The Family and the Nation

The Family and the Nation: Dutch Family Migration Policies in the Context of Changing Family Norms

by

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PROLOGUE

The Netherlands, 1946. Recently liberated from Nazi occupation, the country is still in shambles. The Dutch are struggling to piece together their private lives, to reconstruct their industries and infrastructure and to renew the social and moral fabric of the nation. Housing is cramped and basic commodities still have to be rationed. People who had fled the country during the war, or who had been deported for forced labour or internment, are on their way back home. More than 100,000 Dutch colonials whom the Japanese had interned in camps during their occupation of the Dutch East Indies are being repatriated.

Among the repatriates are Sergeant Hertogh, a former officer in the Dutch colonial army, his wife Adeline–a woman of mixed origin born and bred on the island of Java–and five of their six children.[1] They eventually settle in the provincial town of Bergen op Zoom, in the Catholic South of the Netherlands. Their sixth child, Bertha, is still missing. By chance, Adeline had left her with a friend of the family, a Malaysian woman named Che Aminah, just days before the rest of the family was arrested by the Japanese. Bertha was five at the time. Unable to trace her in the chaotic days following Japan's defeat, the Hertoghs had had to sail to the Netherlands without her.

In the summer of 1949 word finally reaches the Hertoghs that Bertha is alive and well and still in the company of Che Aminah, who by then has moved to Malaysia. Sergeant Hertogh immediately requests the Dutch Consulate-General in Singapore to arrange for Bertha's transportation to the Netherlands. In April 1950, at the request of the Dutch Consulate-General, Che Aminah travels to the British colony of Singapore with Bertha, apparently under the impression that she and the girl will be

[1] My rendition of the Bertha Hertogh affair is based on newspaper clippings, diplomatic correspondence and court judgements that have been kept in the archives of the Dutch Ministry of Foreign Affairs, filed under number 724.1 H, and three biographical works: Giap 1971; Hughes 1980 and Maideen 1989. My thanks to Hans Meijer who first drew my attention to Bertha's story with his article in the NRC Handelsblad of 8 April 2000: "Het Hollandse junglemeisje: Voogdijzaak Bertha Hertogh was ideologisch gevecht", and who graciously helped me find my way to the Ministry's archives.

invited to travel to the Netherlands together, and that she will be able to discuss Bertha's future there with the Hertoghs. Throughout the war, Che Aminah has looked after Bertha as if she were her own daughter. She has given her a Malaysian name, dressed her in Malaysian clothes, taught her the Malaysian language and brought her up in the Islamic faith. For her, it is not self-evident that it will be in Bertha's best interest to leave Malaysia and move to the Netherlands. However, upon arrival at the Dutch consulate in Singapore, Che Aminah hears that the Hertoghs have demanded immediate custody, and that Bertha is to be sent to the Netherlands at once, alone. Che Aminah refuses to comply.

As a reaction to Che Aminah's refusal, the Dutch Consulate-General requests a court order. Bertha is placed under the care of the Department of Social Welfare and on 19 May the Chief Justice of Singapore orders that she be returned to her parents. Che Aminah reacts by lodging an appeal and on 22 May a stay of execution is granted. Che Aminah subsequently wins her appeal on formal grounds and on 28 July Bertha is returned to her care.

While staying at a Girl's Home pending Che Aminah's appeal, Bertha becomes acquainted with a young teacher, Mansoor Adabi. This young man is a protégé of the President of the Singapore Muslim Welfare Association. This person, Majid, took Che Aminah into his home and set up a special committee in her support. On 1 August, three days after being returned to Che Aminah, Bertha marries Mansoor Adabi according to the Islamic rites. She is thirteen at the time; Mansoor is twenty-one. A day later, Che Aminah receives a formal request from the Hertoghs' lawyers to submit Bertha to her parents' custody before 10 August. Assuming that Bertha, being married, is no longer a minor, Che Aminah takes no further action.

On 26 August 1950 an originating summons is taken out by Bertha's parents applying for a declaration that Bertha's marriage is null and void and that she should be delivered into their custody. What started as a family affair, now becomes an episode in the world-wide struggle for decolonisation which has been emerging following the end of the Second World War. The challenge to the validity of Bertha's marriage elicits furious reactions from the side of Islamic nationalists not only in Singapore but also in Indonesia, Pakistan and Saudi Arabia. Meanwhile Bertha's parents have won the support of a special committee, originally set up by a Red Cross worker and later taken over by notables in Bergen op Zoom. Outraged editorials start to appear in both local and national Dutch press, soon to be followed by newspapers in France, Belgium, Great

Britain and South Africa, where numerous articles report on the fate of the "Dutch jungle girl".

The Dutch Ministry of Foreign Affairs becomes involved. In his letters to the Dutch Foreign Minister and to the Chairman of the Bertha Hertogh Committee, Van der Gaag, the Dutch Consul in Charge, reports that Bertha "reacts like a fury" to any suggestion that she be sent to the Netherlands, but sees no reason to doubt that Majid, the chairman of the Singapore Muslim Welfare Association, is the true motor behind her marriage, and that both Aminah and Mansoor will agree to Bertha's return to the Hertogh's, once they have been removed from Majid's influence.

In November 1950, Bertha's mother, Adeline, receives the necessary funds to attend the court hearings in Singapore. Judgement is delivered on 2 December 1950. The British judge presiding in Singapore rules that Dutch law should be applied. This means that Bertha, being younger than sixteen, lacks the legal capacity to marry, and hence remains a minor, subject to the authority of her parents. The judge awards custody to Sergeant Hertogh and directs that Bertha be handed over to Adeline. Che Aminah and Mansoor Adabi immediately put in an appeal and apply for a staying order pending the hearing. While awaiting the decision on this application, Bertha is placed in a Catholic convent, together with her mother.

The photographs that subsequently appear in the Singapore papers of Bertha surrounded by nuns and various symbols of the Catholic faith add fuel to the nationalist fire. When the court announces, on 11 December 1950, its refusal to grant a staying order, the city explodes into a riot that lasts for three days. Eighteen people die; one-hundred and seventy-three are injured and more than five hundred are placed under arrest. Bertha and Adeline are moved for their own safety to St. John's Island, a place normally used for detention and quarantine. In the evening of 12 December 1950, a KLM flight on its way to the Netherlands makes an unscheduled landing and takes Bertha and Adeline on board. Upon arrival at Schiphol airport, they are welcomed by a cheering crowd of thousands.

On 30 August 1951, the Court of Appeals of the High Court of the Colony of Singapore passes judgement, ruling against Mansoor and upholding the original judgement that Bertha should be returned to her parents. Fearing that Mansoor or Majid might subsequently try to abduct Bertha, the Dutch government provides a police escort to accompany her daily on her way to school and back. Mansoor tries to correspond with her, but his letters are intercepted. Mansoor and Bertha will never see or hear from each other again.

INTRODUCTION

The story of Bertha Hertogh, interwoven as it is with the dynamics of post-war reconstruction and decolonisation, offers a singularly dramatic illustration of the theme of this book: the complex relationship between transnational families and the Dutch nation. As the conflict over Bertha's custody makes clear, legal definitions of family relations can play a role in determining who does and who does not belong to the "imagined community" of a nation.[1] And as the riots following the Singapore court's decision show, conflicts over family norms can trigger emotions linked to the political project of constructing a nation's identity.[2]

While nothing as dramatic has occurred in the Netherlands since the Bertha Hertogh affair, the relationship between transnational families and the Dutch nation has not been consistently cordial either. Recently, under the centre-right cabinets headed by Premier Balkenende between 2002 and 2007, it has actually cooled considerably. The Ministers responsible for immigration and integration affairs during this period, Hilbert Nawijn (of the populist Pim Fortuyn party) and after him Rita Verdonk (of the liberal VVD party), have introduced a number of measures designed to prevent foreign immigrants from joining family members in the Netherlands. Income requirements, for example, have been raised for Dutch residents wishing to bring foreign family members over to join them, while the

[1] The term "imagined community" was coined by Benedict Anderson in his by now classic work: Imagined Communities: Reflections on the Origin and Spread of Nationalism, Anderson 1985.

[2] It should be noted that the Bertha Hertogh affair was no isolated incident. It formed the climax of a broader political struggle between nationalists in Singapore and the British colonial power, bent on reforming local family law. This struggle had focused on the issue of child marriages–hence the significance of Bertha Hertogh's case (for more over the political context of the Bertha Hertogh affair, see: Hughes 1980 and Maideen 1989). Interestingly, the exact same issues gave rise to similar political upheaval in the Dutch East Indies in the late 1930's, following the publication in the bi-monthly journal *Bangoen*, affiliated with the secular nationalist party *Parindra*, of an article in support of Dutch proposals to reform family law in the colony. For a detailed account of this so-called *Bandoeng* affair, see: Locher-Scholten 2000, p. 187-218.

number of categories made exempt from such requirements has been reduced.

Particularly controversial have been the compulsory language and integration tests that specified categories of foreigners must pass in their countries of origin, as of 15 March 2006, before they can be admitted to the Netherlands. Although not directly evident, these policies effectively target only people applying for admission to the Netherlands for the purpose of joining their partner, spouse, parent or child. Moreover, only family migrants originating from "non-western" countries: i.e. countries in Africa, Asia (including Turkey, but excluding Japan) and Latin America have been required to pass these tests before being allowed to enter the Netherlands.[3] Family members accompanying skilled labour migrants are exempt however, as are the (non-European Union:EU) family members of EU citizens making use of their freedom of movement within the EU. In other words, the restrictions to family life implied by these rules do not apply to certain (mostly Western) nationalities; nor to migrants occupying a privileged position on the transnational labour market.

It is too early to give an accurate indication of the effect these policy changes have had upon family migration to the Netherlands, but publications of the Dutch national bureau of statistics (CBS) suggest that their impact may well be significant. Thus in the period following 1 November 2004, at which point the higher income requirements had become effective, the number of immigrants entering the Netherlands from Turkey and Morocco–traditionally important countries of origin for family migrants–diminished noticeably. While in the previous years the number of immigrants coming from these two countries had remained stable, numbering about 12,000 per year,[4] in the third quarter of 2004 half as many people originating from these two countries entered the Netherlands as during that same period the year before.[5]

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[3] Exempt are nationals of the following countries: Australia, Austria, Belgium, Canada, Cyprus, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxemburg, Monaco, New Zealand, Norway, Poland, Portugal, Slovenia, Slovakia, Spain, the Czech republic, the Vatican, the United Kingdom, The United States of America, Iceland, Sweden and Switzerland (including Liechtenstein), and any remaining member states of the European Union, Vc 2000 chapter B1/4.1.1.

[4] Alders 2005, p. 46-49.

[5] Latten & de Jong 2005. In total, the number of people admitted to the Netherlands for purposes of family migration dropped from 21,691 in 2003 to 181,122 in 2004 (CBS 2007).

When defending her policies before Dutch parliament, Minister Verdonk linked assumed differences between the 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 (my translation: SvW)." [6]

One possible explanation for the increasingly restrictive attitude towards family migration in Dutch immigration policies could be a growing hostility towards people of the Islamic faith resulting from the attack in 2001 on the World Trade Centre in New York and the assassination of the explicitly anti-Islamic filmmaker Theo van Gogh in 2004. However, initial moves towards the above mentioned shifts in Dutch family migration policies date from well before these particular incidents. In linking exotic family norms and immigration to formulate a compound threat to the Dutch nation, Minister Verdonk gave vent to anxieties whose roots ran deeper than the above named moments of religiously inspired violence could account for. Her words were in fact strikingly reminiscent of the beleaguered sense of moral superiority that fuelled the reactions in the Netherlands to the Bertha Hertogh affair, and of the discourse used in colonial times to distinguish the Dutch, legally defined as "European", from the "native" inhabitants of the former Dutch East Indies.

This parallel is remarkable, given the radical changes in Dutch family norms since colonial times. The "antiquated norms and values" that Minister Verdonk warned against–such as gender inequality and enforced heterosexuality–were after all very much part of the normative register that once legitimated Dutch moral authority over the "natives" of the former Dutch East Indies. Could a technique that was once used to distinguish the Christian from the heathen still serve in a secular age? And can we justifiably draw parallels between current nationalist discourse and the racist distinctions of the colonial past?

A review of the changes that have taken place in Dutch family migration policies since the Second World War shows that family norms

[6] *Kamerstukken II* 2004/05, 29 700, nr. 6, p. 47-48.

have always served to distinguish the national from the foreign, but in varying ways and with different results. Paradoxically, it is in the most recent period, in which Dutch family norms have become the most removed from what they were in the colonial era, that Dutch immigration policies have come to be motivated in terms most reminiscent of that colonial past.

Changes in the Way Family Norms Have Delineated the Dutch Nation

I first became alert to the interaction between family norms and migration policies in 1985, the year in which the European Commission of Human Rights declared a certain Mr. Berrehab admissible in his complaint against the Dutch state.[7] Mr. Berrehab, a man of Moroccan nationality, had been admitted to the Netherlands on the grounds of marriage to a Dutch woman, but had lost his residence permit two years later following a divorce. By then he and his former wife had had a daughter, Rebecca. Although no longer living with Rebecca's mother, Mr. Berrehab was intensely involved in looking after her, devoting four days a week to her care. Nonetheless, the Dutch Deputy Minister of Justice persisted in refusing to extend Mr. Berrehab's residence permit, rejecting the claim that his and his daughter's right to respect for family life was being violated, contrary to the obligations imposed by article 8 of the European Convention of Human Rights.[8] The reasoning on the part of the Dutch state was that as long as father and daughter did not belong to the same household, they had no family life together. Hence their relationship could form no hindrance to Mr. Berrehab's deportation.

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[7] *Berrehab v. The Netherlands*, EComHR 8 March 1985, application nr. 10730/84. According to the rules of procedure that apply before the European Court of Human Rights (ECHR), complaints must first be examined for admissibility, before being referred to one of the court's chambers for a procedure of merits. The ECHR has an official database, HUDOC (http://www.echr.coe.int/ECHR/). Unless otherwise indicated, all cited judgements and admissibility decisions can be found on that website.

[8] Article 8 reads: "1) Everyone has the right to respect for his private and family life…; 2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

This reasoning was remarkable given the changes that were going on in Dutch family law at the time, in which single, divorced and separated fathers were acquiring the right to have access to their children and to share custody, regardless of whether or not they had ever married the mothers of their children or even lived together with them. In the wake of the second feminist wave and women's campaigns for the elimination of gender discrimination in various fields of law, men were demanding their equal share of rights in the sphere of family life. The impressive successes that they managed to book in the Dutch civil courts stood in stark contrast to the experiences of migrant fathers, like Mr. Berrehab, who appealed to the same legal principles in order to be allowed to stay in the same country as their children. The legal concept of "family life" apparently had different connotations in Dutch family law than in Dutch immigration law.

Ironically, in the same period that the *Berrehab* case was being deliberated, Dutch nationality law was being reformed, putting an end to the last remnants of distinction based on gender. As of 1985, foreign women could no longer opt for Dutch nationality upon marrying a Dutchman while Dutch women could finally pass on their Dutch nationality to their children, regardless of the nationality of the father. Other than in previous decades, Dutch nationality law no longer served to include the family members of Dutch male citizens while excluding the (previously Dutch) family members of foreign men.[9] But if gender no longer served to mark the limits of the nation, new principles would, as the *Berrehab* case was making clear. No longer running between families, the new limits of the nation were being drawn through families, potentially dividing husbands from wives and parents from children.

On 21 June 1988, the European Court of Human Rights decided on the *Berrehab* case and ruled that father and daughter did in fact enjoy family life together, and that their right to respect for that family life had been violated.[10] The ruling of the European Court of Human Rights in the *Berrehab* case had important implications for Dutch rules regarding the right to extended residence for divorced or separated foreign parents. Nevertheless, for decades to come, the ruling assumptions concerning family life in the Netherlands would continue to differ depending on whether they were being applied to families that included foreign members or to families that consisted exclusively of Dutch citizens.

To name just a few examples: while Dutch emancipation policies focussed on increasing married women's economic independence and

[9] Up until 1965, Dutch women who married foreign men automatically lost their Dutch nationality. See further: Chapter Two.

[10] *Berrehab vs The Netherlands*, ECHR 21 June 1988, application nr. 10730/84.

reducing their vulnerability to domestic violence, Dutch immigration policies kept foreign spouses in a dependent position during the first years of their stay in the Netherlands and made no special provisions for women threatened by violence in the home; while Dutch parents were acquiring more freedom in deciding how to bring up their children and with whom, Dutch immigration law sanctioned parents who had entrusted their children to the care of others during their first years in the Netherlands; and although divorced and separated fathers like Mr. Berrehab were no longer assumed to have completely severed their family ties with their children, Dutch immigration law did continue to demand certain substantive proofs of family life–payment of child support; visiting arrangements for a minimum number of hours per week–before allowing them to extend their stay, while Dutch family law imposed no such demands upon Dutch fathers claiming their right to acknowledge a child, to have access, or to exercise parental responsibility.[11]

Since 2000, a new shift seems to have been taking place in the relationship between family and nation in Dutch immigration law. The divergence in family norms as applied in Dutch family law and in Dutch immigration law appears to be fading. With the introduction of a new law on immigration as of 1 April 2001, family life between parents and children has been defined in identical terms, regardless of the nationality of the parent concerned.[12] In a letter to the Dutch Parliament, dated 17 October 2003, Minister Verdonk announced her intention to grant independent residence status to immigrant spouses who were able to prove they had been subjected to domestic violence.[13] And in a letter dated 25 September 2006, she announced that Dutch family migration policies would be amended per 8 September of that year, allowing parents residing in the Netherlands to apply to have their foreign children join them, regardless of how long those children had been living abroad or with whom.[14]

Admittedly, some pressure had to be brought to bear before these changes were effected. Once again the European Court of Human Rights played its part,[15] as well as some active lobbyists on the home front.[16]

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[11] I have discussed such discrepancies in, among others: Van Walsum 2003.
[12] Vreemdelingencirculaire 2000: Chapter B2/13.2.1 (presently: B2/10.2.1)
[13] *Kamerstukken II* 2003-2004, 29 200 V1, nr. 20.
[14] *Kamerstukken II* 2006-2007, 19 637, nr. 1089.
[15] Particularly significant were the judgements in *Sen vs. The Netherlands*, ECHR, 21 December 2001, application nr. 31465/96, and in *Tuquabo-Tekle vs. The Netherlands*, ECHR, 1 December 2005, application nr. 60665/00.

Moreover, the European family reunification directive, that became effective as of 3 October 2005,[17] has placed limits upon national sovereignty in the field of immigration law. All the same, it is striking to note that Dutch family norms are being applied more universally in a period in which there is also evidence of growing anxiety concerning cultural differences as expressed through family norms.

Initially then, following the gendered principles of post-war family law, foreign family members of Dutch men were seamlessly absorbed into the Dutch nation, while Dutch women married to foreign men were divorced from their nation of origin. However, subsequently, foreign family members could qualify for admission to the Dutch nation on equal terms, regardless of gender, but only subject to compliance to a specific set of family norms that did not apply, or no longer applied, to their Dutch counterparts. In the most recent model, the family norms to which transnational families are subjected have become more congruent with the regime that applies to families consisting solely of Dutch nationals. However, while certain categories of foreign family members are actually being welcomed into the Dutch nation in the interests of facilitating a transnational labour market, others are being denied admission on the grounds of attributed family norms that mark them as a potential threat to the social cohesion of the Dutch nation.

In Dutch law, the imagined "communities" of family and nation have continued to be mutually constitutive and, at times, mutually disruptive, but the dynamics of this relationship have been subject to change.

Changes in Historical Context

The Bertha Hertogh affair took place in a period that marked the beginning of the end of European imperialism. The decades that followed were marked by decolonisation, the cold war, and the expansion of the Welfare State in many western European nations–among them the Netherlands.

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[16] NGO's that have been particularly vocal on these issues have been: the Komitee Zelfstandig Verblijfsrecht Migrantenvrouwen (a platform of Women's Shelters and migrant women's organisations campaigning for the rights of marriage migrants), LAWINE (an organisation of Dutch women with foreign partners), the Clara Wichmann Instituut (an institute for women and the law) FORUM (a Dutch NGO active on many issues of immigration law and integration policy) and STIL (an NGO supporting undocumented immigrants in the Netherlands).

[17] Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, published in the Official Journal of the European Union on 3 October 2003, L 251/12- zl 251/18.

In her book *Territory, Authority and Rights*,[18] Saskia Sassen argues that we are currently once more caught up in a period of fundamental changes. 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. The new dominant ideology has become that of neo-liberalism:

> "I posit that particular institutional components of the national state begin to function as the institutional home for the operation of powerful dynamics constitutive of what we could describe as "global capital" and "global capital markets." In so doing, these state institutions reorient their particular policy work or, more broadly, state agendas toward the requirements of the global economy."[19]

As Sassen furthermore points out, the post-war model of the Welfare State had been grounded on the concept of the male breadwinner citizen: on assumptions about full employment, the pre-eminence of the nuclear household and exclusive heterosexual relations.[20] The nationally orchestrated forms of solidarity had been set up in order to enable the breadwinner citizen to participate more fully in society. The Welfare State was designed to relieve him of the strain of having to support his dependent family members by ensuring him of sufficient financial means.[21] As a result, national citizens, and particularly male heads of households, had strong reasons to identify with the post-war Welfare State:

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[18] Sassen 2006.
[19] Ibid p. 412. For a comparable analysis specifically regarding the Netherlands, see: Wilterdink 1995.
[20] Sassen 2006, p. 285.
[21] C.f. Mundlak 2007

> "There are several reasons why the concept of the nation, once established in the nation state, is so powerful ... one reason is of particular importance. It is the ability of the nation to articulate itself with practically all practices in which individuals try to gain control over their lives ... It is because the nation is inextricably linked with state practices that subordination and consent to the nation state can be experienced as a form of securing social facilitation and competences."[22]

In the neo-liberal perspective however public forms of social security no longer qualify as a basis for emancipation and civic dignity, but as a crutch for those not yet able to fully participate in (transnational) market relations. Social benefits have become a stop-gap on the way to paid labour; paid labour itself is a first step towards more lucrative forms of security such as private investments and insurances; public housing has become a way-station on the route towards home ownership.

As the meaning of social security has changed, so too, one may expect, has the significance of the male breadwinner-citizen. While Sassen does not pursue this facet of the changes described in her otherwise rich and complex book, other authors have done so. Mary Ann Glendon in particular has given a detailed account of the developments that have taken place both in family law and in social policies in the United States and in a number of Western European countries since the Second World War. Reviewing these changes, Glendon remarks that "not one of [the].. formerly basic assumptions has survived unchanged. Most have been eliminated, and some have been turned on their heads."[23] Where previously family law had been organised around a unitary conception of the family as marriage-centred and patriarchal, in the end it has focussed primarily on individuals. The family has been broken down into its component parts and family members are being treated as separate, equal and independent. Furthermore, as the significance of human interdependency has disappeared from view, dependency has come to be seen as somehow degrading.[24]

More individualist notions of citizenship have thus found their reflection in more individualist perceptions of family relations. A problem that neither Sassen nor Glendon seriously addresses, however, is how–in this context of increasing individualism–a sense of imagined community is being maintained. And while both of these authors warn that the power of the state is actually increasing, they do not discuss how, in a context of

[22] Räthzel 1995, p. 165-166.
[23] Glendon 1989, p. 292.
[24] Ibid. p. 295-297.

increased sexual freedom and egalitarian and atomised family relations, state power that was once mediated through family relations might now control individual behaviour.

It seems reasonable to assume that changes that have taken place in the regulation of family migration to the Netherlands, somehow relate to changes that have taken place within the broader historical context. How have rules that address individual claims to belonging to both family and nation been reconciled with the trend towards individualisation, and what changes do they reflect in the ongoing tension between individual, family and state?

Sex and the Manufacture of Consent and Common Sense

A possible answer to the questions posed above may be found in the theoretical work of Ann Stoler. In her book *Race and the Education of Desire*,[25] she has expanded on Foucault's theory on sexual discourse, class relations and state power in Western Europe. Hers is an ambitious project, aimed at broadening, deepening and transposing Foucault's insights into the dynamics of power so as to include and account for the racial taxonomies of empire. In her analysis, the patriarchal family norms that characterised Western European societies in the post-war period do not figure primarily as the foundation for the post-war Welfare State. Rather, they stand for the broad and complex system of norms that served to distinguish the colonisers from the colonised in the former colonies, and the dominant from the subordinate classes in the former metropoles, up until the Second World War.

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 have 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.[26]

Sex, Race and the Quality of Citizenship

In Stoler's account, the nineteenth and early twentieth century discourses of race in the colony and class in the metropole were related, but different in their effect. In the metropole, those who were excluded from political

[25] Stoler 1995.
[26] Ibid. p. 203.

citizenship (i.e. from voting rights and access to civil service jobs) on account of their lack of bourgeois credentials, still counted as members of the nation. While they formed the object of state intervention, they also qualified for specific forms of support. In the Dutch East Indies, the concept of race was mobilised to introduce an extra layer of exclusion that disqualified people from membership in the nation and denied them access to state care, the claim to national belonging and the liberal regime of Dutch law.[27] "In taking on responsibility for the regeneration of the dominant race, the colonial state protects its own by expelling the colonised other. Thus a positive relation is established between a right to kill or expel, and the assurance of life."[28] The concept of race thus played a crucial role in developing the concept of an internal threat to the body of society as a whole, in linking personal to social hygiene. It evoked the image of a "barbarian" within society, "necessitating a protective state entitled to intervene in the making of life; the manner of living".[29]

Stoler's historical studies of the practices surrounding racial distinctions in the Dutch East Indies reveal how the colonial discourse of race was not so much about phenotypic characteristics as about the normative properties that these were supposed to signal. As discourses, race and class both shared a core element, namely: the presence or lack of "an ethic of how to live", the quality of citizenship.[30] Citizenship, class and race were all related gendered properties that had to be learned. In nineteenth century bourgeois discourse in Europe, citizenship was a faculty to be learned and a privilege to be earned. In the liberal democratic presumption, the "boon of freedom–the right to govern oneself–should be granted only to those who had assimilated certain internal controls."[31] Similarly, racial discourse cannot be understood "without attending to the ways in which the cultivation of 'character', personality and the cultural competencies by which they were marked figured in the making of race."[32] "Perhaps one of the most common observations about the racial discourse of colonialism is the patriarchal, protective familial metaphors in which it is cast … interweaving private sentiments and public politics."[33]

[27] Ibid. p. 8; 53; 119.
[28] Ibid. p. 85.
[29] Ibid. p. 78; 83.
[30] Ibid. p. 120.
[31] Ibid. p. 130.
[32] Ibid. p. 207.
[33] Ibid. p. 150.

The discourse of sex, served as one of the *leitmotifs* of "character", marker of the interior landscape of the "true" European,[34] just as it also helped produce moral clusters of judgement and distinction that defined the boundaries of middle-class virtue and lower class immorality. As such it formed a vital link between the discourses of race and class, and helped to integrate both into the concepts of nation and citizen. "The fact that these discourses do not reduce to racial typologies alone suggests that the colonial order coupled sexuality, class, and racial essence in defining what it meant to be a productive–and therefore successfully reproductive–member of the nation and its respectable citizenry."[35] Mothers and wives formed a particular focus of attention, as they were responsible for the health of their children, the solidity of the family and, ultimately, the safeguarding of society as a whole.[36]

The media coverage of the Bertha Hertogh affair shows how Dutch perceptions of the racial divides that had shaped the former colony of the Dutch East Indies continued to inform public expressions of Dutch national identity following the Second World War and Indonesia's decolonisation. In particular the media reports expressed an undercurrent of anxiety regarding Bertha's sexual integrity. An article in the *Nieuwe Haagsche Courant* dated 8 August 1950 evoked the fear that Bertha's virtue might be threatened by more than just her marriage, now that she had come to live next door to a seamen's hostel frequented by Malaysian and Pakistani sailors on furlough in Singapore. *Elsevier*, a Dutch weekly, reported that Bertha's trial was being attended by crowds of Muslims "expressing unusually great interest in the blonde little Christian girl".[37]

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[34] Ibid. p. 191.
[35] Ibid. p. 178.
[36] Ibid. p. 35.
[37] Those who opposed European imperialism did in fact link the controversy surrounding Bertha's case to the racism that they saw as characteristic of colonial rule. In its editorial comment of 7 December 1950 on the Bertha Herthogh affair, the Dutch Communist daily *De Waarheid* for example accused the other Dutch media of having seized on Bertha's story to fan the flames of racial conflict. The Bertha Hertogh affair also provided an opportunity for Americans to express their criticism of Dutch colonial rule. James Michener, for example (author of *Tales of the South Pacific*) published a column concerning the affair on 3 May 1951 in the *International Herald Tribune* as the first instalment of a series of columns entitled "Tales of South Asia". Michener clearly wanted to shed a different light on Bertha's story than most European reporters had done. He quoted Mansoor's indignation over the fact that Bertha had regularly been referred to as a "jungle girl". Judging from the photos that Mansoor had shown him, Michener concluded that Bertha "does look to be 16. She does appear to be a normal, happy, civilised

According to Stoler, the gendered and sexualised discourses of race didn't serve to resolve racial ambiguities, but rather kept anxieties concerning those ambiguities alive, anxieties that called for the policing of the intimate sphere, particularly in the danger zones of ambiguity which were populated by children of mixed descent; by European children being raised by "Babu" nursemaids; by poor European men cohabitating with native concubines; by European women who had elected to marry a native husband.[38]

Again, the media coverage of the Bertha Hertogh affair shows how the colonial anxieties described by Stoler continued to echo in post-war Dutch society, and remained relevant for the (re)construction of a national identity even as the former Dutch empire was waning. Bertha's Malaysian upbringing, for example, was a source of morbid fascination for the Dutch press and was described in detail: she was depicted as a devout Muslim, who didn't speak a word of Dutch; who ate with her fingers; who lived in the *kampong*, listened to the Malaysian name of Nadra and only played with *kampong*-children. At the same time, her European origins were also stressed. Frequent references were made to her white skin colour and blonde hair, and to the fact that she had once been baptised as a Catholic: "it remains strange to see how this white child dresses herself in a Malaysian sarong, shuffles through the room in her bare feet and babbles the Malaysian language...".[39]

Many Dutch (and foreign[40]) newspapers moreover saw the Bertha Hertogh affair as a worrisome symptom of waning colonial prestige, and called for more vigorous government action. An editorial published on 23 August 1950 in the right-wing Dutch daily newspaper *De Telegraaf* complained that the most painful aspect of the whole affair was that "our rights as Dutchmen" had not been respected by the British judge who had returned Bertha to Aminah's custody: "That all this could occur in Singapore is the result of the fact that, in another region [i.e. the former

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girl." Michener described the room where Mansoor conducted his studies as resembling a "college dormitory with pictures of Roy Rogers, Greer Garson and a championship soccer team." Concluding his report, Michener stated: "There were many things Mansor Adabi told me that the British courts refused to accept, but on one point I could not be deceived. This Muslim boy loved the girl he had married."

[38] Stoler 1995, p. 45; 102, 107.

[39] *Nieuwe Haagse Courant*, 8 August 1950. See also: *De Linie* 28 July 1950; Algemeen Handelsblad and the *Volkskrant*, 4 August 1950; *Elsevier* 12 August 1950.

[40] See for example the Belgian *Métropole* of 19 December 1950, which referred to the affair as proof of the declining authority and prestige of Europe in Asia.

Dutch colony of the Dutch East Indies – SvW], we [the Dutch] have too often done too little to maintain our prestige." Two days later the same newspaper expressed its outrage at the fact that "a British judge in a British colony can rule that a Dutch child, against the express wishes of her parents, should be delivered into the arms of her nursemaid, and subsequently coupled to a native Muslim." Even before Bertha had married Mansoor, the Catholic daily *De Linie*, in an editorial dated 28 July 1950, wondered whether the British would take the necessary steps to save Bertha from the clutches of the Muslims, "…who are so crazy about white women? Has the British Commonwealth reached such a point of decadence that it would rather leave a European child to such a fate than cause trouble with the Muslims? (my translation-SvW)"

In the final chapter of her book, Stoler suggests that current anti-immigration discourse in Western Europe forms a new episode in this racist "defence of the republic". In her analysis, modern European nations have been built on "interior frontiers" in the same fashion as, and in conjunction with, colonial empires. Although the discourses of sexuality, race and nation are distinct, they all share the assumption that visual markers reveal hidden moral properties and invisible essences, and that the state has the moral authority to defend the social body. "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".[41]

Linking the Colonial Past to the Present

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, Saskia Sassen emphasises that 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 organising 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."[42]

[41] Stoler p. 130, 136.
[42] Sassen 2006, p. 17.

Remarkably, certainly in the light of Stoler's analysis, 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 century 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.[43]

Given these differences, it seems reasonable to expect that techniques of power, or "capabilities", to use Sassen's term, 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 the distinct repertoire of capabilities developed during the imperial order might offer opportunities for developing a new organising logic suited to a globally oriented order, as opposed to a nationalist one.

Race and the Power of the State

The essence of Stoler's analysis is that racism forms a technique of power 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

[43] Prins 1952, p. 49-74.

in its resistance to the monarch became generalised and confiscated by society at large.[44] The racism of the 19th century subsequently reversed 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.[45]

In this she echoes Foucault's insight that specific discourses, as technologies of power, can be deployed by different parties, for different ends, depending on the historical context. Particular sets of concepts can be used to play different games, and oppositional histories can resurface within the discourses that they oppose.[46] Foucault, for example, rejected the notion that sex was "freed" by the generation of 1968. Rather, he claimed, the moral discourse of sexuality had been appropriated by a new and secular generation. As a technique of power, sexual discourse had not disappeared, but simply changed hands.[47]

The colonial technology of race, as described by Stoler, made it possible to create a mode of belonging in the fragmented and cosmopolitan society of the Dutch East Indies, albeit at the expense of creating fundamental inequality. At the same time it also provided a rationale for legitimating state interference in the intimate lives of both citizens and subjects. The specific forms of involvement of the colonial state in the intimate lives of its subjects and (future) citizens had concrete consequences for the position of servants, the upbringing of children, the access of poor Europeans to welfare, the selection of Europeans deemed "fit" to migrate to the colonies, and the moral standards and domestic arrangements that they were expected to live by once they arrived.[48] It also served to undermine an emerging mestizo elite that could have challenged the dominance of the Dutch colonising power.[49]

Could it be that the techniques of inclusion and exclusion that were developed during the colonial age might once more serve to support a new mode of belonging, now that notions of national solidarity are starting to fade, and a new rationale for state intervention in intimate lives, now that family norms have become less authoritarian? The question of course is how such a transposition could occur in an historical context in which decolonisation has become virtually completed; in which racism has

[44] Stoler 1995, p. 77.
[45] Ibid. p. 71;91.
[46] Ibid. p. 61-63; 77.
[47] Ibid. p. 77.
[48] Ibid. p. 190.
[49] Ibid. p. 44.

become taboo; and in which patriarchy–that in Stoler's analysis plays an important mediating role–no longer figures in the legal regulation of family life.

Charting the Post-War Dynamics of Inclusion and Exclusion

The purpose of this book is to take up the challenge launched by Stoler, namely: to seek out whether or not it is possible to establish parallels between the dynamics that have led to the present restrictive family migration policies in the Netherlands and the earlier dynamic that she has described between family norms and racist modes of exclusion in the Dutch East Indies. To that end, the history of Dutch nationality and immigration law during the second half of the twentieth century will be analysed in the context of changes that have taken place during that same period in family norms in the Netherlands. The main focus of the book will be on the legal regimes of family law and nationality and immigration law, regimes that principally regulate matters of status.

For purposes of analysis, however, the scope of the book will be broader. In her analysis of how the power to exclude manifested itself in the practice of colonial rule, Stoler distinguishes between the notion of a population, as crafted by administrators, and the notion of a people, as crafted by ethnographers.[50] Although these were complementary projects, they also expressed competing visions on how to generate a European "critical mass"–i.e. through quantity or quality.[51] Together they helped produce a racial identity that was "fixed" via a legal code that itself depended on sexual and psychological typologies that were ill-conceived and ill-defined.[52] That is, the collaboration between administrators and ethnographers led to a formalisation of racial categories which was contingent on the management of both legitimacy and behaviour.[53]

This mode of analysis borrows from Foucault's insight that specific discourses help produce specific regimes of power, which can be combined to produce yet a new type of power. Thus, in Foucault's perception, a discourse of legitimate descent serves to regulate alliance, while a discourse of sexuality serves to discipline behaviour.[54] These two

[50] Ibid. p. 39.
[51] Ibid. p. 114.
[52] Ibid. p. 47.
[53] Ibid. p. 44.
[54] Ibid. p. 36.

discourses merge in the family, the site where state power has penetrated into the most intimate domains of modern life, producing a society in which the population is governed by the individual governing the self.[55]

Similarly, Glendon, in her description of state, law and family in the United States and Western Europe, not only focuses on changes in family law, but on changes in social policy as well. In fact, as she herself points out, it isn't really possible to comprehend the changes that have taken place in family law in the second half of the twentieth century without taking parallel developments in social security and welfare policies into account.[56] The reason is that changes in the perception of the relationship between the Welfare State and its subjects regarding the provision of social security and welfare benefits has necessarily implied changes in assumptions regarding mutual obligations between family members–and vice versa.

Closer to the topic of this book, it is also difficult to conceive of a history of Dutch family migration policies that does not take developments in Dutch integration policies into account. Certainly, under the regime of Nawijn and Verdonk, when one sole ministry bore the responsibility of developing policy in both of these areas, these were strongly intertwined. However, even before this was the case, integration policies were largely grounded in assumptions concerning the implications of immigration for Dutch society and vice versa: immigration policies were based on assumptions concerning the possibility or impossibility of integrating specific categories of immigrants into Dutch society.

Mindful of Stoler's account of the fruitful interaction between discourses of status and discourses of discipline, and given the above mentioned limits of focussing purely on the regulation of status; the history of Dutch family, immigration and nationality law, as written in the following chapters, will be flanked by descriptions of related changes in the fields of social security law, welfare policies and integration policies. These in turn will be related to rough sketches of the changing historical context. Other than in Stoler's work, however, the scope of this research has been limited to legislative texts, policy documents, parliamentary interventions and court judgements. The broader normative context as reflected in media reports, ego-documents and professional handbooks, for example, remains unexplored.

[55] Ibid. p. 60; 96.
[56] Glendon 1989, p. 293-298.

The Scope of this Study

Next to national regulation, European legislation regulating EU citizenship and the freedom of movement within the EU has come to play an increasingly important role in the Netherlands, as in all the member states of the EU, in regulating immigration. Thus it should be borne in mind that certain groups of (aspiring) family migrants–those from Italy, Greece, Portugal and Spain–initially fell under the more restrictive national immigration regimes, but later became subject to the European norm of freedom of movement as their countries of origin came to be included in the European project. Although their freedom to (re)unite with family members elsewhere within the EU is not unlimited, this regime is so different from the national rules regulating family migration from outside of the EU that I have decided not to include it in this study. Interested readers can consult Sewanando's PhD thesis on the rules regulating family migration within the EU.[57]

Consequently, the main focus of this book will be on Dutch rules regulating the admission and continued residence of so-called third country nationals. Similarly, only brief attention will be given to the situation of asylum seekers and their family members. The rights of refugees and asylum seekers in the sphere of family migration and family reunification form an issue that certainly deserves attention,[58] but is beyond the scope of this book. The focus will moreover be on family relations between (marriage) partners and between parents and children, i.e. the so-called nuclear family. Again, the implications of Dutch immigration law for more extended family bonds is well worth documenting,[59] but would overextend the scope of this work.

Although many remarkable developments have taken place in the Netherlands regarding the regulation of family migration since the year 2000, I have chosen to leave them out of my account. These developments are so recent that I do not feel confident that I could present them with the detachment needed for insightful analysis. Moreover, the purpose of this book is to discern the historical processes that made current developments possible, not to report on those developments as such.

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[57] Sewandono 1998.
[58] See Fernhout 1990, p. 185-189; Den Uyl et al. 2006.
[59] I have dealt with these to some degree in earlier publications: Van Walsum 2000; Van Walsum 2001.