

'We Do Not Hang Around. It Is Forbidden.'

Immigration and the Criminalisation of Youth Hanging around in the Netherlands

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Abstract

The focus in this article is the 'criminalisation' of youth hanging around with the emergence of bans on hanging around. A critical social constructivist approach is used in this study, which draws predominantly on qualitative primary data collected between the late 1980s and 2010s. The article compares indigenous with immigrant youth, which coincides with, respectively, youth in rural communities and youth in urban communities. This study shows that there is discrimination of immigrant youth, which is shaped by several intertwining social phenomena, such as the 'geography of policing' – more police in urban areas – familiarity, sharing biographical information (in smaller communities), and the character of the interaction, normalising versus stigmatising. In further research on this topic we have to study (the reaction to) the transgressions of immigrant youth, and compare it with (the reaction to) the transgressions of indigenous youth, which is a blind spot in Dutch criminology.

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The crucial task of sociological theory, one thus far unaccomplished, must be to deal with this contrasting character of everyday realities: the dissensus within consensus, the disorder within order, the freedom within constraint, the change within stability.¹

1 Introduction

The idea that legal norms are an expression of social norms and contribute to a shared feeling of solidarity in society, posed by Durkheim over a hundred years ago, has been challenged by many authors in the post-war era and onwards. This has been done by legal scholars,² sociologists and criminologists³ who share a social constructivist approach. In this article on the 'criminalisa-

tion' of youth 'hanging around' and its relation to immigration, I will use this constructivist approach to observe the interactions between different actors, especially (immigrant and indigenous) youth and professionals who control them, and the meaning they attach to these interactions. This explorative micro-sociological study focuses on the daily practice of law in action and draws predominantly on qualitative primary data, documentary analysis, interviews and (participant) observation collected in the late 1980s and between 2007 and 2012. I will not only describe how approaches to youth hanging around have changed, but I will also explore how the societal reactions to the hanging around of indigenous youth compare with immigrant youth. Finally, I will reflect on some theoretical and methodological implications for further research on how the criminal justice system interacts with immigration.

2 Immigration and the Social Construction of the Criminal Justice System

The public debate on immigration in the Netherlands is focused on a specific category of immigrants, called 'non-Western allochthones', persons of whom at least one parent is born in Africa, Latin America, Asia (not including Japan and Indonesia) or Turkey. Migration of this category started with guest workers from Turkey and Morocco in the 1960s, followed by immigrants from former colonies (Suriname and the Dutch Antilles) in the 1970s and asylum seekers from a range of countries such as Iran, Iraq and Afghanistan. Since 1996 the category 'non-Western allochthones' has almost doubled from 1,171,113 to 2,038,509 persons (74%). The two main groups of immigrants are from Turkey and Morocco. The first group increased from 271,514 in 1996 to 396,555 in 2015, a growth of 46%. The second group increased from 225,088 in 1996 to 380,755 in 2015, a growth of 69%.⁴ There is a strong concentration of non-Western immigrants in the three biggest cities,

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1. J.D. Douglas, *American Social Order: Social Rules in a Pluralistic Society* (1971), at 248.
 2. B.A. Tamanaha, *A General Jurisprudence of Law and Society* (2001).
 3. P.A. Adler and P. Adler, 'The Deviance Society', 27 *Deviant Behavior* 129 (2006); J.D. Douglas, *The Social Meanings of Suicide* (1967); D.M. Downes and P.E. Rock, *Understanding Deviance: A Guide to the Sociology of Crime and Rule-Breaking* (2011); I. Taylor, P. Walton & J. Young, *The New Criminology: For a Social Theory of Deviance* (2013).

4. See Centraal Bureau voor de Statistiek, 'Bevolking; generatie, geslacht, leeftijd en herkomstgroepering, 1 januari', available at: <<http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=37325&D1=0&D2=&D3=0&D4=0&D5=2-4,11,38,46,9596,137,152,178,182,199,220,237&D6=0,4,8,12,16,1&HD=140523-1106&HDR=T,G2,G3,G5&STB=G1,G4>> (last visited on 19 December 2015).

Rotterdam (37.1%), Amsterdam (34.9%) and The Hague (34.4%), with many neighbourhoods that have a concentration of non-Western immigrants between 50% and 75%.⁵ In these years of massive immigration, the presence of immigrants has been redefined from a multicultural enrichment of society to a variety of social problems, such as poverty, crime and a lack of integration. Populist parties gained momentum by labelling immigrants, especially with a Muslim background, as a threat to the mores of Dutch society.

This transformation from a tolerant and open-minded country coincides with a fundamental shift in favour of punitive interventions, in line with Garland's 'culture of control' thesis.⁶ This transformation accelerated after the growth in anti-immigration sentiments post 9/11, which in the Netherlands was fuelled by the murders of two anti-Muslim activists, the populist right-wing politician Fortuyn (2002) and the movie director Van Gogh (2004).⁷ Since the early 2000s there has been an ongoing severe criminalisation of immigration.⁸ This article argues, based on a social constructivist approach, that the criminalisation of immigration also plays a role in how Dutch society approaches immigrant youth hanging around.

While it is impossible to cover the social constructivist approach in detail in this article, in order to see how this approach can be used as an alternative to the functionalist Durkheimian perspective on law, which assumes law is neutral, I will discuss some classical examples,⁹ more recent studies that focus on the relationship between immigration and the rise of state coercion¹⁰ and studies

on policing (immigrant¹¹) youth.¹² The social constructive perspective of law focuses on its daily practices and studies how different actors define, apply and react to law. This perspective shows how law is used by the established to (re-)claim and defend their position against newcomers or outsiders who are defined as a threat to society. A classic example of this approach is Douglas's *Social Meaning of Suicide*, from 1967, in which Douglas explicitly and fundamentally critiques the Durkheimian perspective on crime and law, and especially how he used the suicide statistics. The thrust of Douglas's critique is that he shows how official documents are not a neutral reflection of social reality, but a social construction in which coroners play an essential role in deciding whether someone committed suicide. He describes how coroners were pressured by the families of the deceased to define a suicide as an accident, or as a natural death because of the experienced stigma and shame related to religion. In *American Social Order* (1971), Douglas argues that sociologists and criminologists should study the problematic nature of social and moral norms in a pluralistic society. There will be conflict about two questions, which will be used as guidelines for this article: '(1) What will be considered deviance, especially, what will the laws be? and (2) To whom will be imputed the categories of deviance.'¹³ Becker, furthermore, argues that in a plural society like the United States of America there is 'differential enforcement of rules on different categories of people'.¹⁴ Becker describes how social activities are constructed as criminal by 'moral entrepreneurs', persons who had an interest in 'labelling' certain kinds of behaviour as criminal. Law making and its enforcement is highly political.¹⁵

In *Symbolic Crusade: Status Politics and the American Temperance Movement*, Gusfield¹⁶ focuses specifically on the intersection of immigration and the social construction of law. Gusfield relates the temperance movement to maintaining cultural and political dominance, as a reaction to the mass immigration in the second half of the nineteenth century. The temperance movement defined the presence of the new immigrants as a threat to American society and tried to preserve the cultural dominance of Protestant rural communities. Since the

5. See 'Niet-westerse allochtonen geconcentreerd in grote steden', available at: <www.zorgatlas.nl/beinvloedende-factoren/demografie/etniciteit/niet-westerse-allochtonen/#breadcrumb> (last visited on 19 December 2015).
6. D. Downes and R. Van Swaaningen, 'The Road to Dystopia? Changes in the Penal Climate of the Netherlands', 35 *Crime and Justice* 31 (2007); D. Garland, *The Culture of Crime Control* (2001); R. Van Swaaningen, 'Public Safety and the Management of Fear', 9 *Theoretical Criminology* 289 (2005).
7. F. Pakes, 'The Politics of Discontent: The Emergence of a New Criminal Justice Discourse in the Netherlands', 43 *Howard Journal of Criminal Justice* 284 (2004).
8. J.P. van der Leun and M.A. van der Woude, 'Ethnic Profiling in the Netherlands? A Reflection on Expanding Preventive Powers, Ethnic Profiling and a Changing Social and Political Context', 21 *Policing and Society* 444 (2011); P. Mutsaers, 'An Ethnographic Study of the Policing of Internal Borders in the Netherlands Synergies between Criminology and Anthropology', 54 *British Journal of Criminology* 831 (2014); M.A. Woude, J.P. Leun & J.A.A. Nijland, 'Crimmigration in the Netherlands', 39 *Law & Social Inquiry* 560 (2014).
9. H. Becker, *Outsiders* (1963); Douglas (1967), above n. 3; Douglas (1971), above n. 1; J. Gusfield, *Symbolic Crusade* (1963).
10. K.F. Aas, 'Analysing a World in Motion Global Flows Meet Criminology of the Other', 11 *Theoretical Criminology* 283 (2007); K.F. Aas, *Globalization and Crime* (2013); V. Barker, 'Global Mobility and Penal Order: Criminalizing Migration, A View from Europe', 6 *Sociology Compass* 113 (2012); J.P. Stumpf, 'The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power', 56 *American University Law Review* 367 (2006).
11. Though in other countries concepts like race, ethnicity and minorities are used, for the sake of continuity I will use the concept of immigrant in this article.

12. B. Bradford, 'Policing and Social Identity: Procedural Justice, Inclusion and Cooperation between Police and Public', 24 *Policing and Society* 22 (2014); K. Murphy and A. Cherney, 'Fostering Cooperation with the Police: How do Ethnic Minorities in Australia Respond to Procedural Justice-Based Policing?', 44 *Australian & New Zealand Journal of Criminology* 235 (2011); J. Norman, 'Seen and Not Heard: Young People's Perceptions of the Police', 3 *Policing* 364 (2009); A. Peterson, 'Who "Owns" the Streets? Ritual Performances of Respect and Authority in Interactions between Young Men and Police Officers', 9 *Journal of Scandinavian Studies in Criminology and Crime Prevention* 97 (2008); T. Pettersson, 'Belonging and Unbelonging in Encounters between Young Males and Police Officers: The Use of Masculinity and Ethnicity/Race', 21 *Critical Criminology* 417 (2013); D. Sharp and S. Atherton, 'To Serve and Protect? The Experiences of Policing in the Community of Young People from Black and Other Ethnic Minority Groups', 47 *British Journal of Criminology* 746 (2007).
13. Douglas (1971), above n. 1, at 146.
14. Becker, above n. 9, at 13.
15. *Ibid.*, at 17-18.
16. Gusfield, above n. 9.

early 1970s the problematic nature of the criminal justice system in a plural society has become an established topic in American sociology and criminology, especially in relation to the main category of 'race'.¹⁷

In relation to globalisation a field has developed in recent years within criminology that focuses on state governance in relation to immigration.¹⁸ In our contemporary world of global vast flowing currents of money, people, labour and commodities, local definitions of nation, home and belonging are questioned, transformed and threatened. This transnational hypermobility defies once trusted borders and creates fundamental existential insecurities and confronts Western citizens with a new world of seemingly uncontrollable risks, which materialise in moral panics about a range of 'foreign' threats, such as terrorism, Islam and human trafficking. Regulating the perceived negative flows of hypermobility, by creating legal and symbolic dams, has become one of the focal points of national governments in the Western world.¹⁹ Symbolic politics address the anti-immigrant sentiment and the fear of ethnic threat, which for instance in the Netherlands have resulted in the rise of populist political parties and the criminalisation of immigration law. Just like other European governments, the Dutch are trying to rebuild trust and confidence in their democratic government by being tough on crime and immigrants.

The punitive turn in relation to immigration crystallises in different public issues, such as the legal position of refugees and immigrant youth hanging around in public space. Though the latter can be seen as a strong example of crimmigration, this topic, as far as I know, has not yet been discussed in a systematic way in the crimmigration field. Studies on policing immigrant youth tend to focus on the topic of procedural justice and, in general, are not related to the literature on immigration and state governance. In this article I aim to bridge this gap and relate the crimmigration field to the literature on policing (immigrant) youth. Especially in the USA, there is a long tradition that shows the partiality of law in relation to black young men in marginalised neighbourhoods.²⁰ On a regular basis they are confronted with police misconduct and violence, which enhances their stigma and exclusion and creates distrust and a lack of cooperation with the state. The European literature shows a less harsh portrayal of youth-police interaction, but also these publications clearly show that immigrant youth

from marginalised neighbourhoods tend to experience more negative interactions with the police.²¹ Bradford points out that their focus on procedural fairness might be related to the existential vulnerability of their social identity: '[...] police activity is a particularly important factor in promoting (or undermining) social identities among people who feel a more complicated sense of belonging.'²² Two Swedish studies²³ show that the experience of unfairness seems to be related to masculinity and dominance during interactions between police and immigrant youth. Policing with an emphasis on coercion is experienced as disrespectful, stigmatising and excluding. In their efforts to resist the police definition of the situation, the interaction tends to escalate with the police. As I will explain further on, this is also at stake in the Netherlands.

Though there has been enormous scientific attention for the theme of immigration and crime in the Netherlands, mostly referred to as ethnicity/culture and crime, there has been very little attention to the intersection between immigration and the criminal justice system. Still, there are several studies that show that persons with an immigrant background are discriminated against in the Dutch criminal justice system.²⁴ Two recent studies on ethnic profiling showed how persons with an immigrant background are discriminated against in the Dutch police force.²⁵ As far as I am aware, there has not been a historical study on the criminalisation of youth hanging around that compares the reaction towards indigenous youth with that towards immigrant youth.

17. K.J. Rosich, *Race, Ethnicity, and the Criminal Justice System* (2007).

18. Aas (2007, 2013), above n. 10; Barker, above n. 10; S. Pickering, 'Common Sense and Original Deviancy: News Discourses and Asylum Seekers in Australia', 14 *Journal of Refugee Studies* 169 (2001); L. Weber, '"It Sounds Like They Shouldn't Be Here": Immigration Checks on the Streets of Sydney', 21 *Policing and Society* 456 (2011).

19. Aas (2007, 2013), above n. 10; Barker, above n. 10; Pickering, above n. 18; Weber, above n. 18.

20. K.M.W. Bonner, 'Race, Space, and Being Policed A Qualitative Analysis of Residents' Experiences With Southern Patrols', 4 *Race and Justice* 124 (2014); R. K. Brunson, '"Police Don't Like Black People": African-American Young Men's Accumulated Police Experiences', 6 *Criminology & Public Policy* 71 (2007); A. Goffman, 'On the Run: Wanted Men in a Philadelphia Ghetto', 74 *American Sociological Review* 339 (2009); Rosich, above n. 17.

21. Bradford, above no 12; A. Dirikx, D. Gelders & S. Parmentier, 'Police-Youth Relationships: A Qualitative Analysis of Flemish Adolescents' Attitudes Toward the Police', 9 *European Journal of Criminology* 191 (2012); Murphy and Cherney, above n. 12; Norman, above n. 12; Sharp and Atherton, above n. 12; E. Saarikkomäki, 'Perceptions of Procedural Justice Among Young People: Narratives of Fair Treatment in Young People's Stories of Police and Security Guard Interventions', *British Journal of Criminology* (2015).

22. Bradford, above n. 12, at 35.

23. Peterson, above n. 12 and Petterson, above n. 12.

24. S. Çankaya, 'De politie surveillanc van ras en etniciteit', in L. Gunther-Moor, J. Janssen, M. Easton & A. Verhage (eds.), *Ethnic profiling en interne diversiteit bij de politie Cahiers Politiestudies* (2015) 13; M. Komen and E. van Schooten, 'Allochtonen jongeren gemiddeld langer vast', 81 *Nederlands Juristenblad* 1352 (2006); Mutsaers, above n. 8; D. Weenink, 'Explaining Ethnic Inequality in the Juvenile Justice System: An Analysis of the Outcomes of Dutch Prosecutorial Decision Making', 49 *British Journal of Criminology* 220 (2009); H. Wermink, S. van Wingerden, J. van Wilsem & P. Nieuwbeerta, *Etnisch gerelateerde verschillen in de straffoetmeting* (2015).

25. Çankaya, above no. 24 and Mutsaers, above n. 8.

3 Long-Term Ethnography on Youth Hanging around

This section draws on my long-term research involvement in studying the social use of public space.²⁶ I will refer mainly to a two-year study in the late eighties in Alkmaar,²⁷ a two-year study in a multicultural neighbourhood in Tilburg²⁸ and a four-year multi-site study²⁹ on youth hanging around.³⁰ The topic of this article was not part of the initial research design of these studies, but emerged over time and was developed after comparing these studies with the relevant literature. I have chosen these three ethnographic studies because they focus on the transgressive nature of youth hanging around and they make a historical comparison possible. Another reason to include these studies is their geographical and demographical variety, which makes it possible to compare indigenous youth with immigrant youth hanging around.

The first study is an ethnographic study of anti-vandalism projects in a suburb of the city of Alkmaar in the period 1987–1989.³¹ The research consists of a diverse range of methods, such as participant observation, including living in the neighbourhood, over sixty in-depth interviews with residents and professionals, document analysis and a questionnaire. For this project I regularly visited two youth meeting places, spoke with the youngsters who were using them and the professionals who were responsible for the meeting places.

The second study³² took place in a neighbourhood in Tilburg between 2007 and 2009. The focus of the study was the inhabitants' use and the meaning of a shopping square and how this was shaped by immigrant young men who were hanging around on this square. The study consisted of a variety of methods, such as a questionnaire, participant observation, formal and informal interviews and documents analysis. Participant observa-

tion consisted of being in the neighbourhood between twenty and thirty hours per week for two years. Over forty formal interviews with inhabitants and professionals were held, and over hundred open-end conversations lasting between five minutes and an hour. Seventeen focus groups were held, in which over hundred persons participated.

The third study³³ was focused on youth in public space, and public nuisance such as littering, vandalism and noise disturbance. This study was conducted by observing and interviewing over one hundred Dutch (immigrant and indigenous) teenagers in a variety of public places, such as school squares, sport squares and shopping squares in cities, towns and villages. Most of these interviews were held in 2008. In addition, between 2010 and 2012 I also interviewed over twenty professionals who were involved with youngsters, such as police officers, youth workers and safety coordinators. In all these studies I used a social constructivist approach of law in action focusing on how the different actors gave meaning to the interactions they were involved in.

In the late eighties I started to research the use of public space and especially its significance for youth. An iconic Dutch qualitative study on this topic called *Hanging around as passing time*, by Hazekamp, focused on the diverse meanings of hanging around for teenagers.³⁴ Hazekamp's study barely mentioned youth hanging around in public space in relation to urban danger; the safety issues that are discussed focused on the pedagogical development of the teenagers themselves, especially girls. The common approach of the concept of hanging around was not, by definition, negative. But this would change dramatically in the next thirty years.

Over the course of the past three decades, hanging around in public space has been criminalised; it has been related to public nuisance, sexual harassment, criminal activities and gangs. This criminalisation of hanging around has been paralleled by a demographic shift in *who* is doing the hanging around: there has been a major increase of immigrant youth. Politicians and the media played a significant part in the redefinition of hanging around. Though the clearest example comes from right-wing populist politicians, such as Geert Wilders, who used words like 'Moroccan street terrorist' in relation to Moroccan-Dutch youth, politicians on the left have also used stigmatising concepts in relation to Moroccan-Dutch youth, such as 'cunt Moroccans'.³⁵ A similar pat-

26. H. van der Laar and T. Müller, *Lokaal vandalisme: Een studie naar vandaliseprojecten* (1991); T. Müller, *Je doet het voor het gevoel...: een onderzoek naar buurtbetrokkenheid in Amsterdam* (1998); T. Müller, *De warme stad. Betrokkenheid bij het publieke domein* (2002); T. Müller, 'De staat van de straat: regels voor de openbare ruimte in de Spaarndammerbuurt', 4 *Agora. Tijdschrift voor sociaal-ruimtelijke vraagstukken* 36 (2004); T. Müller, 'Praten is Goud in Malburgen. Lessen uit interculturele contacten', (i.s.m. Gozewijn Bergenhenegouwen). *Vitale stad*, November 4 (2005); T. Müller, 'Ethnic Use of Public Space', in J. Rath and L. Nell (eds.), *Ethnic Amsterdam. Immigrants and Urban Change in the Twentieth Century* (2009) 23; T. Müller, 'Litter as a Sign of Public Disorder?', in H. Bude, M. Dellwing & S. Grills (eds.) *Kleine Geheimnisse* (2015) 21; T. Müller, 'The Construction of an Inner City Neighbourhood as a Social Problem. The Perspectives of Professionals and Residents', in M. Dellwing, H. Bude, S. Scheerer & T. Scheffer (eds.), *Soziale Interaktion* (forthcoming); T. Müller and T. Fischer, 'Feeling Unsafe in a Multicultural Neighbourhood: Indigenous Inhabitants' Perspectives', 55 *British Journal of Criminology* 790 (2015).

27. Van der Laar and Müller, above n. 26.

28. Müller and Fischer, above n. 26.

29. Most of the material published in this article is not used in this study, which was focused on hanging around and littering.

30. Müller (2015), above n. 26.

31. Van der Laar and Müller, above n. 26.

32. Müller and Fischer, above n. 26.

33. Müller (2015) above n. 26.

34. J. Hazekamp, *Rondhangen als tijdverdrif: over het onder-elkaar-zijn van jongens en meisjes in de vrije tijd* (1985).

35. E. Goffman, *Stigma: Notes on the Management of Spoiled Identity* (1963).

tern has emerged in the media,³⁶ where there has been a strong emphasis on the ethnic background of youth hanging around who are mostly described as ‘Moroccan’, and their victims who are often portrayed as indigenous Dutch. This image has also been reinforced by the social sciences and particularly criminology, where the focus of research is on immigrant youth and especially on young men with a Moroccan–Dutch background.³⁷

In the studies I have been involved in, I have encountered groups in which Moroccan youth dominated, but also many mixed groups as well as some groups that consisted mostly of indigenous Dutch youth. The reason for this variety is that my research included both multi-ethnic neighbourhoods in urban areas and provincial towns and villages with little immigrant presence. In fact, the transgressions of indigenous youth are a blind spot in Dutch criminology, mostly because of its largely urban focus.

4 From JOP to Law and Order: Interventions on Youth Hanging around

In the late eighties I was involved in an evaluative study of anti-vandalism projects.³⁸ One of the preventive interventions was to give the youngsters in a predominantly white suburban area a place to hang around, in order to accommodate their social behaviour and prevent them from creating public nuisance. The municipality explained their transgressive behaviour in an empathetic way by stating that ‘youngsters were left to their own devices’.³⁹ In the same period a citizen group from the neighbourhood said in a similar vein that the problems could be solved by organising a place for the local youth. One of the problems that was reported is that youth had been damaging school property, and to prevent this they were given another place to hang around. In general, the youngsters were depicted in a friendly and sympathetic way as ‘small, friendly, adoles-

cent lads who do no harm’⁴⁰ and ‘they are actually not such bad boys.’⁴¹

The construction in which the youngsters were invited to hang around looked like a small open building where one could hide from the rain, very similar to a bus stop. There was not yet an official name for these constructions, but soon this became a common intervention, and an official name was given for this type of building: a JOP, Jongeren Ontmoetingsplaats (Youth meeting place). In the last three decades these JOPs sprouted like mushrooms in the Netherlands. A modest industry of building companies was developed to supply materials for these constructions. In general, the decision of the local community to place a JOP is preceded by youth causing trouble. To give an example, in the second half of the 2000s, in a small community, just thirty kilometres North of Amsterdam, a group of indigenous teenagers were hanging around at a schoolyard, playing soccer and drinking beer. There were similar complaints about several forms of transgression: noise nuisance, damaged school property and beer bottles scattered in the schoolyard and in places where small children play. The mayor of this municipality asked a youth worker to contact the young men and see what could be done about the situation. The youth worker offered them a JOP, just like one in a nearby village where he also worked. The young men participated in building the JOP (for example, they paved the floor with tiles) and were supported by neighbours, friends and family who brought them refreshments including beer. The young men had to follow some rules, such as keeping the place tidy and not create a nuisance to the neighbourhood. If they would manage to avoid being problematic to the neighbourhood, they could use the place as they pleased. The youth worker argued: ‘I don’t care if they drink beer or smoke a joint, as long as they do not bother people. If I see them using hard drugs, such as speed, it is a different issue, and I will take action.’

In other conversations with agents of control in other small communities also I encountered this lenient approach towards the use of alcohol and soft drugs by indigenous youth. A BOA⁴² in a village close to Leiden said: ‘I just came to check how they were doing. I saw that they were drinking hard liquor and smoking marijuana. I know the parents of most [youngsters]. So if something goes wrong I can go to them. After a chat I left.’ I was surprised that he did not confiscate the hard liquor or the soft drugs, which is a common approach in

36. A. Bouabid, ‘De Marokkanenpaniek: de sociale constructie van ‘Marokkanen’ als folk devils’, *Tijdschrift Over Cultuur & Criminaliteit* (forthcoming); A. Bouabid, ‘Riots of the Other: An Analysis of the Societal Reactions to Contemporary Riots in Disadvantaged Neighbourhoods in the Netherlands’, *European Journal of Criminology* (forthcoming), M.L. Koemans, *The War on Antisocial Behaviour: Rationales Underlying Antisocial Behaviour Policies: Comparing British and Dutch Discourse Analyses* (2011); W.A. Shadid, ‘Public Debates over Islam and the Awareness of Muslim Identity in the Netherlands’, 38 *European Education* 10 (2006).

37. F. Bovenkerk and T. Fokkema, ‘Criminaliteit onder Marokkaanse jongemannen in Nederland: speelt regionale herkomst een rol?’, 57 *Tijdschrift voor Criminologie* 59 (2015); J.D. de Jong, *Kapot moeilijk. Een etnografisch onderzoek naar opvallend delinquent groepsgegedrag van ‘Marokkaanse’ jongens* (2007); F. van Gemert, *Ieder voor zich. Kansen, cultuur en criminaliteit van Marokkaanse jongens* (1998); H. Werdmolder, *Marokkaanse lieverdjes. Crimineel en hinderlijk gedrag onder Marokkaanse jongeren* (2005).

38. Van der Laar and Müller, above n. 26.

39. *Ibid.*, at 7

40. *Ibid.*, at 22

41. *Ibid.*, at 25.

42. A BOA is a parking officer that has taken over police tasks considering public order (similar to the English PCSO).

bigger cities like Rotterdam.⁴³ He said that as long as they are quiet and keep it tidy, it is OK. Another facet of this lenient attitude was that a law and order approach was explicitly rejected. Another example is how this police officer in a village in the east of the Netherlands described his approach: ‘Then I get out of my car. I just go and sit with them, making contact, how are you, and then I told them (...) that they have to watch out, that they are responsible.’

Over the same period in which JOP’s popped up everywhere, a seemingly contrary development took place. There was an increase in the use of a specific repressive intervention in which local by-laws banned gathering (of youth) in public space, which is known as ‘the hanging around ban’. These by-laws started to be used as an intervention for youth hanging around in 2000 and gained widespread popularity in the period 2005–2008. Thus far, there has not been any numerical systematic academic research on this topic, though I did find a newspaper article that stated, on the basis of a media analysis of regional newspapers, that an increase in bans on hanging around had taken place in 2007.⁴⁴ A study on bans on smoking cannabis in public places also showed an increase during the same period.⁴⁵

Most of these by-laws target groups of three or more persons engaged in disorderly behaviour. An example of a public space where there was a ban on hanging around is a square I studied in a multicultural neighbourhood in Tilburg, a city in the south of the Netherlands.⁴⁶ The square consists of a parking space and a dozen shops. One identifiable youth group hangs around the square every day. It consists of (5–20) young men, mostly with a Moroccan background (13–25 years old). The young men are aware that there is a ban on hanging around in the square. They have been confronted with police actions enforcing this ban. They are on their guard when they see a police car passing by. However, in my conversations with them it became clear that they interpreted the ban wrongly, thinking that hanging around was forbidden: ‘We meet our friends here but we are not allowed to hang around here. But we do it anyhow, but when we see the police coming we know we have to go.’

When I told them that hanging around in groups of more than two persons is forbidden only if it results in nuisance, they were surprised. They thought that hanging around itself was forbidden. I also encountered a similar interpretation of this ban in other public places

where I interviewed immigrant youth. Not knowing that the ban on hanging around changed the definition of this social activity, I started street interviews by asking whether they were hanging around here more often. But this fairly open introductory question turned out to be less innocent. Most of the immigrant youngsters I spoke with said that they were not doing illegal activities: ‘We do not hang around. It is forbidden.’

The youth explained that in most public places they visit, it is illegal to hang around. They said that the police had been chasing them away in several public places. Although some did refer to positive experiences with the police, these were exceptions and mostly related to neighbourhood police officers who were familiar with them. In general, the youth would approach the police with distrust and the sense that they never know what the intentions of the police are. There were also narratives about being fined for different reasons, such as hanging around, biking on a stoop and littering. In some cases I also encountered indigenous youth who were regularly fined for similar transgressions, but their definition of hanging around differed from that of immigrant youth. Though they knew that there was a ban on hanging around in some places, they stated that it was normal to hang around and meet friends in public. They rejected the definition of hanging around as ‘forbidden’. They actually argued with the representatives of local communities to get a JOP or to improve their JOP, with, for instance, comfortable chairs.

My explorative observations showed that by-laws on hanging around exist in rural and urban communities, but my proposition is that by-laws are more common in large urban communities than in smaller communities and that in rural communities there are more JOPs than in non-urban communities. Yet the difference in the approach towards youth in public places is possibly shaped more by the way the by-laws are implemented. The implementation of the by-law on hanging around is related to what I call the *geography of policing*, which, as I will explain below, has an impact on ‘distributive justice’: the equal treatment of different categories of citizens in different locations.⁴⁷

In rural places there is less police activity in public places, than in more urban communities. An illuminating example was given by the ‘safety coordinator’ of a small village just above Rotterdam, who is in charge of safety issues in his community. The safety coordinator used to work as a police officer in The Hague and said that it was hard to control the youth in his small community because they only had a few police officers available and that on weekends there was just one police car patrolling several small communities in their rural region. He told me that in The Hague it was vastly different: ‘When there was trouble with youth hanging around, we had two cars, two police motors and some patrolling police officers. We could easily corner a group and take everybody with us.’

43. A. Vermaat, ‘Utrecht kan leren van verbod op samenscholing in Rotterdam’, *Trouw*, available at: <www.trouw.nl/tr/nl/4324/Nieuws/article/detail/1629850/2008/02/15/Utrecht-kan-leren-van-verbod-op-samenscholing-in-Rotterdam.dhtml> (last visited at 11 May 2015); See ‘Rotterdam wint rechtszaak over blowverbod’, available at: <www.rijnmond.nl/nieuws/112130/Rotterdam-wint-rechtszaak-over-blowverbod> (last visited at 11 May 2015); See ‘Rosé-protest in Rotterdam’, available at: <www.joop.nl/nieuws/rose-protest-in-rotterdam> (last visited 7 June 2016).

44. Nederlands Dagblad *Gemeenten verbieden samenscholing vaker*, maandag 18 februari 1 (2008).

45. D. Chevalier, *Playing It by the Rules: Local Bans on the Public Use of Soft Drugs and the Production of Shared Spaces of Everyday Life* (2015).

46. Müller and Fischer, above n. 26.

47. T.R. Tyler, ‘Social Justice: Outcome and Procedure’, 35 *International Journal of Psychology* 117(2000).

There is also a qualitative difference: the interaction between police and immigrant youth, mostly in an urban setting, seems to be more conflictual and antagonistic than the interaction between police and indigenous youth, mostly in less urban settings. In the latter situation the teenagers knew the social control officials for a longer period and were familiar with them. As a result their relationships and interactions were more convivial and cooperative. The young men could negotiate with officials and explain their position. This was not the case for the immigrant youth I interviewed. Many times they were confronted with policemen they were not familiar with. There was, additionally, little space for negotiation or explanation of their perspectives. Their voices were often unheard.

This law and order attitude stands in clear contrast to my observations of youth hanging around in a small village just above Rotterdam. In this village a group of mostly young men were hanging around, causing nuisance, smoking cannabis and drinking alcohol. In this case I was able to observe the process of deciding how to react to the transgression of the young men. When the community took some repressive steps and prohibited the young men from hanging around, one of the youth's parents complained to the local community about how her boys were treated. She made it clear that the boys had a right to hang around. What followed was that the community asked the civil servants to deal with the youth hanging around in a different way. As a result, the civil servants decided to place a JOP. So instead of a law and order approach, the youth in this small village were served with a preventive accommodating intervention. In comparison with the indigenous parents who supported their children and resisted the labelling by police officers, most immigrant parents did not act in a similar way. In some cases they refrained from action because they felt ashamed and wanted to avoid more problems. The parents would, however, in some cases punish their children at home.

When I walked around with a group of social control agents in this village, they told me that they knew almost all the youth. They described them as 'kids that sometimes go astray but in essence they are not bad kids'. With most youth, they knew their background and also their parents. Even when they had to fine the youngsters, in most cases the interaction was characterised by conviviality and camaraderie. An essential difference was that the indigenous youngsters when confronted with their transgression in a face-to-face situation, while sometimes trying to negotiate, still accepted the dominant position of the agents of control, and acted in a deferential way to avoid further conflict and escalation. For example, a police officer said that a young man did not run away when he approached him, but instead replied: 'yes, I know that you have seen it [his misbehaviour], just give me the fine.' In contrast to the indigenous young men, immigrant youth tend to deny an accusation, and present themselves in a dominant way,

being non-apologetic and feeling disrespected.⁴⁸ In my talks with them they would not only complain about the police, but also about the rejection they felt in general, which could vary from an unfriendly gaze from an elderly woman holding her purse tightly to negative media reports on their neighbourhood and anti-immigrant statements by populist politicians.

With the use of a social constructive perspective in this article, I have been able to show how law is enacted on the micro level of interactions and how this contradicts the Durkheimian functionalist perspective on law. As a result of the local interactions, transgressions of indigenous youth tend to be defined as 'normal trouble'.⁴⁹ Their behaviour is normalised: their transgression is defined as a deviant act, but it does not transform them into 'bad kids' or 'deviant persons'. In the case of immigrant young men, stigmatisation and othering takes place, which defines them as outsiders. In reaction to this process they refuse this label because they see it as unfair, and they react in a non-cooperative way when dealing with agents of control, which intensifies their general stigma and their sense of exclusion.

5 Discussion

In this article I have used the social constructivist approach to assess the Durkheimian perspective on law in a critical way. Though this comparative, historical and micro-sociological approach of hanging around can be considered innovative, this article does follow a long tradition of scholars with a critical perspective stating that law is problematic in a pluralistic society because established groups will use their definition of crime and its enforcement to sustain their dominant position. The two crucial questions posed by Douglas – '(1) What will be considered deviance, especially, what will the laws be? and (2) To whom will be imputed the categories of deviance'⁵⁰ – were used to research and analyse the social reaction towards youth hanging around. The article describes how the criminalisation of youth hanging around has been part of the punitive turn in the Netherlands in the last three decades.⁵¹ The criminalisation of youth hanging around was in itself not a neutral intervention compatible with the Durkheimian perspective on law. In fact, it was closely related to the increase in the numbers of immigrant youth hanging around in public space.

This article coincides with a range of publications on the problematic nature of policing immigrant youth. But in general, these publications do not relate their findings to structural societal transformations in relation to immigration. In contrast, this article, in line with the reason-

48. See also Peterson, above n. 12.

49. S. Cavan, *Liquor License: An Ethnography of Bar Behavior* (1966), at 67.

50. Douglas (1971), above n. 1.

51. Downes and Van Swaaningen, above n. 6; Pakes, above n. 7; Van Swaaningen, above n. 6.

ing of Gusfield and authors who publish in the field of crimmigration, shows that the treatment of immigrant youth can indeed be seen as a reaction to late modern global flows of goods, knowledge and persons threatening Western definitions of community and identity. Policing immigrant youth hanging around is part of the criminalisation and penalisation of immigration, demarcating a strong legal and symbolic border between the established and the outsiders.⁵²

This article shows that in relation to immigrant youth there tends to be a focus on repressive interventions, such as local by-laws forbidding hanging around. In relation to indigenous youth there is a tendency to apply preventive measures, such as JOPs. It is not that by-laws are not used in relation to the latter category, but the focus seems to be on (starting with) preventive intervention. Besides, JOPs and other preventive interventions are to be found in more urban places, but they are not as common as in the more rural communities. In addition, this article shows that agents of social control tend to interact with indigenous youth in a more sociable and reciprocal way, whereas their interactions with immigrant youth tend to be characterised by a law and order approach. When indigenous youth transgress, their behaviour tends to be normalised. By contrast, transgressive behaviour of immigrant youth tends to be criminalised and used to stigmatise them. As a reaction, they behave in a defensive way, which escalates the situation and enhances their stigmatisation.

The social construction of the 'hanging around by-laws' are shaped by different processes that take place on a macro, meso and micro level. On the national (macro) level, journalists, politicians and social scientists have been active in relating immigrant youth hanging around to crime and fear. In this article I have predominantly paid attention to the meso and micro levels. When focusing on the first level we have to consider the communities themselves and how the police are organised in these communities. There is a specific *geography of policing*, which is related to the organisation of the police force. In urban communities there are more police available, and they have more resources to deal with youth hanging around. In smaller, more rural communities the situation is reversed. As a result, those who hang around in urban places, mostly immigrant youth, have a higher chance of being controlled by a police officer, or of being caught when they act in a transgressive way.

Another aspect of the geography of policing that shapes enforcement approaches is that in smaller rural communities police officers have more familiar relations with youth hanging around, in contrast to urban places. This has a strong impact on the micro level of interactions between agents of control and youth hanging around. Their transgressive behaviour is not the definitive marker of their identity, or master status, but forms just one of their traits that define them in the eyes of those who control them. Also, immigrant youth some-

times have interactions with officers they know better, and in these cases too their experience tends to be better.

Familiarity also plays a role in the choice of JOPs as a reaction to rowdy behaviour of indigenous youth in small rural communities. Reverting directly to repressive measures might result in counteractions by parents and other caretakers. In contrast to this, immigrant youth lack this support in redefining their hanging around as a normal activity. When we look at the micro level of interactions between agents of control and youth hanging around, we can see that besides familiarity, stigma and feelings of exclusion infused by journalists and politicians⁵³ also play a crucial role for immigrant youth. Being aware of their negative reputation, they see a strict and unfriendly approach as a rejection of themselves and will react defensively. In these situations they feel shamed or 'disrespected', as they themselves phrase it. They try to restore their sense of masculinity by resisting the authority of the professionals who try to control them. In the case of indigenous youth, stigma does not seem to play a similar role. They know that in order to avoid (more) trouble they have to play a submissive role that does not affront the agents of control.^{54,55} In this article I have used several studies that were carried out over a period of three decades. Still, I realise that I cannot generalise on the basis of my explorative observations. Nevertheless, my observations suggest that there are at least several processes that influence 'distributive justice' in such a way that we can speak of an unequal treatment of immigrant youth in urban settings.⁵⁶ I hesitate to use the term ethnic profiling in this case, because the focus seems to be on behaviour (hanging around), and there does not seem to be a 'police practice of stopping someone for questioning or searching on the basis of their ethnic or "racial" appearance'.⁵⁷ To me, a more suitable concept seems to be 'unintended structural discrimination', which refers to institutions where policies are neutral but when implemented lead to unintended consequences that generate discrimination against a specific category of the population, in this case immigrant youth.⁵⁸

In order to be able to gain more insight into the criminalisation of hanging around and its relation to immi-

52. Mutsaers, above n. 8; Stumpf, above n. 10; van der Leun and van der Woude, above n. 8.

53. Bouabid (forthcoming), above n. 36; Shadid, above n. 36; Koemans, above n. 36.

54. In Dutch academia there have been several studies that explained the behaviour of immigrant young men by focusing on their 'ethnic' culture. I am not denying that this might play a significant role in some cases, but as I have made clear before, the transgressive reaction of young lower-status men in public places is similar across time, places and cultures.

55. T. Müller, 'Hulde voor Samsom, maar het zijn niet alleen Marokkaantjes', in: NRC, 23 September 2011 (2011) 16.

56. Tyler, above n. 47.

57. J. Goodey, 'Ethnic Profiling, Criminal (in) Justice and Minority Populations', 14 *Critical Criminology* 207, at 207. (2006).

58. M.C. Angermeyer, H. Matschinger, B.G. Link & G. Schomerus, 'Public Attitudes Regarding Individual and Structural Discrimination: Two Sides of the Same Coin?', 103 *Social Science & Medicine* 60 (2014); F.L. PinCUS 'Discrimination Comes in Many Forms: Individual, Institutional, and Structural', 40 *The American Behavioral Scientist* 186 (1996).

gration, we have to study this topic in a more systematic, long-term and in-depth way. This requires not only studying immigrant youth, which is done by criminologists by default, but also paying close attention to indigenous youth, which is a blind spot in Dutch criminology. An ethnographic comparative approach is necessary to describe and understand the different aspects of the social construction of law in rural and urban communities by a diverse range of actors, such as police officers, youth workers, youth, their parents and others who live in the neighbourhood. This approach can be combined with a quantitative approach that maps the amounts of JOPs, by-laws on hanging around and modes of enforcement in rural and urban communities. The resulting geography of by-laws, JOPs and modes of enforcement can be related to the demography of the communities and its percentages of immigrants, for an enhanced understanding of the criminalisation of youth hanging around and its relation to immigration.

Another issue is that because 'unintended structural discrimination' does not have a blatant racist form, it eludes recognition as a social issue, especially in the Netherlands, where the dominant self-image is one of a democratic, tolerant, open and anti-racist society. This article shows that this is not the case, and that the way immigration intersects with the criminal justice system needs structural academic attention. I suggest that we start looking at how the overlapping processes (organisational, geographical, interactional), as described in the case of youth hanging around, shape the intersection of immigration with the criminal justice system.

