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tijdschrift voor antropologie **focaal 22/23 1994**

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**Coping with insecurity**



# Coping with insecurity

## An 'underall' perspective on social security in the Third World

Edited by

Franz von Benda-Beckmann  
Keebet von Benda-Beckmann  
and  
Hans Marks

## Mixed metaphors: the nation and the family

Sarah van Walsum

### Prologue: a tale of two migrants

Amma, a woman I have been interviewing in the course of my present research, was born in the former Dutch colony of Surinam, the daughter of indentured plantation workers, brought from Java to Surinam by the Dutch colonial government. She came to the Netherlands, together with her husband and her youngest children, shortly after Surinam gained its independence. At the time it was still relatively easy for the Surinamese to come to the Netherlands. As political and economic conditions in Surinam worsened and Dutch immigration policies tightened, she helped her two remaining sons to come to the Netherlands and apply for refugee status. One gained entrance on humanitarian grounds, the other, I shall call him Rob, did not. An undocumented migrant, he now lives in with Amma, who in the meantime has divorced her husband and lives on welfare.

George, a good friend of mine, grew up in Canada, the child of well-to-do Dutch immigrants. At 35, already a successful lawyer, he left Toronto and came to Amsterdam to work for a Dutch firm. Through his work, he became involved in many international company mergers. He also got to travel a lot to North America to bring colleagues there up to date on developments in the European Community. Eventually he quit the law firm and he now works for a multinational company, selling telecommunications systems to Eastern European governments.

The independence of Surinam has had important repercussions for Amma and her family. What was once one Kingdom is now two coun-

tries, divided by national borders. People who were once Dutch citizens are now foreigners. As a foreigner, her son Rob has been excluded from the Dutch labour market and social security system, and now depends entirely on her. The immigration authorities have made it clear they will not bother him as long as he stays with his mother, and does not get into trouble with the police. Since his chances of getting a work permit are nil, the only way out of his mother's house is to marry a Dutch girl. Up until now he has not met one he likes and who is willing to marry him.

National borders have not affected George's personal relationships. On the contrary, the frequency and ease with which he criss-crosses the globe for business and pleasure (skiing at Val d'Iser, weekends in Paris, London or New York, Christmas with his parents in Montreal) makes it possible for him to maintain contacts with friends and family spread over two continents. At the same time, his ambitions keep him on the move. He has never let love tie him down.

While the weight of her family responsibilities has increased, Amma in turn has leaned on other Surinamese to cope. It was a Javanese-Surinamese organization that got her sons into the Netherlands in the first place. It is a Surinamese band that is keeping Rob off the streets, and Amma supplements her welfare checks so she can support her live-in son, by selling Javanese snacks to a Surinamese take-out restaurant.

If you ask George what he is, Dutch or Canadian, he will tell you he does not know. He is not often forced to think about his ethnic identity.

One thing though is certain. His dual citizenship, his command of three languages (Dutch, English and French) and his intimate familiarity with both the social and the legal cultures on either side of the Atlantic have all greatly helped him get to where he is now. To a large extent, national borders and national differences are his bread and butter.

On the face of it, Amma and George have some things in common. Both were born as Dutch citizens on the other side of the Atlantic but now live in Amsterdam. Both have many friends and relations on both sides of the Ocean. But there the resemblance stops. While George's involvement in the power-plays of international business leaves him little chance to settle down and raise a family, for Amma and her children family ties are the surest way to strengthen their precarious hold on residence in the Netherlands. George's dual citizenship has provided him the maximum of freedom in which to capitalize on his various cultural backgrounds. Amma and her family were not offered the possibility of keeping various options open. They have been thrown back onto their Surinamese 'roots' in order to cope with the consequences of lost Dutch citizenship. Despite their shared international background, for Amma and George, the concept of nationality holds very different meanings, and has had very different implications for their personal lives. Their stories make clear that the concept of nationality not only influences a person's mobility through geographic space, with all the economic implications that that entails, but that it also resonates in a person's identity and sense of belonging, of place.

### The concept of nationality

The concept of nationality has, in the past two centuries, gained acceptance throughout the world. This does not however mean that it is defined in the same way in all places. In some nations, like the Netherlands, nationality is acquired via one's parents, in others, like Canada and the US, via the place of one's birth. Some nations, like Germany and Israel, also grant nationality on the basis of ethnic or religious identity. Sometimes a combination of any of these three criteria is applied. More interesting perhaps than these

different definitions of nationality in the various national legal systems, are the different roles the concept of nationality plays in the various relevant fields of law: immigration law, the law of conflicts, and social policies specifically designed for migrants. Since I am most familiar with the situation in the Netherlands, I shall focus on the roles which the concept of nationality plays in different areas of Dutch law, concentrating on my particular field of interest, immigration law.

In Dutch law, as anywhere else, the concept of nationality is relatively new.<sup>1</sup> At the end of the eighteenth century, Dutch law did not yet distinguish between nationals and foreigners, but between natives, residents and foreigners. The latter signified persons not residing within Dutch territory. The distinction between natives - born in the Netherlands - and other residents was considered of little consequence. Nationality was strongly equated to residence. There was no conception yet of a personal quality of nationality which would protect one against deportation or exile. Nor could someone keep his or her nationality after moving abroad. All those who moved to another country were considered to have become foreigners. The concept of nationality as a person-bound quality was first introduced with the Napoleonic civil code, and its rules concerning the law of conflicts. It was not until the middle of the nineteenth century that the civil law definition of nationality as a personal quality was incorporated into the first Dutch immigration law. At that time, the concept of nationality was an issue of hot debate, whereby the liberals argued for the maintenance of the criterion of residence, while the conservatives pleaded for the Napoleonic Civil Law definition of nationality via birth. In fact, although the conservatives won out in the end, the criterion of residence did continue to play an important role, since the civil law defined as nationals not only those who were Dutch by birth, but also all residents who had spent six years in a given municipality, even if they were not authorised to do so, and who had expressed their intention to settle permanently.

A new nationality law introduced in 1892, eventually curtailed the rights which could be accrued through residence. Nationality could henceforth only be acquired through birth, marriage or naturalization. Nationality now came to be legally conceived of as membership of what Benedict

Anderson (1991) has dubbed the imagined community, shaped by language, culture, history and tradition. A membership, I would like to point out, primarily transmitted through the male line. Up until 1985, children born in wedlock could only acquire their Dutch nationality via their father, while Dutch men could pass on their nationality to their foreign spouses immediately following the wedding, but Dutch women could not. Today, the association of nationality with an imagined community with a specific genealogy still holds for Dutch immigration law, as I shall try to make clear further on. The Dutch law of conflicts, however, no longer offers any room for sentimental notions of 'national community'. As for Dutch policies on ethnic minorities, there communities of language, culture and affiliation seem to have become largely divorced from the legal concept of nationality and rather apply to the concept of ethnicity.<sup>2</sup>

### The concept of nationality in Dutch immigration law

Although the legal position of foreigners and non-native residents weakened with the introduction of the new nationality law at the end of the nineteenth century, it was not until after the first World War, that concerted efforts were made by the Dutch government to restrict immigration. For the first time, visas were used as a means to protect the national labour market against foreign labour, instead of just as a control of personal antecedents. While various bilateral treaties gradually reduced the effects of these policies, new laws enacted in the thirties shut off certain sectors of the economy for foreign labourers and small entrepreneurs. By the late 1930s, as the number of German refugees seeking entrance increased, people were being refused entry on grounds of general policy, regardless of their personal antecedents or their potential impact on the national economy. So, while freedom of movement could be maintained as a principle by the liberal state of the nineteenth century, by the middle of the twentieth century things had changed. The ideal state was now actively involved in its citizens' welfare. The concept of nationality became more laden as it implied growing responsibilities on the part of the state for its

citizens' schooling, health, housing, employment and basic wants. As the democratic welfare state approached maturity, the national border became an issue of general interest for a state conceived to be protecting the welfare of its national citizens. It was not until 1967, however, when the postwar boom in labour migration was well on its way, that a new immigration law was enacted which would explicitly conceive of the rights of foreigners to enter and stay in the Netherlands as a function of general national interest.

Another important innovation introduced by the new law was the permanent immigrant status, the refugee status and the family member status. These all grant relatively strong statuses and could to a certain extent be compared to the nineteenth-century status of resident. However, other than in the nineteenth century, such a strong status can never be acquired by long-term residence alone; there must be an official authorization to stay. Given the wide margin of discretion provided by the immigration law, the authorities have ample opportunity to refuse or revoke such authorization. A second important difference between the newly created strong legal statuses and the nineteenth-century resident status is that these statuses, however strong, do not lead automatically to a legal status equal to that of national citizens. Anyone with one of these statuses can, under certain circumstances, lose it, become illegal and run the risk of deportation. Migrants with family status are especially vulnerable, since they can lose this status during the first few years of stay should they leave the family home. The only way to acquire legal protection equal to that of a native is by acquiring Dutch citizenship. Significantly, the Dutch government has proposed to amend the nationality law so as to definitively exclude all undocumented migrants from the naturalization procedure (De Groot 1993: 92).

### The concept of nationality in the Dutch law of conflicts

The law of conflicts plays an important role in civil cases with an international character. It provides a method to determine which national law must be invoked to resolve questions concerning property, contract or tort. It is becoming increas-

ingly important in family law, but it remains typically a field for transnational and multinational business; for international trade, travel and traffic. In this field of law, the whole concept of nationality is coming to be seen as somewhat anachronistic. Two advisory reports which were presented in anticipation of the new Dutch nationality law of 1985, can serve as illustrations. Dr. Ko Swan Sik states in his report that the "bond of nationality is legally empty" and that, as the concept of a national community forged out of a national bond loses its appeal, nationality will be replaced by other criteria for determining who falls under which state's jurisdiction (Ko Swan Sik and Haandrikman 1981: 13, 15). Similarly, Haandrikman states in his report that the place of residence of parties and/or their choice of jurisdiction are becoming more important than nationality in determining which national laws should apply to their case. A distinction is made between formal nationality (the place indicated in someone's passport) and effective nationality (the place where someone lives, works and loves). The tendency, he asserts, is to favour the latter (Ko Swan Sik and Haandrikman 1981: 49). Thus we see that in the Dutch law of conflicts, nationality is again tending to become synonymous with residence. Dutch family law offers a striking example of this growing tendency to limit the role which nationality plays in the law of conflicts. A famous case was that of a Portuguese couple who wished to divorce before the Dutch court. Although they both had the Portuguese nationality, the court decided Dutch law should be applied since they had lived in the Netherlands for five consecutive years and were thus "bound to the Dutch legal order".<sup>3</sup>

### The concept of nationality in Dutch policies on ethnic minorities

The Dutch government only very recently initiated a programme to deal with the social problems associated with international migration. Although there had been specific programmes to receive and integrate large groups of people arriving from the Dutch colonies at the eve of their independence, it was not until 1982 that the government published its White Paper on

Minorities.<sup>4</sup> The reason why the government found it necessary to initiate general policies after two decades of migration from the Mediterranean area to the Netherlands, was that it had come to realize that the labourers who had come in the 1960s and early 1970s, and the refugees who had followed, were now here to stay, and were being joined by their wives and children. These families, it was expected, would develop specific needs in the fields of housing, employment, education, health and cultural activities. Thus, ethnic minorities policy became a specific task of the Dutch welfare state, geared at a specific group of families. The stated policy aims were to promote the integration of these families into Dutch society, that is to say into the Dutch health services, education system and housing and labour markets, while at the same time guaranteeing them the right to practise and maintain their own language, religion and culture.

One of the intriguing aspects about the Dutch ethnic minorities policy is that, although it is primarily designed for the families of foreign migrants who have recently come to the Netherlands, it explicitly refers to its target groups by ethnicity, and not by nationality. Thus many Dutch nationals are included: formerly foreign migrants who have acquired Dutch citizenship, people from the Dutch West Indies or those who migrated from Surinam while it was still a colony - even 'ethnic Dutch' who live in mobile homes. At the same time many foreign migrants are excluded, notably EC nationals, Japanese and North Americans, but also people like Ghanaians, Pakistanis or even Indonesians, who came to the Netherlands after labour migration was officially stopped, and who did not qualify for refugee status. Ethnic minorities policies are thus reserved for those who are perceived to be deserving - those coming from (former) Dutch colonies, those who were actively recruited as migrant labour, and those recognized as refugees - and sufficiently 'unadapted' to warrant special treatment.<sup>5</sup>

Immigration law, a corollary to the concept of nationality, is also written out of the Dutch policies on ethnic minorities. Repeatedly the government, and many experts on the field of migrant studies, have asserted that the restrictive immigration measures belong to a separate field of policy. Such measures are only relevant to ethnic minorities policy, to the extent that they are

supposed to be a prerequisite for the successful integration of ethnic minorities. Only if further migration is severely limited, is the reasoning, can the government guarantee sufficient services to accommodate her ethnic minorities.<sup>6</sup> Foreigners and 'ethnic minorities' are thus conceived of as two separate and competing groups, pressing on the resources of the Dutch welfare state. In a way, one is again reminded of the nineteenth-century three-prong distinction between natives, residents and foreigners, as opposed to the dichotomy national-foreigner. Only now ethnicity and not place of birth distinguishes the native from the resident, and foreigners can no longer attain the status of 'ethnic minority', let alone 'Dutchman', by simply residing in the Netherlands for a longer period of time.

### The concept of nationality, mediated by immigration law, as exclusionary criterion

Some Dutch authors have argued that the concept of nationality is losing importance in all fields of Dutch law. Not only do they point to the developments in the field of the law of conflicts, but also to the growing unification of the European Community and the recently accrued right of foreign migrants with permanent immigrant status to partake in municipal elections (see for example Holterman 1993: 9, 10). Swart, however, maintains that the concept of nationality, as mediated through immigration law, has over the past two centuries gained steadily in importance as a distinguishing criterion, with far reaching consequences. If anything, this tendency is increasing and not decreasing (Swart 1978: 30-1).

The Dutch constitution of 1815 explicitly guaranteed residents and foreigners equal protection of civil liberties: "All those present within the Kingdom be they residents or foreigners, enjoy equal protection of person and property". As mentioned above, no distinction was made at that time between 'native' and other residents. In 1887 the Dutch constitution was revised, whereby the explicit prohibition of discrimination against foreigners was dropped. This occurred in the same period that birth came to replace residence

as the chief determinate of nationality. Thus on the one hand, the category of persons who could be labelled as foreigner was being increased, while on the other hand the constitutional protection of foreigners against discrimination was being scrapped. By the time the nineteenth-century text of the Dutch constitution was up for revision in 1976, the distinction between national citizens and foreigners was so taken for granted that it was the one form of discrimination *not* explicitly on the political agenda. At the same time that constitutional reforms were to formally guarantee all Dutch citizens freedom of labour, measures were being introduced to seriously curb the access of foreigners to the Dutch labour market. Also the constitutional guarantee of social rights explicitly limited the right to welfare payments to Dutch citizens (Swart 1978: 29). The result has not been that all Dutch citizens have acquired employment or a secure income, nor that foreigners have been rigorously excluded from the Dutch labour market and welfare system. Quite the contrary, as I shall explain further on. But the result has been that for all foreigners the right to access to the labour market and to social security benefits is now mediated by immigration law, that is to say state authorization to stay, in a way that that of Dutch citizens is not. One could argue that the rights of Dutch citizens are similarly mediated, since they are all subject to registration within their municipality. However, the right of a foreigner to reside is far more precarious and subject to far more controls than the 'right' of a Dutch citizen to be registered.

The mediating role of immigration law is increasing in scope. Formerly, for instance, anyone who had paid premiums and/or income tax could collect certain forms of social insurance or benefits, such as Medicare, sick leave payments, disability pension or child care benefits, without having to prove legal status. Now in far more instances than in the 1970s, migrants are required to show their documents in order to collect benefits. In fact, since recent policy changes, they are required to show their papers in order to be able to pay any premiums and income tax at all.<sup>7</sup> There are also proposals to refuse government permits (for example housing permits) and marriage licences to foreigners who do not possess the required documents (Boeles 1993: 712).

While only foreigners are legally obliged to show their identity papers on demand, authorities are permitted to ask anyone they can "reasonably assume to be a foreigner" to give proof of legal residence.<sup>8</sup> Inevitably, distinctions are made on the bases of appearance, accent or 'ethnic location' (Turkish coffee house or Moroccan bakery for instance). In practice, measures of control extend well beyond the bonds of nationality. These developments are not limited to the public sector. Most private insurance companies in the Netherlands refuse to provide health insurance for foreigners not (yet) in the possession of the required documents.<sup>9</sup> And due to increased pressures upon airline companies to pay the price of returning refugee seekers who have been denied status, access to air travel too is increasingly a question of nationality, visa and immigration papers (Groenendijk and Minderhoud 1992: 80-1).

While nationality, as mediated by immigration law, has become a relevant factor for determining access to work, marriage, housing, health insurance, income and international travel, the inverse is also true. Legal immigration status and, eventually access to Dutch nationality, is granted on conditions that often include income, work, housing, marital status and health insurance. Similarly, immigrant status can be revoked as a result of unemployment, divorce or loss of income.<sup>10</sup> Thus, to acquire and maintain status, foreigners can see themselves forced to marry and stay married, or to accept and stay with certain jobs they might otherwise refuse. In the area of criminal law, too, the rights of foreigners are strongly influenced by their status. I am not sufficiently well versed in this area to provide extensive details, but I can name some salient examples. Dutch convicted criminals can never be deported or banished, foreigners can and often are, if they have been charged with a lengthy prison sentence. Dutch suspects may not be held in custody for longer than a couple of days before being brought before a judge, and even then custody will only be extended in certain cases. While undocumented residence in the Netherlands is not a criminal offence, undocumented foreigners can be kept in detention for up to a month 'pending expulsion', without being brought before a judge.<sup>11</sup> While Dutch citizens are only, since recently, required to carry identi-

fication papers, and only in certain situations, foreigners have always had to do so and at all times, and can be incarcerated if they are caught without their papers.<sup>12</sup> On an international level, migration is often dealt with in conjunction with organized crime and the international drug trade. Thus secret agreements concerning international cooperation between police and exchange of automated data, have become part and parcel of Dutch immigration policies.<sup>13</sup>

Recently, the Dutch government has launched proposals to change the immigration law in the wake of a general revision of the Dutch administrative law. Typically, the proposed changes will exclude foreigners from protective measures offered Dutch citizens by Dutch administrative and criminal law. Possibilities to detain asylum seekers who are awaiting expulsion, or who are still awaiting a decision on their request for asylum, have already been considerably increased in 1991. The newly proposed law will extend these possibilities even further, and make them applicable to other foreigners besides asylum seekers. At the same time, it will remove such detentions from the scrutiny of the criminal courts. Under the present law, the foreign family members of Dutch citizens and of permanently settled migrants are immune from expulsion after serving long-term criminal sentences. The new law will lift this immunity and increase the grounds for permanent banishment. Finally, the new law will grant foreigners fewer rights to appeal a negative decision than the revised administrative law will offer to Dutch citizens (De Haan 1993, Boeles 1993).

I must conclude then, with Swart, that the concept of nationality, as mediated by immigration law, is increasing and not decreasing in its importance as a distinguishing criterion in the area of social and civil rights. This even, while in other areas of law, notably that of ethnic minorities policies and the law of conflicts, the concept of nationality is either considered irrelevant or at most an anachronistic relic of the nineteenth century. To understand why the concept of nationality now plays such different roles in the different fields of Dutch law, it can be instructive to consider the pressures the nation state has recently been subjected to.

## The economics of space

The geographer David Harvey offers an interesting theoretical framework for an analysis of the present-day nation state. He treats space as more than so many square miles, bounded by a border. Space is an important factor of economic power. Harvey distinguishes the economic value of 'space' from the emotional value of 'place', the sense of identity and belonging which people can derive from a location. I shall concentrate now on his analysis of the economic value of space, and return later to the politically laden term of place.

According to Harvey, as transportation, information and communication technologies improve, production can be internationally and even globally organized. Capital, expertise, labour and leisure are all subject to increased mobility. At the same time, it is becoming easier to profit from regional and international differences in wage levels, tax- and social security legislation, skills, traditions and infrastructure. Politicians and local businesses in different areas are increasingly competing to attract capital, cutting labour costs and upgrading infrastructure. At the same time, they try to emphasize the specific, and (they hope) unique characteristics and advantages of their area (Harvey 1989: 233, 294; Harvey 1991: 6-12). In the process, the labour markets of western capitalist countries have undergone some significant changes. Other authors besides Harvey speak of a 'post-Fordist' or 'post-industrial' mode of production. The industrial sector has suffered a marked decline, while employment in the service sectors has grown. Many new jobs are going to women, but as they gain access to paid labour, jobs become increasingly precarious: temporary or flexible contracts, part-time work and an expansion of unprotected and peripheral employment, including a return to piecework carried out in homes. Jobs in the public sector are being privatized, and private businesses are contracting out as much as possible, hiring temporary staff via employment agencies, or working with flexible contracts. The number of small family-type businesses has increased to provide services or contracted-out work for larger firms.<sup>14</sup> The economist Swasti Mitter (1986) has shown how a fragmented labour force can be an integral part of a globally organized form of production, and what

the specific consequences can be for Third World women in particular, whether working in their country of origin or as migrants in Great Britain.

While increased mobility and flexibility bring new social risks, the pressure of international competition is also forcing national governments to reduce the indirect costs placed on labour in the form of income taxes and social premiums. The solution to the dilemma is sought among other things in the privatization of social insurances and social services (see for instance Offe 1984 and Johnson 1987). Such solutions however are only accessible to the financially secure. Those who cannot afford private insurances, hospitals or schools are being admonished to revive the 'good old' values of family and community care. The same women who are joining the least secure ranks of the changing labour force, will also have to bear the brunt of its risks (Johnson 1987: 74).<sup>15</sup>

## The concept of family

Such women, and their families, were the subject of Judith Stacey's study *Brave New Families* (1991), conducted in Silicon Valley in the 1980s. She chose Silicon Valley, because there the characteristics of a post-industrial economy have been particularly strong. The electronics industry invaded this rural area in the 1960s and early 1970s and led to an explosive economic and demographic growth. By the mid 1970s however, many businesses had transferred production to areas where labour was cheaper. A growing unemployment resulted. At the same time, 'permanent employees' were being replaced by flexible and temporary workers. By the late 1970s more and more women, minorities and recent migrants were being employed in production jobs which offered little perspective of earning a 'family wage' and no chance of advancement. New job opportunities arose more in the service sectors such as hotels and security, than in the electronics industry itself. These developments mirror, in intensified form, general trends in the United States. In the same period, the welfare state protections have been dismantled by the Reagan and Bush administrations, and many services and forms of social insurance have been reprivatized.

What Judith Stacey wanted to investigate in Silicon Valley was how such developments had affected the family relationships of those involved. The feminist attack on the male-dominated nuclear family and discrimination of women on the labour market had fallen on fertile soil in the optimistic 1970s. But the women who harvested the fruits of this critique in the 1980s were ambivalent at best. Stacey concludes that the 'modern family' defined as a nuclear household unit composed of a male breadwinner, his full-time homemaker wife and dependent children, to the extent it had ever prevailed, was by then definitely a thing of the past. The 'family wage' had become the privilege of well-educated white Anglo males. Most families needed at least two incomes to make ends meet. At the same time, however, the number of divorces and single parent families increased rapidly in Silicon Valley. In this respect too, this area yielded a sharpened version of a national trend. One of the aspects of this trend has been the 'feminization of kinship'. According to Stacey (1991: 260), demographers report a drastic decline in the average number of years that men live in households with young children. This has not however prevented men from gaining more extensive rights regarding the offspring they are, more and more, keeping at a distance.

The growing instability of families has been part and parcel of the growing economic insecurity, of which women in particular have felt the effects. None of the younger women whom Stacey interviewed were in a position to realize the ideal of the 'modern family', but neither were they able to realize the feminist dream of combining democratic family arrangements with a successful career. While some men at least proved quite flexible in adapting to new gender roles at home, the gender inequities of the occupational structures had proven to be far less flexible. "With few social protections provided to replace the precarious 'private' ones that the modern family once offered, many women have found good cause to mistrust the terms post-modern conditions appear to offer in its place" (Stacey 1991: 259). Stacey's research shows that many women entertain a fervent nostalgia for 'traditional family norms', even as they are deploying various alternative strategies to secure their survival and that of their children: divorce, unmarried cohabi-

tation, single working mothers, double income families, matrifocal, extended and fictive kin support networks. While she sympathizes with these women's frustrations, Stacey is highly sceptical of the 'pro-family' movement which has enjoyed much success in the United States: "There is bad faith in the popular lament over family decline. Family nostalgia deflects social criticism from the social sources of most 'personal troubles'" (ibid.: 270).

The situation in the Netherlands is, of course, not identical to that depicted in Stacey's book. The norm of the male breadwinner and full-time mother have survived longer in the Netherlands than in most other western capitalist countries. Still, here too things are changing. The participation of married women in the Dutch labour force has increased dramatically in the past couple of decades, and even more than elsewhere women have been entering part-time, poorly paid and/or insecure employment. Although the number of women in paid employment has increased significantly, the total number of paid hours worked by women in the Netherlands has not (Bruyn-Hundt 1988: 35). At the same time, the norm of the single (male) breadwinner earning a 'family wage' is rapidly losing ground in both minimum wage legislation and social security provisions.<sup>16</sup> The divorce rates and the number of single parent families have been rising, while changing definitions of the family in Dutch family law have favoured absentee fathers at the expense of divorced and unwed mothers.<sup>17</sup> Along with these changes, and despite the growing number of single-person households, nostalgia for the traditional ideal family enjoys a new popularity here as well, although there is not (yet) as marked an anti-feminist or pro-family backlash as in the USA or France, for example.<sup>18</sup>

### The politics of place

As I have already mentioned, Harvey makes a distinction between the economic exploitation of 'space' and the emotional appeal of 'place', the sense of belonging somewhere. The cultivation of such a sense of place has political implications; geography can be used to distinguish between insiders and outsiders, and to elicit loyalty. Harvey (1991: 2) observes that the "elabo-

ration of place bound identities has become more rather than less important in a world of diminishing barriers to exchange, movement and communication". In his view, an explosive increase in mobility, the commodification of space and the rapid fluctuation in its economic value have fuelled a nostalgia for a sense of belonging, support and identity.

There are of course other authors who have examined the political consequences of an increasingly mobile economy. I shall refer particularly to Joachim Hirsch (1991), and to Jane Kelsey (1993). These two authors, like Harvey, describe the dramatic increase in the spacial scope of capitalist production. As companies transcend national boundaries, divide their productive activities over various places, and regularly shift the locus of those activities, the role that the nation state can play in the organization and control of economic activities changes. Growing competition to attract increasingly mobile capital narrows the margins of national social and economic policy. Increasingly, decisions regarding the organization and control of economic activities are being taken on an international level, often beyond the control of national democratic institutions. As a result of these developments, the nationally organized consensus between labour unions, employers and government - the traditional backbone of the Western welfare state - no longer functions. Inevitably, the importance of institutions such as trade unions and political parties, geared at influencing national policy, has declined. The demands of internationally operating businesses have gained priority over national social issues.

According to these authors, the Western nation state is no longer the "abstract universal and anonymous carer of all members of the community", as the Dutch sociologist De Swaan (1989: 260) optimistically depicted it, not so long ago. The new dominant ideology is that of neo-liberalism. The state must no longer pamper its citizens. But, warns Hirsch, the presently popular neo-liberal rhetoric should not be mistaken for a call for less state. It is a call for a different state. As western nation states have been retracting their redistributive policies of wage controls, progressive income tax and collectively financed social security and services, while at the same time favouring capital, the gap between rich and

poor has rapidly increased (Wilterdink 1993). That social conflicts can increase as a result seems evident. Less clear is how they are to be contained. Hirsch expects social problems will be depoliticized and individualized in order to prevent organized and focused conflict. This would further undermine the mediating and disciplining role of institutions like labour unions and their affiliated political parties, already curtailed in their possibilities by the reduced influence of the nation state. Thus, as work relations become more individualized and flexible, more and more employees fall outside the sphere of organized labour and general wage negotiated contracts. As private insurance companies gain a greater role in providing social security, citizens no longer invest their hopes in political strategies for improved protection against social risks. Hirsch (1991: 81) foresees that if a "post-Fordist mode of regulation is to replace the institutional class compromise through a struggle of each against all which cross-cuts classes, then this requires above all the development of a strong State". To support his claim, he points to the tendency in all Western European countries to expand the powers and the resources of their police forces, to increase the controlling activities of other government officials, and to broaden the scope of criminal and administrative sanctions.

Jane Kelsey describes a similar scenario, but gives a more detailed account of how conflicts are dispersed. In her description, the responsibility for policies to cover social risks and to alleviate inequality has shifted from the centrally focused state, which could be influenced at least to a degree by political struggle and which was open to public debate, to a myriad of relatively closed private institutions, such as insurance companies and charities, or to families. Where Hirsch speaks of a "depoliticization", Kelsey speaks of a "privatization" of the social. Via her analysis, we can present the families described by Judith Stacey as subject not only to dramatic economic changes, but also to a political process. The pro-family propaganda which Stacey describes, fits well into Kelsey's privatization of the social, into a political programme of promoting the nuclear family as an atomized caring and at the same time controlling and disciplining private institution, in lieu of unions, political parties and welfare agencies, with their focus on

public responsibility for solving social problems.

Like Harvey, Hirsch and Kelsey also signal a growing and nostalgic sense of nationalism, as the nation state itself is coming under pressure. Hirsch does not expect that such nationalist sentiments can dominate national politics in the face of increasing economic and political internationalization. Clearly, if we follow his analysis, we cannot expect nationalist rhetoric to dominate the debate over responsibility for social problems. After all, it is precisely the nationally organized social infrastructure which is being undermined under the pressure of internationally operating capital. It is, however, quite conceivable that nationalist sentiments could play an important political role in legitimizing the growing powers of control with which state institutions are being invested.

Benedict Anderson has indicated how important nationalist sentiments can be for a nation state seeking to establish and legitimate parameters of control. Anderson distinguishes two types of nationalism: popular nationalism, which is constructed in a struggle against vested political power, and official nationalism, which is a response to popular nationalism, and which is largely modelled after it. In effect, the vested political powers, in order to survive, appeal to the same emotions which have emerged in resistance to them. Popular nationalism, according to Anderson, is backed by a specific version of history: the ancient bonds with soil and/or language; the heroic deeds of national heroes. Official nationalism feeds on history, but is really about bureaucratic control over a specific population, claimed via history, geography and/or census. The official version of history, grafted onto the popular one, serves to weld a heterogeneous agglomeration of people into a single defined population - without fractions, as he puts it.

The present unease in the face of growing mobility, regional and social inequality, increased social risks, loss of nationally based structures of consensus and the commodification of and speculation with space, can provide elements for a new form of official nationalism, one geared at an atomized rather than a homogenized population. While relinquishing its central role in dealing with inequality and social risks, the nation state can now profile itself as protector of citi-

zens' property against violence, defender of the taxpayers against fraud. While no longer attempting to contain or control the export of capital or production activities, the state can claim a role in protecting its borders and repressing international crime. While ineffective in protecting people against economic fluctuations within their place of residence, the state patrols those same areas to protect the safety of the inhabitants. While saddling women with many of the social risks of a mobile and fragmented economy, the state champions the family and preaches traditional morality as solution for social ills. At the same time, ironically, increased pressures on women to enter the labour force are presented as the distinguishing characteristic of a nation's emancipated liberal identity. Thus the concept of nationality can now be deployed in such a way that state control can be increased in a politically appealing way, without impeding the mobility of capital or labour.

Seen in this light, it becomes understandable that the concept of nationality plays such different roles in the different fields of law. The law of conflicts downplays the importance of nationality to facilitate transnational contracts and dispute settlements. Policies on ethnic minorities emphasize ethnic differences in family values over nationality as a constitutive element of identity. On the other hand, nationality as mediated by immigration law has broadened the scope of state control over a growing number of people. Documented migrants are confronted, in a growing number of areas, with the demand to show their documents. A growing number of undocumented migrants, as they are refused access to more and more government services and welfare institutions, are also subjected to control - not by the agencies from which they have been excluded, but by an expanded body of police and other controlling officers, with extended powers of investigation and incarceration.

### Mixed metaphors

The nostalgia for place, described by Harvey, parallels the nostalgia for the family, described by Stacey. Both seem to entail similar reactions to new forms of insecurity, bred by the same economic processes. They represent a longing for

lost identity and support, providing the present-day nation states with a new historical theme to legitimate their claim, now, to protect the moral against the corrupt, rather than the weak against the strong.

Both the nation and the family are imagined communities, artificially defined but pretending naturalness. They claim a degree of harmony which belies the actual differences, conflicts and power structures that they contain. Both have important implications for the identity of an individual, for the appeal he or she can make upon others and, conversely, the claims others can place upon him or her. As a result, both also carry a strong emotional component. Anderson (1991: 141) points to the similarities between nation and family, and attributes the emotional appeal of a nation to the metaphorical role which the notion of family has played in forming the concept of nation. He gives a number of examples of how nations are described in the vocabulary of kinship. I myself witnessed a recent example in Canada, in the summer of 1992, when the unity of the country was the subject of political strife. An advertisement on the television showed two darling babies, dressed only in their diapers, playing peacefully together. All of a sudden the image was torn in two, as if it were a snapshot, and one of the twins disappeared. A solemn voice admonished the listener not to let the 'Canadian family' suffer this fate.

Not only is the family a metaphor for the nation, families and family values are also constitutive elements of a national identity. Families are involved in constructing and transmitting both legal nationality and the sense of belonging to a nation. Families produce the subjects of a nation, and can help bind individuals to that nation, but can also cement loyalties that transgress national boundaries. Conversely, nationalist struggles have also divided families. Families are caring and disciplinary institutions which can complement, but which can also rival or frustrate the caring and disciplinary institutions of the nation state. Control by a nation state over its population must then also involve control over families and family values. This is perhaps the reason why family relationships now play such a central role in Dutch immigration law.

### The economics of space in Dutch immigration law

Swart explained the historical changes in the position of the foreigner within Dutch law in terms of the growing importance of the welfare state and the acquisition of universal suffrage. As the involvement of the state in the welfare of its population increased, he argued, it was logical that distinctions should be made in favour of the state's 'own' citizens, who were after all the base of political power (Swart 1978: 28-9). It is then striking to note that, while the Dutch labour market is now being deregulated and the Dutch social security system is being dismantled and privatized, the protection of the Dutch labour market and the containment of social security costs continue to take a central place in the rhetoric surrounding immigration law.<sup>19</sup> In 1979 a law was introduced to strictly limit the provision of labour permits to those employers who could not recruit Dutch or EC labour.<sup>20</sup> Migrants have been presented through the media and political and legal forums as threatening in the context of an increasingly insecure labour market and increasingly scarce provisions in the fields of health, housing and education. But at the same time, migrant labourers, both documented and undocumented, have been described by many social scientists as increasingly attractive for employers due to their mobility and/or the fact that they are willing, for a number of reasons, to accept unpleasant and poorly paid work,<sup>21</sup> and due to the fact that, again for a number of reasons, they carry less indirect costs than the locally born and bred.<sup>22</sup> Many authors agree that in all western capitalist countries there is a structural demand for migrant labour, both documented and undocumented, and the demand is not decreasing, despite growing unemployment. In fact, all other considerations aside, the demographic developments in Western Europe at any rate imply a growing rather than diminishing need for young recruits from abroad.

Kitty Cavalita (1991), an American lawyer, has traced the process of legal reform in the United States regarding the regulation of foreign labour, both documented and undocumented. She shows clearly how the competing lobbies of labour unions, migrants' rights organizations and employ-

ers' organizations led to highly ambiguous legislation which ultimately favoured the employers of foreign labour more than it hurt them. I am not aware of any similar studies in the Netherlands. However, increasingly restrictive legislation has not resulted in significantly reducing the number of foreigners entering and staying in the Netherlands (Groenendijk and Minderhoud 1992: 14). Despite the intended effects of the 1979 law to restrict the issue of work permits, foreigners have continued to participate on the Dutch labour market. In fact, foreigners benefited relatively more from a recent increase in employment between 1988 and 1990, than did Dutch workers (*ibid.*: 21). It is difficult to assess how many jobs are going to newly arrived foreigners. However, it is interesting to note that the number of temporary and permanent work permits issued to employers of foreign workers nearly doubled between 1983 and 1990 (*ibid.*: 23). In 1991 the number of foreign migrants who received a permanent work permit exceeded the total number of foreigners who were granted a residence permit in 1967, in the heydays of labour migration (*ibid.*: 23, 60). One can then seriously question whether labour migration stopped after the introduction of a restrictive system of labour permits, or was simply channelled via a different legal path, that of family reunion. For, if labour migration has been officially restricted since the late 1970s, the borders and the labour market have remained open for the partners and children of Dutch nationals and permanently settled foreigners.

### The concept of family in Dutch immigration law

Ironically, family reunion has become the dominant access to legal entry, in the same period that, as we have already noted, rising divorce rates, a decline in the number of marriages and a steady rise in the number of singles and single parent families indicate that marriage and the nuclear family are becoming shaky institutions in the Netherlands. Dramatic changes in Dutch family law have challenged the norm of monogamy, and have created possibilities for men to have legal relationships with the children of different

women. The family unit supported by a single breadwinner is rapidly becoming an ideal only the happy few can afford. Feminist activists, while they have not been able to foresee or avert the implications of their ideals in a changing economic context, have succeeded in anchoring equality between the sexes and freedom in the intimate sphere in official government policy aims.<sup>23</sup>

Dutch immigration law belies all these developments. Not only polygamous men, but also divorced parents who have remarried in the Netherlands are denied entry for their foreign children (Van Walsum et al 1987). Family members, particularly partners, are granted entrance by virtue of the fact that they are dependent, and dependent they will remain for at least the first three years of their stay. They may not leave the family home on pain of losing their status. For migrant women who suffer abuse from their husbands the results of this policy are, obviously, disastrous (Van Blokland & de Vries 1992). 'False marriages' contracted for the purpose of securing entry and not for 'romantic reasons' have been the subject of heated public debate. Recent government proposals have been made to refuse marriage licences to foreigners wishing to marry Dutch citizens or foreign residents, unless they have been approved of by the immigration officials.<sup>24</sup> Another recent change has been to grant entry only to family members of Dutch citizens or foreign residents who are 'economically self-sufficient'.<sup>25</sup> According to a recent government survey, only 25% of the women in the Netherlands between the ages of 18 and 64 years could presently meet such a requirement.<sup>26</sup> The implementation of this policy will mean that foreign male partners will be largely excluded from entry via family reunion. It is probably no accident that this change in policy was introduced shortly after other government surveys indicated that the number of foreign men in relation to the number of women entering the Netherlands via marriage had been steadily increasing (Van Blokland & de Vries 1992: 57-8). In the same period that Dutch nationality law was finally freed from its sexist bias, granting men and women equal rights in passing on the Dutch nationality to spouse and children, Dutch immigration law has become dominated by the norms of the viricentral nuclear family: a long-

lasting monogamous marriage based on love, the male breadwinner supporting his dependent wife and children and determining the place of residence.

But the fact that entry has ostensibly been limited to 'dependent' wives and children, cannot hide the fact that foreigners, including new arrivals, continue to play an important role upon the Dutch labour market. In fact, migrant labour mediated through family networks may be better adapted to the changing labour market than the traditional foreign male worker directly recruited by industrial employers for a full-time 'steady' job. An already settled migrant family is an eminently suitable source for recruiting part-time, temporary or flexible workers and offers an effective buffer to soften the risks such work entails. The family structure can provide possibilities for small-scale businesses well adapted to meeting the needs of flexible production in, for instance, the confectionery industry and catering services. The rules that accompany family migration tend to add to these qualities, as they can strengthen dependency and hierarchical power relations within the family.

### The politics of place in Dutch immigration law

In an article which they wrote for the Journal of the Dutch Legal Committee for Human Rights, Thomas Spijkerboer and Anil Ramdas (1992) try to explain why the Dutch government persists in locking up a small number of refugees who have little or no chance of gaining right of entry. The number of rejected asylum seekers that will be expelled thanks to this detention is minimal, they say, so the measure has no practical justification. It does, however, have symbolic importance in that it reaffirms the existence of a national border which is being forcefully defended. Another example of the ideological importance of immigration policies can be found in the published statistics on deportations. Official statistics imply that the number of expulsions grew dramatically the last couple of years, but this increase has been largely due to the inclusion of 'administrative expulsions', that is to say people who were notified that they must leave, without having been physically deported. Prior to 1990, these

'administrative expulsions' were not included in the statistics (Groenendijk & Minderhoud 1992: 60).

While the concept of nationality has been largely written away in other legal areas, and while national sovereignty is giving way to undemocratic forms of international policy-making, the idea of a nation as a place to be defended against foreign intrusion is kept very much alive in Dutch immigration law. While the family norms are rapidly changing, and the state is loudly championing paid work for women, the rules regarding immigration law present the Dutch state as a staunch defender of the outmoded 'modern nuclear' family, based on a male breadwinner. And while the Dutch state is busily dismantling the national system of social security, promoting the 'free market' and 'individual initiative' as the motors behind national economic revival, the need to protect that same national social security system is an important theme in the rhetoric surrounding restrictive immigration policies. In the process the Dutch state is acquiring more opportunities to interfere with more aspects of more people's lives. Immigration law in the Netherlands is proving to be a clear exponent of what Hirsch has described as post-Fordist politics.

### The nation and the family: bones of contention

It would be a mistake, I think, to see Dutch immigration law as simply ideological in its function. It is true that restrictive policies are not keeping people out of the country or away from the labour market. But they are creating more space for state control. The widespread acceptance of this broadened scope for control is sustained by feelings of insecurity related to dissolving national borders and family bonds. Immigration policies in turn feed those same feelings. But these sentiments are also linked to an idealized representation of the 'Western liberal' in apposition to the migrant 'other'. Political debates on immigration law often merge and intermingle with issues concerning ethnic minorities and xenophobic or racist reactions to their presence.<sup>27</sup> They form part and parcel of a growing preoccupation with matters of ethnic identity,

which has given rise to the question of the 'Western European (i.e. Dutch) identity' vis-à-vis that of the foreign migrant, who is increasingly being perceived of as exotic and Islamic (Lutz 1993). Edward Said's term 'Orientalism' (1979) is not irrelevant to the Dutch perception of the migrant. Next to appeals for unfettered mobility, a deregulated labour market and a dismantled welfare state, this preoccupation with identity is prompting a renewed interest in classical liberal values as exponent of a Western European (and therefore Dutch) tradition, which must be protected against intruders.<sup>28</sup>

An important element of distinction between the 'native Dutch' and migrants has proven to be the family and the associated gender roles. In my opinion, family norms take an essential place in the constructed national identity. Referring to the recent developments in the Dutch law of conflicts, Jessurun d'Oliveira (1983: 147, 149) even speaks of a "forced assimilation" through the growing tendency to apply Dutch family law in cases involving foreign migrants. Foreign cultures and particularly Islamic ones are perceived to be rigidly male dominated, with no place for the emancipated wife, exponent of modern western liberalism.<sup>29</sup> This stereotypical depiction of the migrant family is reinforced by Dutch immigration law, with its emphases on dependent relationships within the family. As a result, the emancipatory gains of the Dutch feminist movement remain a dead letter for foreign women during the first years of their stay in the Netherlands. This has been an issue of political struggle for migrant women for the past twenty years. It is interesting then to note that the one area in which Dutch lawyers can currently hope to win an immigration law case is that of 'family life'. By appealing to the radical changes which have recently occurred in family law, some migrants who no longer meet the requirements of 'traditional family norms', so well imbedded in Dutch immigration law, can still succeed in maintaining their right to residence (Van Walsum 1992). Liberal values are proving difficult to reconcile with closed borders, family hierarchy and state control. The contradictory sentiments that support Dutch immigration policies have explosive potential.

As Iris Young asserts, distinctions can and do structure various forms of oppression. At the

same time, however, she claims the same distinctions create spaces within which people can construct their identity and formulate their challenge to the status quo (Young 1990: 166-8). If mobility, ethnic identity and family loyalties are to be keys to success and even to survival in the present world, then surely migrants could enjoy a privileged position. My friend George is a case in point. A number of studies have shown how less well-endowed migrants in different western capitalist countries have in fact also succeeded in cashing in on their specific resources, for example by relying on family ties to facilitate migration and to set up small businesses, by exploiting specific skills or aspects of their culture, and by combining their economic assets in both their adopted country and their country of origin.<sup>30</sup> At the same time, however, the story of Amma and her son Rob show how legal status influences migrants' options. Perhaps the reason why the concept of nationality is now so controversial, is that it in fact marks the site of struggle for mobility, ethnic identity and family loyalties.

## Notes

1. Unless otherwise indicated, all historical information concerning Dutch immigration and nationality law is derived from Swart (1978) chapter 1.
2. Typically, the new Dutch nationality law, introduced in 1985, is ambiguous. Men no longer enjoy a privileged position over women, but the family is still the privileged medium for acquiring nationality. Some more weight is granted to residence than in the previous law, but candidates for naturalization on grounds of residence must now also pass a language test. If proposed changes are accepted, candidates will only be able to naturalize after five years of 'legal' residence. Presently, periods of illegal residence can be included in the required term of residence for naturalization.
3. Hoge Raad (Dutch Supreme Court) February 9, 1979.
4. Minderhedennota (1982), Tweede Kamer.
5. For more on the Dutch ethnic minorities policies, see for example Mullard et al (1988), and Rath (1991).
6. The Dutch government recently confirmed this point of view in her white paper on ethnic minorities: *Allochtonenbeleid* (1989: 9).

7. Circulaire November 11, 1991, 157522/91/DVZ/SBO, reprinted in *Migrantenrecht*, 1992, 4: 88-91.
8. Article 19, Vreemdelingenwet (Dutch law on immigration).
9. This I learned while compiling information at a legal clinic for Surinamese in Amsterdam.
10. The Dutch immigration law only gives the broad contours for immigration policies. The detailed rules can be found in the Vreemdelingenwet of 1982, brought out by the Dutch Ministry of Justice.
11. Article 26, Vreemdelingenwet.
12. Articles 4 and 19, Vreemdelingenwet.
13. The most cited example in the Netherlands is the so-called Schengen agreement.
14. See Harvey (1989: 148-50) and Abou Sada et al (1990). Regarding the Dutch situation see Bruyn-Hundt (1988: 50). This Dutch economist has estimated that at least a third of all workers in the Netherlands are employed on a temporary or flexible basis.
15. See also Wheelock (1990) and Rose (1989).
16. Unemployment insurance no longer guarantees a 'family income' for those reaching the age of 18 after January 1st 1990, minimum wage legislation is under pressure and the largest coalition partner in the Dutch Cabinet launched proposals in August 1990 to drop the 'family income' norm in welfare payments as well.
17. See Holtrust (1993: chapter 6). On divorce rates and single parent families see Holtmaat (1992: 12), and Centraal Bureau voor de Statistiek (1990: 28).
18. Centraal Bureau voor de Statistiek (1990: 20-1). Interestingly, a government report indicates that fundamentalist Christianity and traditional ideals about motherhood particularly seem to attract women younger than 30 years of age (Centraal Bureau voor de Statistiek 1990: 30, 37).
19. See for a recent example *Allochtonenbeleid* (1989: 9).
20. The 'Wet Arbeid Buitenlandse Werknemers'.
21. See Abou Sada et al (1990), Lever Tracy and Quinlan (1988), Miles (1987), Moulner Boutang et al (1989). For the Dutch situation see Groenendijk and Minderhoud (1992).
22. See for example Cordeiro (1984) and Burawoy (1976). Swart (1978) too, has made a similar point in the first chapter of his thesis.
23. These policy aims are stipulated in the Cabinet's *Beleidsplan Emancipatie* of 1985.
24. Tweede Kamer, 1991-1992, 22488.
25. This proposal was launched in a letter dated January 12th, 1993, from the Ministry of Justice to the Dutch House of Commons.
26. Sociaal Cultureel Planbureau (1988: 460).
27. A notorious example in the Netherlands was the speech given by the leader of the Dutch liberal party, VVD, at a meeting of the Liberals International in Luzern, Switzerland, six months after the Gulf War. His speech was later published in the national newspaper, *de Volkskrant*, on September 12th 1991, under the title 'The integration of minorities has to be tackled with decisiveness'.
28. Again, Bolkenstein's speech is a notorious example, see note 27.
29. For a discussion of the role such stereotypes have played in Dutch courts of law, see van Walsum (1991).
30. See for instance Böcker (1989, 1992), Lever Tracy (1983), Dumon (1989), Garrison and Weiss (1979), Pessar (1982) and Bovenkerk (1983).

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