to Europe anyway. Some scholars have suggested that the highly symbolized politics of control of irregular migration has to be interpreted in light of the links that are suggested between immigration, safety and crime (Albrecht, 2002; Tonry, 1998). A 'criminology of the other' is said to exist (Welch and Schuster, 2005b).

The actual problem that is discursively transformed into the 'problem of illegality' is that of a system integration, a self-reproduction of the nation-state under conditions of globalization that threaten its existence. For the lack of effectiveness and efficiency of government policies of immigration and 'illegality' is obvious; its existence, then, can be more accurately interpreted in light of the need for nation-states to adapt to a post-Cold War phase in geopolitical relations. The problem of irregular migration is thus to be seen as one part of a fundamental problem of the modern remnants of the Westphalian state system. In responding to it, the nation-state solves not so much the 'problem of irregular migration', as it does contribute in safeguarding itself against this much more fundamental problem. The problem lies in the challenge to the nation-state that results from it; the solution lies in the chance for a possible reinvigoration of the nation-state by means of a shift from welfare arrangements to (legal) repression. The Western European state that is jeopardized in the process of globalization can thus be seen to adapt to its new situation by transforming from a welfare state into a penal state, as the incarceration of irregular immigrants coincides with their exclusion from welfare arrangements. This adaptation has to be seen in light of the self-preservation of any social system over and against possible threats to its reproduction that make up the environment of such a system.

The problem of 'illegality' is, so to speak, one *form* in which the referential problem of society and the nation-state as a whole is moulded. Systems-theoretical sociologist Niklas Luhmann (see Luhmann, 1984) makes use of the concept of 'form', as coined by Spencer Brown, to indicate a binary opposition, a 'code' along the lines of which operations within a social system (the reproduction of communications) can take place by means of selection of meaning (*Sinn*). It is this autopoiesis or self-reproduction of the social system that ensures its continued existence (it *is* that existence) and through which a social system becomes delineated from its environment (*Umwelt*). In this case, the binary opposition has the form of 'legality-illegality', which bears the connotations of

'inside–outside', 'order–disorder' and 'good–bad'. Alain Badiou (2002: 65) draws a somewhat extreme yet – in light of the integrative power of social exorcism – effective parallel when he says that 'the Nazi category of the "Jew" served to name the German interior . . . via the (arbitrary yet prescriptive) construction of an exterior that could be monitored from the interior – just as the certainty of being "all French together" presupposes that we persecute, here and now, those who fall under the category of "illegal immigrant" '. Quite paradoxically, it is therefore in a sense beneficial to the state that the 'problem of illegality' does not wholly disappear – hence its apparently inefficient solutions. Therefore, the treatment of 'illegal aliens' is, from this macro-perspective, not designed to eradicate the 'problem' as it is formulated in discourse on 'illegality'. The actual problem at hand consists of the manifold pressures exerted on the nation-state in the process of globalization. As Robert Holton has argued, 'for sovereignty to survive in any form, it is necessary for states to remain institutions with capacities to act that are of potential benefit to particular sets of interests' (Holton, 1998: 90). This is achieved by means of a cultural politics that stresses for instance 'Dutch norms and values' or 'Britishness'. In a quantitative sense, irregular immigration hardly counts as a real 'threat' to the state. It does, however, provide one way of reinvigorating the state by transforming the state more and more into a repressive punitive state. And at the same time, it provides substance to a national identity, albeit in the negative sense of a – mostly discursive – making a difference by stressing an inclusion/exclusion dichotomy. Foreigners and immigrants, as Loïc Wacquant (1999) has said, are 'suitable enemies', but much more 'suitable' are 'illegal' immigrants. Their existence enables the continued orderly existence of the traditional state–society dichotomy by means of a continued paradoxical exclusion (since it is a necessary exclusion, and thus always at the same time an inclusion: Agamben, 2002: 17, 25, 28) of 'bare life'.

Discourse suggests the close relationship between the 'problem of illegality' and the problem of system integration. 'Integration' is the key concept in a debate that performatively functions as a way of separating society's inside from its outside (Schinkel, 2007; cf. Derrida, 1994: 47). This becomes apparent in the oppositions between legal or integrated subjects – those who do not get attention in the discourse of integration – and irregular migrants or the mal-integrated (Schinkel, 2002, 2003). The Dutch *Miljoenennota* of 2004, a memorandum in which government policy for the coming years was formulated, reads: 'The nuisance caused by illegal foreigners has to be combated in order to retain societal support for the integration of foreigners admitted [to the Netherlands].'<sup>12</sup> The unilateral focus on the 'mal-integrated' ensures the difference between the two sides of the form 'integrated–not integrated'. In this light, detention awaiting

'repatriation' is to be seen as a symbolic response to a quantitatively speaking relatively minor problem. By symbolically tackling the 'problem of illegality' as a problem on the border between inside and outside legitimating the traditional concept of the nation-state, a consistent self-definition of the state in times of globalization is forged. While many European states are facing problems of 'integration' concerning large legally residing immigrant populations, the conjoint European effort to exclude 'illegal immigrants' both upholds the legitimacy of 'Europe' and allows individual states to latch onto one aspect of globalization it can, to some extent, visibly control.

On a European scale, this means the construction of a Fortress Europe that is focused on control and expulsion of irregular migrants. On this level, the question of identity is doubled, since 'Europe' as such is still struggling to create an identity. A Fortress Europe, however, provides a collective mould for national states to uphold their individual identity. First, because each member state can attribute the responsibility for restrictive migration policies to Europe. EU policies, especially in the field of asylum and migration, generally tend to become national in scope and implementation (Barbou des Places and Oger, 2005). One example is Germany, which pushed for EU-wide asylum policies after having had generous policies that in part led to a number of 438,190 asylum applicants in 1992. Second, as becomes clear from the overview of European states' forms of detention, 'Europe', despite efforts in that direction, does not have a uniform policy, let alone implementation, when it comes to controlling irregular migration. The expansion of Europe with Central and Eastern European states only further compromises synchronization of policy and implementation thereof (Mitsilegas, 2002). And third, the external EU borders are in practice too difficult to patrol, and hence 'policing methods that are suboptimal from the perspective of a means-end calculus of deterrence can be optimal from the political perspective of constructing an image of state authority and communicating moral resolve' (Andreas, 2000: 9, cited in Broeders, 2009). Thus, even if synchronization of policies on 'illegal immigration' were to occur, its ineffectiveness would still be to the benefit of individual states from the perspective of reasserting, through *EU action*, at least the symbolic image of *individual state* authority (cf. Geddes, 2001).

### **Non-Place, Heterotopia, Camp: The Returning Relevance of What Kind of Space?**

With the relevance of the incarceration of irregular migrants for the state, the relevance of the place of space comes in sight. There is a marked difference in tone between the designations of many detention centres and

the official parlance with which policy is designated. Detention centres are in many countries dubbed 'reception centre', yet official EU documents refer to the 'return' of 'illegal migrants' or 'aliens' as 'removal' (EU Commission, 2002).<sup>13</sup> In the UK, however, 'detention centres' have been renamed 'immigration removal centres' (IRCs) in 2002 (Nationality, Immigration and Asylum Act). Next to IRCs, irregular migrants as well as asylum seekers are detained in regular prison establishments and in immigration short-term holding facilities (Hammond, 2007). In Germany, *Abschiebungshaftanstalt* quite literally means an 'institution for those arrested awaiting deportation'. In the Netherlands, the term *uitzettingencentrum*, meaning 'expulsion centre' is used. In Malta, for instance, the term 'prison' is to be restricted to the incarceration of criminal convicts, and hence detention of immigrants, although it takes place in a 'prison-like environment' is not 'detention in prison' (Cachia and Montebello, 2007: 71). Likewise, the UK Nationality, Immigration and Asylum Act redefines 'detention centre' as 'removal centre', which means 'a place which is used solely for the detention of detained persons but which is not a short-term holding facility, a prison or part of a prison' (Nationality, Immigration and Asylum Act, 2002: §66: 1b). It then appears somewhat pathetic to advise, as the Dutch Advisory Committee for Alien Affairs (ACVZ) did in 2002, the application of criminal punishment (prison) for 'illegal aliens' who refuse to repatriate. But whatever 'official' spatial designations are used, when our perspective is informed by the relationship between the incarcerated immigrant as *homo sacer* and the state, the space occupied by the detention centre has to be characterized by designations signifying the *exceptio* that the detention centre facilitates. Precisely the effort to deny that the detention centre is a prison expresses the exceptional status of the detention centre. It then appears that the detention centre is, as is all space according to Massey, a configuration of a 'multiplicity of trajectories' (Massey, 2000). I use three notions in order to capture the nature of the space occupied by the detention centre, which escapes traditional social scientific notions of space. Ranging from the more 'formal' characteristics of the spaces in question to their full political substance, they are Augé's notion of the *non-place*, Foucault's notion of the *heterotopia* and Agamben's notion of the *camp*.

### **The Detention Centre as Non-Place**

For Augé, a 'place' is a relational space (Augé tends to speak of 'anthropological place'), in which people are connected historically to the space they occupy or traverse. A place is 'a space where identities, relationships and a story can be made out' (Augé, 2000: 8). Non-places, on the other hand, are devoid of such relationality and identity: 'the space of non-places creates neither singular identity nor relations' (Augé, 1995: 103).

Hotels, shopping centres and airports are prime examples of non-places. In what Augé calls 'supermodernity' (which bears all the characteristics – *qua* time–space compression – of 'globalization'), non-places abound. The detention centre is (unlike the regular prison) a non-place in this sense, because its inhabitants are devoid of identity. Their only 'identity' is that of incarcerated 'illegal immigrants' who are 'in' a repatriation procedure. Very often, in the case of discursively (per)formed 'identities', there is what Foucault (1976: 132–5) has termed the 'tactical polyvalence of discourse', meaning that the restraint, the identity forced onto a group, also has its *enabling* effects for that group. It is the productivity of power that shows itself in the way in which such a label offers a certain space to develop, a certain relative degree of autonomy. It enables that group, for instance, to emancipate, be it only under the label that has been pinned on it. That way, the restrictions that have been placed on people can be put to work by those people in a fashion that is constructive for them. This notion of Foucault has been highly relevant in expanding traditional, one-sided views of power. However, the case of 'illegal aliens' shows that such opportunities can be very scarce. When communicating in society, for instance in France under the label of *sans papiers*, emancipatory effects may exist (Balibar, 2005); the detention centre, however, provides a ban on all positive identity. Many immigrants are incarcerated because their identity is unknown. Their identity, then, is reduced to 'having no known identity'. Their place of incarceration is a non-place in the sense that no positive identity can be gained from dwelling in it – which is a permanent state of transition (officially: towards 'repatriation'), the traversing of a void.

### **The Detention Centre as Heterotopia**

In terms that bear similarities to Augé's conceptualization of non-places, Foucault speaks of what he calls the heterotopia as a 'nowhere', for instance when he discusses the place – the train or the hotel – of a bride's 'deflowering' on her honeymoon (Foucault, 1986). Foucault speaks of heterotopia against utopia. Utopia are non-existent places where the normal order of everyday life is inverted; heterotopias are actually existing places – 'other places' (*des espaces autres*) – where the same happens (and in that sense they bear similarities to what Zukin [1991] calls 'liminal zones'). The interruption of normality that the heterotopia brings forth is in a way, Foucault states, possibly constitutive of the set of relations it reflects (Foucault, 1986). They are 'counter-sites' that simultaneously represent, contest and invert all the other sites within society. Foucault mentions as a first 'principle' of heterotopias that they exist in every culture. A second principle holds that heterotopias can fulfil different functions. In our case, this become apparent in the carceral shift from prison as a site, according to Foucault (1977), of inclusion, to the detention centre as

extremely focused on exclusion. A third principle states that the heterotopia juxtaposes several contradictory spaces. The detention centre is such a site contracting globally dispersed spaces. Fourth principle: heterotopias are linked to 'heterochronies', i.e. they facilitate a break with ordinary time. Here, as well, the suspension of legal time in the detention centre is a prime example. A fifth principle holds that heterotopias are closed and open at the same time. They are limited as to their points of entry and may have, as in the case of a prison, compulsory entry. Finally, a sixth principle entails that heterotopias have a function in relation to all other space. One such function is to create an illusory perfect space as opposed to the messiness of the real space. Foucault does not elaborate on this, but it might be termed a 'utopian heterotopia'. The detention centre in fact facilitates the opposite: that of purification, creating the illusory image of a purified, orderly national territory and society. In brief, globalized pressures on the state and global economic relations are compressed and represented in the detention centre, yet they are turned inside-out and hence mark a heterotopian reversal of order, since the state of exception they reflect, in Agamben's paradoxical formulation, is the outside of the state that is at once inside. The exceptional state is, however, repressed in normal life and remains invisible therein (Agamben, 2005). The detention centre as a heterotopia allows a glimpse of that exception by inverting the lawful process. It is a combination of what Foucault calls 'crisis heterotopias' and 'deviation heterotopias'. The first are reserved for people in a state of crisis in relation to their environment; the second, which Foucault sees as replacing the first in modern society, for persons whose behaviour deviates from the norm (Foucault, 1986). Irregular migrants are both: they are obviously deviants, yet they also mark a 'crisis', since they deepen the deviation already marked by regular migrants, who are subjected to visiting their own heterotopias, for instance in 'citizenship courses' (*inburgeringscursussen*)<sup>14</sup> and language courses.

### **The Detention Centre as a Camp**

Agamben's notion of the camp is especially potent when it comes to the political relevance of space, as argued by Massey (1992). The camp marks the politicization of space and, especially in the case of the Netherlands, the UK and Malta (where no maximum period of detention is legally specified), the suspension of time. As Agamben says, the camp has a paradoxical status: it is 'a piece of land' that is both part of and outside the normal legal order (Agamben, 2002: 181–2). It is included by means of its own exclusion. The detention centre for irregular migrants cannot be excluded from the territory of the state, and yet it already is that void, that heterotopos that signifies the 'outside' of the state.<sup>15</sup> The relation between sovereign state and *homo sacer* is concentrated in the detention centre as a

'camp' in the sense Agamben deploys, and is turned into a spatial relation. The camp is a place within national territory already marking a space outside state territory, existing in light only of spatial 'removal', as it is a space structured by the extra-legal legalization of life in which the irregular migrant is turned into a modern-day *homo sacer*. Hence Agamben's definition of the camp as a site where 'the space opened when the state of exception becomes the rule' (Agamben, 2002: 180). Because of its absolute space of exception, Agamben says, the camp differs *topologically* from the simple space of imprisonment (Agamben, 2002: 26). The difference is therefore also a difference in the character of the *space* of imprisonment. Since the camp is a site with a specific politico-juridical structure (Agamben, 2002: 178ff.), it is important to recognize the *political* character of the space concerned. The camp, Agamben says, has the same paradoxical character as *homo sacer* and sovereign. It is a piece of land that is an *exceptional space*, a spatial culmination and contraction of the exceptional power of the state. Detention centres, 'international zones', etc. are zones of exception, in which the normal juridical order is suspended by means of that order, and in which the *exceptio* (that which is taken out) is a space that is part of the state's territory and yet a place of ambiguous identity. This allows for the reduction to 'bare life' of its residents, which, in the hybrid of fact and norm, with which Agamben (2002: 182) further characterizes the camp, is not so much a description of a state of affairs but rather an ascription performatively turning 'irregular migrant' into 'illegal migrant', which is the difference between 'law' and 'state of exception'.

The detention centre thus has the politico-juridical structure of the camp and furthermore has all the spatial characteristics of the non-place and the heterotopia. Here are persons incarcerated for sometimes indefinite time without conviction, persons lawfully outside the law, persons both within the territory, the 'ground' of the state and yet at the same time outside the judicial confines of the state. The real place of the detention centre is at the same time the virtual point, the *focus imaginarius*, in which the state finds its ground. One finds, galvanized in it, the *exceptio* that breaks through the crust of the practice of everyday life within the territory of the nation-state.

### **The Space of Detention and the Place of the Detainee**

The detention discussed here is one localized response to a global threat. It smoothes the path for one way in which the state reflexively responds to a challenge of globalization. By warding off irregular immigrants by means of a form of territorial exorcism, the fundamental (not the superficial) problem of stateless persons inside the state – a continuous negation of the authority of the state – is countered. The state is thus able to cling to its self-definition as a territorium-based institution in times of

globalization. This, however, calls for a shading of the definitions of globalization taken as a point of departure here. In spite of the increasing irrelevance of space that the phenomenon of irregular migration is taken to be a signal of, the local becomes recharged in the same process. This may be placed under the heading of 'globalization' (Robertson, 1995), indicating the *combined* relevance of the global and the local, rather than the increasing irrelevance of local spaces. The local is not pitted against the global, and hence it is thus pertinent to state that *the global is networked through localities*. And the exceptional space of the detention centre for 'illegal aliens' is *a political node in the global network*. The incarceration of irregular immigrants as *homines sacri* is part of a response to the global by means of an absolute relevance of the local: the detention centre, which is at once the model of binding locality and the site of a space 'outside' regular social space. Spatialization is of the essence of the definition of crime and criminalization (Coutin, 2005), in particular where the relationship between crime and 'illegality' is concerned and where the moral reprehensiveness is lacking in visibility. The detention centre for the irregular migrant, who is detained without criminal conviction, is indeed a highly localized transit zone which is as such part of the global flow of migration, and which cannot be regarded as fully belonging to the localized space of the nation-state. It is, so to speak, the very limit of the nation-state. It is a prison within and without the territory of the nation-state, and this 'non-space', *which is local as well as global*, allows for a reassertion of the locality of the nation-state in light of the supposed globalizing irrelevance of space. A final question to which it is relevant to turn concerns the place of the detainee.

The question '*where* is the incarcerated immigrant?' might seem a trivial one, but becomes more complex the moment more than geometrical coordinates are required as an answer. Bourdieu has called the 'illegal immigrant' in general an *atopos*, a person without place, who is at best 'displaced' (Bourdieu, 1991: 9). Within the non-place of the detention centre, the *place* of the incarcerated migrant is perhaps best characterized by what is known in the detention centre as 'the procedure'. 'The procedure' is the 'repatriation procedure', in which no appeals are possible. It is, one might say, a pure kind of positive law. In the practice of the interwoven local-global site, the 'non-space' of the detention centre is not so much the detention centre as it is the positive law that the procedure embodies. The 'illegal alien' has no place within the law, but he or she is located within the confines of this pure type of positive law: he or she is not only 'in' the non-space of the detention centre, but, *qua* identity, he or she occupies the non-space of 'being-in-the-procedure', which comes down to 'being-processed-for-removal'. The very location of the 'illegal alien' is the procedure. Outside the procedure, indeed, there 'is' no 'illegal alien'; he or

she is either repatriated (back in that other heterotopia called 'the' 'Third World') or invisible (in the fields, picking asparagus, or in the kitchen, washing dishes). When a recent change in the detention of minors was commented on by the responsible Dutch secretary of state, he argued that 'this policy is good for everyone. For the child. For the repatriation. And for the municipalities.'<sup>16</sup> Hence, in order to avoid the question of whether it was good for the people involved, they were replaced by the procedural confines of their being, the procedural 'repatriation' – for which the policy is 'good'.

### **Conclusion: What Becomes of Zombies and Bare Bodies?**

The pure form of positive law that the repatriation procedure marks is a repressive yet ineffective policy instrument, but it facilitates a rehabilitation of the local centred around the paternal image of the nation-state as a 'law-machine' over and against the maternal image of the nation-state as a 'welfare caretaker' that is threatened by globalization. The repatriation procedure is part of a symbolic policy that transforms the difference between the local and the global into a difference between the legal and the illegal. The division that is set up between 'legals' and 'illegals' (by way of speaking of 'illegals' only) facilitates the image of a 'unity' of a nation-state that struggles to preserve precisely such an identity in times of globalization and irregular immigration. All of this is summarized in a statement of the former Dutch minister in charge of repatriation policies (Minister Verdonk) on the repatriation of asylum seekers whose request for asylum has been denied:

When I hear nasty words such as 'deportation', I think, well, we *are* a decent society, we have our laws here and we are going to do this in a very decent fashion. As humanely as possible. That means: people yet get the chance to take responsibility for themselves. And only when they *really* don't want to do that – when they can go back, but don't want to – well then there are other measures: forced repatriation, incarceration of aliens, and in the end if necessary on the streets. Is it inhumane to draw borders?<sup>17</sup>

Morality is here replaced by the law, by the drawing of borders. 'People' get the chance to take 'their own' responsibility, which avoids responsibility on behalf of the state. Any measures taken are therefore on their hands, not on those of the state. One of these 'measures' is to release them back on the streets, waiting to be reprocessed by the procedure when caught failing to take responsibility again, which indicates the real problem does not lie with the presence of irregular immigrants. Rather, this 'problem' facilitates the image of 'us', 'Dutch society', as a 'decent society'. Precisely

at a time when the legitimacy and sustainability of the welfare state were being questioned, irregular migration was discursively mentioned as a threat to the welfare state and it at the same time provided one way of reallocating the resources of the state towards a more repressive penal state. The turn towards a penal state has first of all been facilitated by a shifting of attention from territorial exclusion of irregular immigrants (controls at borders, etc.) to exclusion from welfare arrangements (Engbersen, 2003). It moreover becomes apparent by the shift, in the example of the Netherlands, of the (sub-) Ministry for Alien Affairs and Integration, which moved from the Ministry of Interior to the Ministry of Justice in 2002, signalling at the same time a more repressive immigration policy and a less tolerant integration policy. Such policy can be regarded as the institutionalized perpetuation of mechanisms of inclusion and exclusion between the fortress of 'the West' and 'the rest'.

But the question remains whether the current treatment of the problem of irregular migration will, in the long run, prove effective in providing the state with new *raison d'être*. For now, the reorientation of the state towards its juridical pole may prove effective in warding off some of the threats of globalization (especially those concerning the relevance of territory and the identity of the 'nation' of the state), but it is questionable whether this will remain such a 'blessing' in the long run. It is based on a rigid notion of national identity and, taking a broader focus that motivates a common European migration policy, of 'Europeanness' – which Denys Hay once called 'the idea of Europe' (Hay, 1968). At a European level, it is based on an identity that is rather arbitrarily spun from a mix of Christianity and secularism, which is the cultural tag of a policy of exclusion banning 'economic migration'. This identity allows Europe to voice a moral superiority – it has learned its lessons from colonization and its European 'civil wars' and it is no longer expansionist or, unlike America, interventionist – which is all the while accompanied by a forceful exclusion of those without papers. Behind the – for the moment mostly discursive – immigration battles, the treatment of irregular immigrants vanishes from public attention since it remains out of sight, except when, as recently happened in the Netherlands (27 October 2005), fire breaks out in a detention centre for irregular immigrants and 11 are killed. The only time the irregular immigrant makes it to national media is when he or she dies, but even then, political and public debate soon narrows down to the *legal* question of correct fire protocols. This Europe, keen on regarding judicial complexity as moral superiority, which no longer wishes to expand or to intervene but instead chooses the path of building a Fortress Europe, may after all be worse off in trying to preserve an unstable *status quo*. As Etienne Balibar has argued, Europe's identity is in a constant process of becoming. Narrowing it down to a rigid definition that is

understood as existing prior to any European political agency may in the long run prove to be a less viable option than taking the 'lesson of otherness' (Balibar, 2003). Precisely in an age of globalization one might argue that a more fluid notion of European identity would be better suited. A 'fortress' might crumble in the currents of globalization. Learning the 'lesson of otherness' at once includes, says Balibar, a renewed reflection on problems of citizenship in a globalized world. Surely it must also include a rethinking of the very idea of an 'illegal' existence that only nation-states in want of 'identity' bring forth in order to ensure a rigidity and a lack of flexibility that will, in the long run, be very likely to only increase the impact of the pressures of globalization on the nation-state. The state can only brace itself against global currents until it crumbles.

On the opposite pole of the state of exception, irregular migrants will remain *homines sacri*, reduced to bare life, unless some form of supra-state citizenship is implemented. Nation-states will not easily allot cosmopolitan rights (Habermas, 1993; Linklater, 1998), postnational (Soysal, 1994) or global citizenship (Dower, 2000) to irregular migrants, since precisely the creation of universal citizenship would entail providing the normative dimension of universal human rights with a legal dimension that necessarily compromises the traditional notion of the state. States traditionally control their subjects through nationalized forms of citizenship, and although the 'foundations of traditional citizenship' are eroding (Falk, 2003), they currently continue to do so. A movement in the opposite direction, of a cosmopolitical institutional framework growing out of national states, will hardly prove a likely solution for problems of eroding national states. The solution would then appear to be sought in the very institutions that have become problematic.

## Notes

1. In this article, I use the terms 'irregular migrant' or 'irregular immigrant'. Whenever 'illegal alien/immigrant/migrant' is used, it is placed between scare quotes.
2. Most 'illegal immigrants' do not engage in crime. Those who do are usually involved in forms of 'survival crime' that are due to the restraints of the status of illegality (Engbersen et al., 2002a; van der Leun, 2003).
3. *NRC Handelsblad*, 7 November 1992: 2.
4. Paradoxically, Hans Dijkstal, former leader of the liberal VVD, whose statement this is, is currently one of the most ardent critics of the policies that are in place. This testifies to the repressive development policies have undergone and possibly still undergo.
5. *NRC Handelsblad*, 21 April 2004: 2.
6. *NRC Handelsblad*, 26 June 1991: 1.
7. *De Volkskrant*, 8 June 2001: E3.

8. *Gedogen* is a Dutch construction that entails the toleration of what is strictly speaking unlawful activity – *gedogen* thus functioned as a mechanism of avoiding unsolvable conflicts between morality and law, until a combination of neoliberal and neoconservative politics led to a more legalistic attitude.
9. EU Council Directive 2003/09/EC, 27 January 2003.
10. The numbers showing a relatively large percentage being repatriated are somewhat blurred by other actions concerning the detainment and immediate repatriation of irregular workers from Bulgaria and Romania, who are not detained for long periods, can easily be repatriated, but are on the other hand just as easily back in the Netherlands.
11. *Vrij Nederland*, 14 April 2007.
12. *Miljoenennota*, 2004: 174.
13. The word 'removal' is used 21 times in fewer than 26 pages.
14. The Dutch notion of *inburgering* is hard to translate. It designates the process of becoming citizen. Literally, it turns citizenship into an active noun, something which can be performed, and which is performed 'into' the nation, in order to literally 'enter' into citizenship/the nation.
15. In Australia, a further stage in this development has been reached. Here, parts of the national territory have, in September 2001, effectively been cut off from the law and hence excised from nation-state territory, e.g. Ashmore Reef, Christmas Island and Cocos Island (see Gibney, 2004).
16. *NRC Next*, 30 January 2008: 10.
17. *NRC Handelsblad*, 7 February 2004: 3.

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