2 Sex and the regulation of belonging: Dutch family migration policies in the context of changing family norms

Sarah van Walsum

2.1 Introduction

In recent years, the Netherlands has drawn international attention by requiring that family migrants originating from less industrially developed nations in Africa, Asia and South America pass a Dutch language and integration test in their countries of origin, before they can be admitted into the country.[1]

When defending these policies before Dutch Parliament, former Minister for Immigration and Integration Affairs Rita Verdonk linked assumed differences between Dutch norms regarding family relations and sexuality and those of 'non-Western' migrants to perceived threats to the stability of Dutch society as a whole. In her words:

> failed integration can lead to marginalisation and segregation as a result of which people can turn their back on society and fall back on antiquated norms and values, making them susceptible to the influence of a small group inclined to extremism and terrorism ... Ongoing radicalisation implies the real risk that non-integrated aliens will take an anti-Western stance and will assail fundamental values and norms generally accepted in Western Society such as equality of men and women, non-discrimination of homosexuals and freedom of expression.[2]

In the context of a debate concerning family migration from 'non-Western' nations, the message is clear. Unless these family migrants can be screened for the proper norms, values and skills before being granted entry, they will form a threat to the Dutch nation. Given its selective bias, this particular aspect of Dutch family migration policies has been dubbed racist by its opponents. In more general terms, Dutch family migration policies have been compared to the racist policies that used to distinguish the rulers from the ruled in the former colony of the Dutch East Indies (De Hart 2003a).

To my mind, one should be careful when drawing such parallels. There is danger in depicting the present as an automatic sequel to a racist past. A significant period of European history following the Second World War,

namely, that of decolonisation and the rejection of racist ideology, risks being brushed aside as atypical, while an important legacy of that period – the equal rights of all citizens of the European Union, regardless of their race, creed or ethnic background – risks losing the attention and activism that it needs in order to survive as a vital element of European politics.

When drawing parallels between the present and the past, it is important to pay close attention to changes in historical context. As Stoler (1995) has argued, the racist regime of the former Dutch East Indies was grounded in assumptions concerning biologically determined differences deemed relevant for the quality of citizenship. Establishing and maintaining racial distinctions therefore depended on the regulation of biological and cultural reproduction through the control of sexuality. This was achieved by, among other things, criminal sanctions against forbidden sexual practices, welfare benefits that gave substance to a regime of inclusion and exclusion and family laws that linked racial status to legitimate family ties. This regime was gendered as well as racist in that it protected European men's privileges both as men and as Europeans. It was they who determined whether or not the children of their 'native' concubines could acquire European status, while a marriage between a 'native' man and a European woman resulted in her losing the privileged status of European – not in his gaining it (De Hart 2003a; Stoler 1995).

The actual implementation of this regime thus belied the biological assumptions that it was grounded on, making it unstable but also amenable to change (Stoler 1995). Even then, however, it was not so flexible as to be able to adjust to the current historical context that is marked by a double legacy: the period of decolonisation and anti-racism, as mentioned above, and a sexual revolution that has ousted marriage as the sole legitimate site of sexuality and rejected, or at least seriously challenged, the hierarchies between the genders and the generations laid down by Dutch family law of the pre-war period. Any attempts to place current immigration policies in the racist tradition of the Dutch colonial past must take these shifts in normative context into account.

In this chapter I shall give a brief account of the normative changes that have taken place in the Netherlands in the course of the second half of the twentieth century. I shall relate these changes to developments that have taken place, during the same period, in the regulation of family migration to the Netherlands. Next I shall explore how the family migration regime that has taken shape at the end of the twentieth century relates to an emerging context of globalisation as theorised by, among others, Sassen. Finally, I shall question if and to what extent the racist legacy of the Dutch colonial past does indeed reverberate in the present-day context.

For purposes of analysis, I have found it useful to chart the relevant changes in the regulation of status (through family and nationality and immigration law) in conjunction with related changes in disciplinary

regimes. In my historical account, I shall therefore not only focus on Dutch family law and the regulation of family migration, but also take into consideration related changes that have taken place in Dutch social security, welfare and integration policies.

2.2 Changing family norms and Dutch family migration policies

2.2.1 1945-1975: The nuclear family and national reconstruction

Initially, the moral order that was reinstated in the Netherlands following the Second World War was closely modelled on the one that had preceded it. Marriage as the sole site of legitimate sexual relations and the main portal to adult participation in Dutch society was vigorously enforced by the state following the war, while the regulation of daily interactions and practices within the confines of married life was outsourced to the same religious institutions and affiliated organisations that had structured civil society and political affiliation prior to it (Kooy 1997). This was also the moral order that had structured the racial distinctions in the former colony of the Dutch East Indies, and it was according to this moral order that the former ruler's population was ultimately distinguished from that of its former colony, Indonesia (Heijs 1994). The formal claims of repatriates to admission to the Netherlands were based on their legal descent from, or marriage to, a Dutch male citizen, as determined by Dutch family law. Decisions to actually facilitate or discourage their repatriation were based on evaluation, by government officials and Christian social workers, of their behaviour in terms of class, language and religiously and culturally shaped practices (Schuster 1999; Ringeling 1978). Dutch family law and Dutch religious institutions thus played an important role in regulating post-colonial migration from the newly established nation of Indonesia to the Netherlands.

Besides having to reconstitute the population of the nation, the post-war government of the Netherlands also had to orchestrate the project of national reconstruction, one of industrialisation, urbanisation and mass consumption (Gastelaars 1985). A newly established Ministry of Social Work coordinated the work involved in guiding individuals and families through the changes in lifestyle that this implied. A growing number of increasingly professional social workers became involved in monitoring family relations. In doing so, they confirmed the role of Dutch family law in defining the contours of legitimate family life and continued to facilitate the disciplinary work of the religious institutions and their affiliated organisations among lower-class families. At the same time, however, they introduced a new perspective on the nuclear family as a discrete and self-sufficient unit, while an increasingly elaborate framework of nationally

orchestrated social insurances, provisions and services helped render previously established networks of interdependency – extended families and religious congregations – redundant (Kooy 1975; Gastelaars 1985; Kennedy 1995).

Not only the urban poor and those who had been uprooted or disoriented by the war, but also the hundreds of thousands of former colonials who had left Indonesia for the Netherlands during the 1950s and early 1960s were included in this project of social integration and national reconstruction. The project focussed on shared territory, the common trauma of occupation and the collective effort of reconstruction in linking together nation, state and citizens (Schuster 1999). Not included were the guest workers who were being recruited to provide extra hands for the reconstruction effort. The guiding assumption was that these workers were to be kept primed for return to their countries of origin. The first labour migration recruitments of the late 1950s actually excluded married candidates, on the assumption that bachelors could be counted on to return home and establish a family (Groenendijk 1990). Dutch housing policies that restricted migrant workers' access to public housing furthermore discouraged or, at least, delayed family reunification, thus inhibiting integration into post-war Dutch society that was being built around the figure of the male breadwinner and head of the family (Jansen 2006)

2.2.2 Sexual revolution and national solidarity

Successive coalitions between confessional parties and parties alternatively sympathetic to labour and business, as well as tripartite agreements between government, employers' organisations and trade unions, generated the rules and practices that were to further shape the post-war welfare state of the Netherlands. The liberal tenets of individual freedom and equality formed the normative point of reference, and the male breadwinner citizen was the chief addressee (Bussemaker 1993). He, his spouse and children became both the organising unit of the Dutch welfare state and the focal point of new disciplinary programmes designed to prime men and women for the exigencies of industrial production, mass consumption and the bureaucratic regulation of services and provisions.

In 1965 a national system of welfare benefits was introduced. All citizens were now to have equal access to a minimum of financial security provided on grounds of national membership, rather than on the basis of religiously informed relations of interdependency. Initially meant to strengthen the financial foundations of the nuclear family, these new measures in effect facilitated avoidance of, and the escape from, the confines of matrimony – a tendency that would be encouraged even more by the liberalisation of divorce laws six years later. As divorced wives and single mothers applied for financial support from the state, latent tensions

between the dependencies and hierarchies regulated through Dutch family law and the new moral order based on the ideals of equality, individual emancipation and national solidarity started to become manifest (Holtmaat 1992).

2.2.3 Normative pluralism and multiculturalism: 1975-1990

As in the other welfare states of the post-war period, in the Netherlands, the 1970s also formed a period of economic crisis due, in part, to the oil crisis, but also to a generally experienced crisis of accumulation. As unemployment started to rise, questions concerning the limits of state responsibility and the reach of national solidarity became acute. But while a consensus was obtained on the need to limit labour migration, restricting family migration proved more problematic, as did the related issue of renegotiating the distribution of social risks and dependencies.

Increasingly, norms of alliance as determined through family law came to be hotly contested, while various (and conflicting) scenarios for sexual emancipation were propagated by men, women and sexually active minors (Kooy 1975; Peters 1976). Although the confessional parties continued to resist any further reforms to Dutch family law (Gastelaars 1985), in the course of the 1970s, non-marital relationships came to be treated more on par with marriage by the Dutch civil law courts (Van de Wiel 1974), while unwed mothers and illegitimate children lost much of their public stigma (Holtrust 1993). Within Dutch society, family relationships came to be seen more in terms of contractual arrangements between free and equal individuals, and less in terms of the strictly regulated and religiously sanctioned hierarchical institutions of the 1950s and early 1960s (Kooy 1997; Brinkgreve & Korzec 1978).

As gender inequality was questioned, Dutch women acquired the statutory right to keep their nationality upon marrying a foreign spouse, and foreign women no longer automatically acquired Dutch nationality upon marrying a Dutchman. In Dutch immigration law, women were no longer assumed to follow a foreign husband to his country of origin, but acquired the right to establish family life in the Netherlands with their foreign spouse (De Hart 2003a). It was no longer self-evident that the national unity of the nuclear family had to be preserved by having the wife follow her husband. The experienced reality of many people residing within Dutch territory – namely, that nations were not discrete entities, but inextricably linked to each other through cross-border intimacy (see Knop 2001) – became legally manifest. Not only were the normative foundations of the post-war welfare state being put to question; so were its personal and territorial limits.

While the religiously based moral order of the Dutch imperial past was being challenged from within, it was also being challenged from outside.

As one former colony after the other acquired national sovereignty during the first three decades following the Second World War, the equality of worth between the newly established national populations and their former colonial rulers came to be internationally acknowledged. Racist distinctions drawn along the lines of family alliance and behaviour, sexual or otherwise, that had previously served to distinguish the imperial rulers from the ruled, lost their legitimacy. In their stead, territory, a racially neutral mode of belonging and constitutive of the concept of the nation became more significant. When the former Dutch colony of Surinam acquired independence in 1975, shared territory, rather than legally defined family bonds, formed the primary criterion for distinguishing the population of the former metropole from that of the newly established nation (Heijs 1994). What's more, the prevalence of non-marital relationships among the Surinamese did not disqualify them from admission to the Netherlands, but rather prompted the reform of Dutch family migration policies and even, one could argue, of Dutch family law (see Van de Wiel 1974).

2.3 The emancipated individual as the new touchstone of the nation

Through the course of the 1980s, in the field of social policy, Dutch authorities finally succeeded in reconciling individual rights to sexual freedom with the public task of controlling economic interdependency by disassociating the one from the other. On the one hand, marital status became disassociated from the gendered division of paid and unpaid labour. Men and women were now assumed to share their earning and caring responsibilities on an equal basis and according to their own preferences. On the other hand, all adults who shared the same household were assumed to support each other financially, regardless of whether or not their relationship involved sex (Bouwens 1997). The Dutch state no longer focused on enforcing the gendered institution of marriage as the only legitimate site for the reproduction of citizenship, but on the enforcement, via social policies, of individual self-sufficiency. The prototype of the citizen was no longer the male breadwinner and head of the family, but the responsible individual who made sure he or she did not become a burden to the state.

Public issues that had previously been represented as a shared national responsibility now came to be formulated in terms of 'individual responsibility', from family housing and old-age pensions to education and health care. Plans for nationally funded child-care were dropped from the political agenda almost before they had reached it. Parenthood was seen as both an individual choice and an individual responsibility (Bussemak-

er 1993). Similarly, neglect and abuses of power within the family were no longer seen as symptoms of social ills to be set right by the welfare state, but as individual failings requiring individual solutions. To the extent that issues like gender discrimination and gendered violence were still perceived of as social and/or cultural issues, this now only applied to 'developing' countries assumed to still be caught up in the archaic traditions of patriarchy (Boerefijn, Van der Liet-Senders & Loenen 2000).

At the same time, women admitted as marriage migrants and originating from those same 'developing' countries were banking on Dutch feminists' critique of gender inequality and gendered violence to contest the dependent nature of their status under Dutch immigration law (Land et al. 1988). And where Dutch fathers were appealing to their right to respect for family life in order to maintain parental responsibility and visiting rights with their children following divorce, migrant fathers with children in the Netherlands started to appeal to the very same right to prevent being separated from their children by deportation (Van Walsum 2003).

In attempts to strengthen their claims to residence rights in the Netherlands, family migrants thus engaged with political and legal strategies developed by Dutch men and women struggling to reformulate the normative order of family relations in the Netherlands. In doing so, these family migrants inadvertently provided support for the notion that equality, individual freedom and human rights did indeed form the natural foundation for a new code of family law in the Netherlands.

2.3.1 A new consensus in Dutch family law; new grounds for exclusion: 1990-2000

In the 1990s a new consensus was finally reached in Dutch family law, a consensus largely based on the liberal tenets of individual freedom, equality and the right to respect for family and private life. In many ways, this new code of family law was the negative image of the code of alliances that had regulated legitimate family bonds in the Netherlands up until the early 1970s. Heterosexuality was no longer prescribed, men and women were assumed to be equal and the hierarchy between the generations was softened. Marriage no longer formed the prerequisite for participation in respectable society; it had become a matter of taste. Couples could choose from a variety of arrangements, and parental involvement in children's upbringing formed a right that could be expressed in different degrees of involvement and via various modes of attachment: legal, biological or social. Sexual preferences, the division of labour between spouses and decisions concerning the upbringing of children were thus seen as a matter of personal choice and not to be dictated by a public morality (Henstra 2000; Loenen 2003).

Individual freedom and personal responsibility also figured large in

the new integration policies being launched in this period. Language and integration requirements were introduced in order to groom the 'problem migrant' for the competitive lifestyle that stood model for the new notion of Dutch citizenship. In this context, the liberal and secular terms that had come to inform Dutch family law were presented as the natural touchstones of Dutch identity, and the 'problem migrant' was presented as its antithesis (Dutch Ministry of Internal Affairs 1994). In this the Netherlands was not unique. For example, Ralph Grillo (this volume) also observes how throughout Western Europe, the 'migrant family' is increasingly being presented as a site characterised by patriarchal relationships and illiberal practices, and thereby as an obstacle to integration.

In the meantime, controlling immigration was becoming less about controlling the number of immigrants being admitted onto Dutch territory. Freedom of movement formed the increasingly emphatic doctrine of an expanding European Union and immigration as such was no longer presented as a problem in Dutch policy documents (Dutch Ministry of Internal Affairs 1994). More and more, immigration law and policy came to be about facilitating the admission of those who were expected to fit into the new normative order and rejecting and – if need be – expelling those who were not, regardless of how intimately they might be bound to Dutch society.

2.4 Changes in the relationship between family and nation: 1945-2000

As discussed above, during the period immediately following the Second World War, disciplinary control of sexuality had been combined with the legal definition of marital status and legitimate descent to redraw the personal borders of the Dutch nation. But as sexual norms became more contested in the course of the 1960s and 1970s, disciplining sexual behaviour ceased to be an effective means for regulating inclusion and exclusion. By 1985, the equal treatment of men and women and of married and unmarried couples had to a large extent been realised, both in nationality and immigration law. A family's right to reside was no longer formally dependent on the male breadwinner's nationality. Neither gender nor family law status could serve anymore to regulate access to citizenship.

Moreover, by the mid-1980s, once migrants acquired access to Dutch territory, they could claim inclusion in the emerging egalitarian discourse of the national welfare state that collapsed physical presence on national territory with citizenship and state responsibility. Thus, up until 1990, immigration control and ethnic minorities policy continued to form distinct channels of state power. Controlling immigration at the nation's borders and managing social tensions and inequalities within them were

seen as distinct policy objectives, targeting different populations. The number of foreigners being admitted had to be kept to a minimum so that the project of national integration could be held at manageable proportions, but members of minorities already present on Dutch territory were to be treated as full – albeit culturally distinct – members of Dutch society. Once legally resident, immigrants were no longer seen as objects of immigration control.[3]

But because dominant notions of citizenship continued to be linked to the notion of the nuclear family as the basic unit of society, applying territorial limits that might cut through transnational families – rather than between them – remained problematic. And given the egalitarian ambitions of the nationalist project of social democracy, allowing some members of the Dutch nation rights in the sphere of family life that were denied to others was not a viable option either.[4]

2.4.1 The flip side to equality: Levelling down

Equality on its own, however, need not spell inclusion. The history of Dutch nationality and immigration law provides a number of examples of how reforms designed to produce equality nevertheless failed to extend a secure claim on family life in the Netherlands to a broader segment of the population. Instead, these reforms resulted in a levelling down: of men with regards to women; of married couples with unmarried couples; of Dutch citizens with immigrants (Van Walsum 2004).

Up until 1985, foreign family members of Dutch men had easy access to an unassailable right to residence via Dutch nationality law. After 1985, Dutch men's foreign wives and step-children had to apply for naturalisation on the same basis as the foreign family members of Dutch women. However, a special immigration law status still applied to all the family members of Dutch citizens and permanently settled immigrants, protecting them against deportation on whatever grounds as long as the family bond lasted. As of January 1994, however, foreign family members could no longer enjoy any such protected status. Protecting the social cohesion of Dutch society had become more important than protecting the integrity of family life (De Hart 2003a).

A second example of levelling down involves the relationship between parents and children. At the same time that the nationality law reforms of 1985 enabled Dutch mothers to pass on their Dutch nationality to their children at birth on the same basis as Dutch fathers, foreign mothers' liaisons with Dutch men ceased to pave a way to admission for their children. In the course of the 1980s and 1990s, policies regarding the admission of foreign children and step-children as well as the rules regarding their naturalisation were modified. The net result was that parents and step-parents who, for whatever reason, had waited to apply for family reunifi-

cation and who had, in the meantime, left their foreign children in the care of family abroad were assumed to no longer have a family bond with those children and hence did not qualify for reunification. And since children could only share in the naturalisation of a parent *after* the child was legally admitted to the Netherlands, it could even be the case after the parent involved had acquired Dutch citizenship.[5]

A third example of levelling down is the change that took place in the application of income requirements. Initially, these requirements were informed by the gendered model of the male breadwinner citizen and privileged married couples over unmarried ones and Dutch citizens over foreigners. By the turn of the century, the government had announced its intention to eliminate all such distinctions – subjecting all cross-border families to the same financial restrictions to reunification. Not only had formal distinctions between men and women and between married and unmarried couples disappeared, the privileges of Dutch citizens with foreign family members vis-à-vis newly admitted foreigners had also largely disappeared.[6]

Anyone, then – male or female, black or white – who wished to bring family members to the Netherlands had to be willing and able to bear the full brunt of the costs. And anyone who wished to stay following a divorce had to be solidly linked to Dutch society via a long-term labour contract, regardless of conflicting care responsibilities or other hindrances possibly experienced on the Dutch labour market. Given the structural differences in income and labour market participation between men and women and between dominant and ethnically marked groups, income requirements and requirements of labour market participation continued to hinder the admission of the foreign family members of women and/or members of ethnic minorities more than that of the family members of ethnically Dutch males (Van Walsum 2003). Gender and ethnic origin thus continued to play a role, albeit indirectly.

2.4.2 Some more equal than others after all

The universal application of income requirements was justified in terms of individual responsibility and the virtues of labour market participation, the touchstones of the new integration policies of the 1990s. The goals of integration policy thus became intertwined after all with those of immigration law. This occurred in other ways as well. The exclusion of children who had been left behind in their parents' country of origin came to be justified on the grounds that their foreign upbringing had made them an 'integration risk'.[7] Substantive controls of both marital and parent-child relations imposed a specific normative order while also serving to further restrict the volume of family migration. Finally, substantive controls premised on the normative assumption that shared residence was constitutive of fami-

ly life came to interfere with a growing arsenal of bureaucratic instruments designed to inhibit or delay international mobility.[8] The net result was that it became more difficult for migrants to claim inclusion in the Dutch nation on the basis of time spent in the Netherlands living as a family with a Dutch or legally resident spouse, partner, parent or child.

No longer kept separate from each other, the regimes of immigration law and integration policies merged to mutually reinforce each other. Premised as they were on the assumption that specific groups of immigrants threatened the new moral order of individual responsibility, sexual emancipation and gender equality, Dutch integration policies gave extra urgency to the task of controlling immigration and helped justify the erosion of a right that had previously been held to be self-evident: that of the Dutch breadwinner citizen to establish himself permanently and unconditionally within the Dutch nation, together with his family members, whether foreign or not – a right that Betty de Hart (2007) has defined as 'the right to domicile'.

The production of a new code of Dutch family law formed an important step in this process. By the end of the twentieth century, the family – the former keystone of society – had lost much of its substance. Heterosexual marriage was no longer being enforced as the only legitimate form of family life, but neither was it being protected as an institution. Homosexuality and non-marital sex had lost their stigma, but matrimony had lost its sanctity. Husband and wife were no longer brought together by God; the state could be justified in separating them in the national interest. While the relationship between parent and child did still enjoy a strong degree of protection, particularly in the realm of international law, it, too, had become more vulnerable to state intervention. The parent-child relationship had become differentiated, based on various grounds, to be enjoyed in varying degrees of intensity and to be shared among varying coalitions of parenting adults. The complexities, choices and negotiations that this implied justified the notion that not everyone would be equipped with the necessary skills and maturity to cope. Like citizenship, family life had become a matter of individual responsibility, but one that allowed for, and even required monitoring by, a tutorial state. The intimate sphere had once more become an accessible locus for exercising state power.

2.4.3 Which families? Whose nation?

Law and culture are not all of a piece. In the course of the 1990s, family norms came to be applied in other fields of Dutch public law in much the same way as they were being applied in Dutch immigration law. As noted above, forced interdependency between adults increased during the 1990s not only because of changing immigration policies, but also under the influence of changes in Dutch social security and welfare policies. And in

that context, too, providing unpaid care became a less accepted alternative for paid employment. At the same time, the Dutch state was claiming a greater say in the upbringing of children of *all* parents deemed incompetent or at risk, not just those of immigrant parents (Dutch Ministry of Health, Welfare and Sport 1996).

What the renewed focus on cultural difference obscured then was that, more and more, family migrants and a specific class of 'national' Dutch family members were finding themselves in the same boat: adult interdependency, reduced state support for parental care and increased state involvement in the upbringing of children. The Dutch government claimed the restrictions it imposed on family migration were necessary to protect personal freedoms depicted as typical of Dutch national identity. In fact, these restrictions fit – some were actually explicitly included – in programmes of control that not only affected family migrants and their family members in the Netherlands. They also applied to all those resident in the Netherlands – foreign and national – who, on the basis of the new concept of citizenship, might be perceived of as maladapted or even threatening to the new normative order of the nation. Programmes focusing on parental skills, for example, played a role in both crime prevention and integration policies.[9]

At the same time, certain categories of family migrants now actually enjoyed a privileged position, in the sense that they were exempt from mandatory integration requirements. These privileged categories consisted of family members of labour migrants who had been granted a labour permit; economically active EU citizens who had made use of their freedom of movement within the EU; and EU citizens possessing sufficient means to be able to support themselves in the Netherlands.[10] The reason for their privileged position is clear. In the interests of an unencumbered labour market within the EU, and in the interest of attracting highly skilled labour from outside of the EU, measures had to be taken to prevent family ties from deterring the movement of privileged categories of labour. National citizens, born and bred in the Netherlands, were thus actually at a disadvantage compared to certain privileged classes of foreigners – at least with respect to their right to settle with their family members within Dutch territory.

Since 1990, then, the Dutch government has proven to be increasingly reluctant to take the intimate lives of its citizens into account in any positive fashion, whether in designing its social policies, or in regulating family migration. Yet, where the integration of the Dutch economy into an emergent system of transnational labour relations is at issue, concern for the exigencies of the intimate sphere suddenly revives. In the period immediately following the Second World War, measures designed to protect family life in the Netherlands had been the prerogative of the male breadwinner citizen; by the end of the twentieth century they had become

the privilege of a transnational elite of mobile and highly skilled professionals and managers.

2.5 The current historical context

There are striking similarities between the normative changes described in this chapter and those signalled elsewhere; the notion of 'individual responsibility' is a recurrent theme throughout. Glendon, for example, has given a detailed account of the developments that have taken place both in family law and social policies in the United States and in a number of Western European countries since the Second World War. Reviewing these changes, Glendon (1989: 292) remarks that 'not one of [the]... formerly basic assumptions has survived unchanged. Most have been eliminated, and some have been turned on their heads'. Not only in the Netherlands, family laws that were originally organised around a unitary conception of the family as marriage-centred and patriarchal have increasingly come to focus on the individual. The family is being broken down into its component parts and family members are being treated as separate, equal and independent.

Other authors, like Macklin (2002) and Barker (2007), have discussed changes in immigration and welfare policies in Canada and the US that parallel my own findings in those fields of law, as described in this chapter. They, too, signal a trend towards cuts in social spending and increased interdependency among adult citizens, on the one hand, and more restrictive and selective controls on family migration, on the other. And they, too, relate these developments to a shift in the logic of public interest, in which efficiency, individual self-reliance and market rationality have become the new touchstones of national identity and purpose. These replaced the organisation of social benefits as well as culturally sanctioned ideas about the national significance of the nuclear family and the family wage system that prevailed in the period of post-war social democracy – a period when the state was still committed to fostering a primarily national economy.

More individualist notions of citizenship have thus found their reflection in more individualist perceptions of family relations throughout the current so-called Western World. A problem the reviewed literature does not address, however, is how – in this context of increasing individualism – a sense of national belonging is to be maintained. And while the quoted authors warn that the power of the state is actually increasing, they do not discuss how, in a context of increased sexual freedom and egalitarian and atomised family relations, state power that was once mediated through family relations might now control individual behaviour.

2.5.1 The possible relevance of a colonial past

In her book *Territory, authority and rights* (2006), Sassen argues that the nationally oriented model of the democratic welfare state, dominant among the so-called Western industrial nations during the decades following the Second World War, has been giving way to a more globally oriented model of governance. As powerful economic actors (particularly transnational companies and financial institutions) have come to transcend national boundaries to a growing degree, they have increasingly divided their productive activities over various places, shifting the locus of those activities all the while. As a result, the role that state actors can play in organising, controlling and regulating economic activities and transactions has changed. In trying to attract and hold down increasingly mobile capital, national governments now tend to give more priority to the demands of transnationally operative businesses than to national social issues.

In this respect it is striking to note that, since the 1980s, the gap between rich and poor has increased throughout the world, creating an economic divide that increasingly cross-cuts national borders (Harvey 2005). Dirlik (2007), moreover, posits a shift of attention in the allocation of resources from the territorially defined spaces of national societies to nodes in global networks, the so-called global cities. He further notes the emergence of a transnational elite that participates in the top echelons of transnational production processes and global consumption patterns and shares not only similar occupations, but similar education and lifestyles as well. Not only is there increased attendance of elites from the third world in first world universities, but models of education and even university campuses are being exported from the first world to the third.

In her analysis of the shift that currently seems to be taking place from a nationally oriented order of the post-war welfare state to a more globally oriented neo-liberal one, Sassen emphasises how the processes she describes have not been pre-determined, but form the result of a complex chain of interaction. Of vital importance are certain capabilities, developed within a previous order, that – in a new historical context – can serve as part of a

> new emergent organizing logic leading towards the constituting of a novel assemblage of key components… Rather than merely seeing an evolving transformation of the state as it adapts to new conditions, I see the particular combination of dynamics that produces a new organising logic as constitutive of foundational realignments inside the state. (Sassen 2006: 17)

Remarkably, Sassen does not include capabilities developed in the

specific context of colonial rule in her historical analysis. In fact, she dismisses the significance of colonialism for her central thesis on the grounds that colonial expansion formed part of the nationalist programme of the Western European nations under the Westphalian order, and that the colonial era was therefore not sufficiently distinct to merit specific attention. But while it may be true that the colonies of the nineteenth and twentieth centuries formed part of competing nationalist projects, the colonial societies themselves were not national in the way that their metropoles were. With the arguable exception of settler colonies like Canada or Australia, the European colonies of the nineteenth and twentieth centuries were not self-ruling and democratic. On the contrary, these were deeply hierarchical societies, ruled from afar, and divided along racial lines. Where the metropoles were premised on a single national identity, the colonies were pluralist and cosmopolitan. Nationality was not the primary determinant of a person's legal status, but his or her racial affiliation. Thus, in the Dutch East Indies people of various national origin could be classified as 'European', 'native' or 'foreign Oriental'. Whether or not they were legally included within the Dutch nation was of secondary importance (Prins 1952).

Given these differences, it seems reasonable to expect that techniques of power, or 'capabilities', to use Sassen's term, which were developed in the colonial setting may not have been suited to regulating social relations within the nationalist order of the democratic welfare state, as it was established in the former metropoles following the Second World War and decolonisation. But capabilities developed in the specific context of colonial societies preceding the Second World War might conceivably suit the organising logic of a globally oriented order, as opposed to a more emphatically nationalist one.

2.6 Linking the present to the colonial past

In her book *Race and the education of desire* (1995), Stoler provides a historical analysis of racism as a technique of inclusion and exclusion that can and has been re-appropriated towards new ends within successive historical contexts. Stoler's historical analysis is that racism forms a discourse that can and has repeatedly been re-appropriated towards new ends within new historical contexts. She traces the history of racist discourse in Western political thinking back to a pre-modern era in which the aristocracy used the concept of race in narratives of war to challenge the God-given sovereignty of the monarch. In her rendition, the French revolution marked a point at which this discourse, that once served nobility in its resistance to the monarch, became generalised and confiscated by society at large. The racism of the nineteenth century subsequently re-

versed from a discourse against power into one organised by it. In fact, according to Stoler, racial thinking has harnessed itself to varied progressive projects to shape social taxonomies that define who is to be excluded from those projects.

Through her analysis of the Dutch colonial regime in the former Dutch East Indies, Stoler shows how racist institutions do not simply serve to define existing distinctions and to legitimate the associated differences in wealth and privilege. Rather, they form the elements of a complex technology of inclusion and exclusion that actually produces, maintains and reproduces such differences. This technology incorporates various lines of distinction – including legally defined categories – that can be arranged and rearranged in varying combinations to legitimate modes of exclusion suited to the normative context of the time and subject to enforcement through interfering regimes of legally defined alliance and policy-steered discipline linked to normative structures such as social work, religion or the family.

Interestingly, Stoler suggests that the dynamics of power that characterised both the colonial societies and their metropoles in the late nineteenth and early twentieth centuries left behind a 'sedimented knowledge' that could serve to manufacture the consent and common sense needed to mediate state power in new ways suited to the current historical context.

> Via the sexualised discourse of race, a link could be made between nationalism and desire, creating a key discursive site where subjugated bodies could be made and subjects formed – generating social divisions that are crucial to the exclusionary principles of modern nation-states. (Stoler 1995: 136)

In the final chapter of her book, Stoler suggests that current anti-immigration discourse in Western Europe might form a new episode in this racist 'defence of the republic'.

2.6.1 Similarities and disjunctions

Having traced the parallel histories of changing family norms and family migration policies in the Netherlands, my conclusion is that a number of Stoler's theoretical concepts do in fact help us understand how technologies of inclusion and exclusion have developed and changed in the Netherlands in the course of the latter half of the twentieth century.

Firstly, Stoler's ideas on how discourses of exclusion link to emancipatory projects help explain why the shifts in the regulation of family migration to the Netherlands took place when they did. Secondly, her ideas on how different techniques of power can interfere with each other to produce new technologies of inclusion and exclusion help clarify

how the Dutch state's capacity to exclude, as expressed through nationality and immigration law, could be amplified at some points, and checked at others. Above all, Stoler's analysis makes us alert to the significance of a legal regime that links the construction and maintenance of citizenship to state involvement in the intimate sphere.

During the imperial order that preceded the Second World War, the legal determination of family status had been combined with the distinguishing marks of gender and generation as well as the disciplinary control of sexuality to draw national lines of distinction and maintain a technology of exclusion still reminiscent of the racist regime of the colonial period. During the nationalist order of the Dutch post-war welfare state, the power to exclude declined. The hierarchies of the previous order were being contested, while protected forms of family life continued to cross-cut territorially defined limits to solidarity. It wasn't until a new consensus had been reached concerning a new revised model of citizenship, defined in terms of individual responsibility, that it once more became possible to draw links. Legal determination of status (in terms of nationality and immigration law) became linked to the distinguishing mark of an individual's labour market participation and, more broadly, to a disciplinary regime, that of integration policies. Together these factors worked to construct – and maintain – a newly effective technology of exclusion. Once more, a social taxonomy (that of the market citizen) had been produced, giving expression to an emancipation project (that of liberal individualism) by defining who was to be excluded from that project – the 'traditional' non-Western migrant. By linking the new pedagogy of individual responsibility to a new family code grounded in the principles of freedom and equality, it once more became possible to channel state power into the intimate sphere to control individual behaviour.

But if illuminating parallels can be drawn between the colonial and the more recent pasts, there are also significant differences. In an era when women have acquired an important degree of sexual autonomy and in which legal, biological and social forms of parentage have become disassociated from each other, the focus of state control has shifted from the sexual act itself to the result of that act: children – their care, upbringing and education. Where under the colonial regime racially impure children figured as the main threat to the integrity of the Dutch empire, the current threat to the Dutch nation takes the shape of culturally deviant offspring: delinquents and radicals who pull down the market value of global cities and business locations on offer in the Netherlands.

In the first years following the Second World War, Dutch citizenship still stood for a privileged claim to belonging, favouring male heads of families with a genealogy that, traced through the male line, was rooted in Dutch territory. During the 1970s and early 1980s, the scope of Dutch

citizenship expanded. But at the same time, the rights accrued to Dutch citizenship were changing. Once a birthright, by the end of the twentieth century the claim to domicile in the Netherlands was becoming an object of international competition, and Dutch citizenship a license to compete.

While the manipulation of anxiety has once more become a key factor of state power, the anxieties in play now are not identical to those of the colonial past. The ambiguities and tensions inherent in the racist regime of the Dutch East Indies reflected and formed an expression of the then prevalent perception of affiliation as an unstable compound of biological reproduction, sexual behaviour and legal status. In the current context of formal gender equality, sexual freedom and de-institutionalised family relations, territory – rather than sexuality – seems to be emerging as a focus of anxieties related to identity and modes of belonging.

Notes

1 'Wet Inburgering Buitenland (*Staatsblad* 2006, nos. 26 & 75). This legislation became effective as of 15 March 2006.'
2 Tweede Kamer (2004-2005, 29 700, no. 6: 47-48).
3 *Minderhedennota* (Tweede Kamer 1982-1983, 16 102, no. 21).
4 Attempts to limit second-generation immigrants' rights – for example, the right to bring over a foreign spouse – were met with strong resistance on the grounds of being discriminatory (Tweede Kamer 1983-1984, 17 984, no. 3; see also Tinnemans 1994).
5 On changes in nationality law, see *Nationaliteitswetgeving* (Schuurman & Jordens 209, 7th edition, part B: 110-111), HR (13 October 1995) and RvdW (1995: 204). On immigration law, see Van Walsum (2003).
6 The only significant remaining advantages enjoyed by Dutch citizens was that their spouses could apply for naturalisation after a shorter period of residence than other immigrants, and that objections concerning public safety weighed less heavily against their spouses' admission than faced by foreign immigrants. By 2003, the latter distinction was eliminated (De Hart 2003b).
7 Tweede Kamer (2001-2002, 26 738, no. 98).
8 'For example, possessing a long-term visa acquired in the country of origin became mandatory for family migrants originating from less industrially developed nations in Asia, Africa and South America (*Staatsblad* 1998: 497); family migrants appealing a negative decision on their applications lost access to certain provisions of the Dutch welfare state under the law of the Koppelingswet (*Staatsblad* 1998: 203); family migrants originating from Ghana, Nigeria, India, Pakistan and the Dominican Republic were subjected to strict, lengthy controls of the substantive verity of their official documents (see Boeles 2003).'
9 Criminaliteitspreventie in Relatie tot Etnische Minderheden (Tweede Kamer 1997-1998, 25 726, no. 1).
10 'Wet Inburgering Nieuwkomers (*Staatsblad* 1998: 261).'

References

Barker, I. (2007), 'At the threshold of citizenship: Global capitalism, immigration, and welfare regime change', paper presented at Association for Legal & Social Philosophy Conference, Keele University, 19-21 April 2007.

Boeles, P. (2003), *Mensen & papieren: Legalisatie en verificatie van buitenlandse documenten in 'probleemlanden'*. Utrecht: FORUM.

Boerefijn, I., M.M. van der Liet-Senders & T. Loenen (eds.) (2000), *Het voorkomen en bestrijden van geweld tegen vrouwen*. The Hague: Dutch Ministry of Social Affairs.

Bouwens, W.H.A.C.M. (1997), 'Het gezin in de sociale zekerheid', *RM Themis* 4: 155-164.

Brinkgreve, C.D.A. & M. Korzec (1978), *'Margriet weet raad': Gevoel, gedrag, moraal in Nederland 1938-1978: Culturele veranderingen in Nederland: Analyse en interpretaties van een adviesrubriek*. Utrecht: Het Spectrum.

Bussemaker, J. (1993), *Betwiste zelfstandigheid: Individualisering, sekse en verzorgingsstaat*. Amsterdam: SUA 1993.

De Hart, B. (2007), 'The right to domicile of women with a migrant partner in European immigration law', in S. Van Walsum & T. Spijkerboer (eds.), *Women and immigration law: New variations on classical feminist themes*, 142-159. London: Routledge-Cavendish.

De Hart, B. (2003a), *Onbezonnen vrouwen: Gemengde relaties in het nationaliteitsrecht en het vreemdelingenrecht*. Amsterdam: Aksant.

De Hart, B. (2003b), 'Onbezonnen vrouwen: Gemengde relaties in het nationaliteitsrecht en het vreemdelingenrecht', *Nemesis: Tijdschrift over vrouwen en recht* 3: 54-62.

Dirlik, A. (2007), *Global modernity: Modernity in the age of global capitalism*. Boulder: Paradigm Publishers.

Dutch Ministry of Health, Welfare and Sport (1996), *Notitie gezin: De maatschappelijke positie van het gezin*. Rijswijk: Dutch Ministry of Health, Welfare and Sport.

Dutch Ministry of Internal Affairs (1994), *Contourennota integratiebeleid etnische minderheden*. The Hague: SDU.

Gastelaars, M. (1985), *Een geregeld leven: Sociologie en sociale politiek in Nederland 1925-1968*. Amsterdam: SUA.

Glendon, M.A. (1989), *The transformation of family law: State, law, and family in the United States and Western Europe*. Chicago: University of Chicago Press.

Groenendijk, C.A. (1990), 'Verboden voor Tukkers: Reacties op rellen tussen Italianen, Spanjaarden en Twentenaren in 1961', in F. Bovenkerk, F. Buijs & H. Tromp (eds.), *Wetenschap en partijdigheid: Opstellen voor Andre J.F. Koebben*, 55-95. Maastricht: Van Gorcum.

Harvey, D. (2005), *A brief history of neoliberalism*. Oxford: Oxford University Press.

Heijs, E. (1994), 'De Nederlandse nationaliteit van Indische Nederlanders: Een historische terugblik', in W. Willems & L. Lucassen (eds.), *Het onbekende vaderland: De repatriëring van Indische Nederlanders*, 58-66. The Hague: SDU.

Henstra, A. (2000), 'Kroniek van het personen- en familierecht. Never a dull moment', *Nemesis: Tijdschrift over vrouwen en recht* 5: 159-166.

Holtmaat, R. (1992), *Met zorg een recht? Een analyse van het politiek-juridische vertoog over bijstandsrecht*. Zwolle: W.E.J. Tjeenk Willink.

Holtrust, N. (1993), *Aan moeders knie: De juridische afstammingsrelatie tussen moeder en kind*. Nijmegen: Ars Aequi Libri.

Jansen, J. (2006), *Bepaalde huisvesting: Een geschiedenis van opvang en huisvesting van immigranten in Nederland, 1945-1995*. Amsterdam: Aksant.

Kennedy, J. (1995), *Building New Babylon: Cultural change in the Netherlands during the 1960s*. Ann Arbor: UMI Dissertation Services.
Knop, K. (2001), 'Relational nationality', in T. Aleinikoff & D. Klusmeyer (eds.), *Citizenship today: Global perspectives and practices*, 89-126. Washington, D.C.: Carnegie Endowment for International Peace.
Kooy, G.A. (1997), 'Gezinsleven en recht in naoorlogse Nederland', *RM Themis* 4: 123-129.
Kooy, G.A. (1975), *Seksualiteit, huwelijk en gezin in Nederland*. Deventer: Van Loghum Slaterus.
Land, S., M. Gieskes, L. Kok & S. van Walsum (1988), *Recht om te blijven, recht om te leven*. Amsterdam: Landelijk Aktie Komitee Zelfstandig Verblijfsrecht voor Migrantenvrouwen.
Loenen, T. (2003), 'Zorg(e)loze toekomst voor de vrouw in het familierecht', *Nemesis: Tijdschrift over vrouwen en recht* 5-6: 115-122.
Macklin, A. (2002), 'Public entrance: Private member', in B. Cossman & J. Fudge (eds.), *Privatization, law, and the challenge to feminism*, 218-264. Toronto: University of Toronto Press.
Peters, A.A.G. (1976), 'Maatschappelijke verandering, ouderlijke macht en het recht', *Ars Aequi* 1: 12-24.
Prins, W.F. (1952), 'De gevolgen van de souvereiniteitsoverdracht ten aanzien van de nationaliteit van Nederlandse onderdanen', *Het personeel statuut* 4-5: 49-74.
Ringeling, A.B. (1978), *Beleidsvrijheid van ambtenaren: het spijtoptantenprobleem als illustratie van de activiteiten van ambtenaren bij de uitvoering van beleid*. Alphen aan de Rijn: Samson.
Sassen, S. (2006), *Territory, authority and rights*. Princeton: Princeton University Press.
Schuster, J. (1999), *Poortwachters over immigranten: Het debat over immigratie in het naoorlogse Groot-Brittannië en Nederland*. Amsterdam: Het Spinhuis.
Stoler, A.L. (1995), *Race and the education of desire: Foucault's history of sexuality and the colonial order of things*. Durham: Duke University Press.
Tinnemans, W. (1994), *Een gouden armband: Een geschiedenis van mediterrane immigranten in Nederland (1945-1994)*. Utrecht: Nederlands Centrum Buitelanders.
Van de Wiel, A.M. (1974), *Samenleven buiten huwelijk: Over het juridisch lot van concubine en concubijn in binnen- en buitenland*. Deventer: Kluwer.
Van Walsum, S. (2004), 'Family norms and Dutch migration policies', *IMIS-Beiträge* 24: 119-128.
Van Walsum, S. (2003), 'Family norms and citizenship in the Netherlands', in C. Harzig & D. Juteau (eds.), *The social construction of diversity: Recasting the master narrative of industrial nations*, 212-226. New York/Oxford: Berghan Books.
WHACM (1997), 'Het gezin in de sociale zekerheid', *RM Themis* 4: 155-164.