Gender, Migration and Categorisation

Making Distinctions between Migrants
in Western Countries, 1945-2010

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6 Belonging and membership

Postcolonial legacies of colonial family law in Dutch immigration policies

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Introduction

In recent years, the Netherlands drew international attention by being the first country to require that family unification migrants pass a language and integration test in their countries of origin before being admitted into the Netherlands.[1] Member of Parliament Rita Verdonk (VVD), who in 2006-2007 would become the Dutch Minister for Immigration and Integration Affairs, in 2005 defended these policies in parliament by linking threats to the stability of Dutch society with assumed differences between Dutch norms regarding family relations and sexuality and those of 'non-Western' migrants:

> [F]ailed 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 a real risk that non-integrated migrants will take an anti-Western stance and will assail fundamental values and norms generally accepted in Western society such as equality of men and women, non-discrimination of homosexuals and freedom of expression.[2]

In the context of a debate concerning family migration from 'non-Western' nations, Verdonk's message was clear. Unless family migrants could be screened for 'proper' norms, values and skills before being granted entry, they posed a threat to the Dutch nation. Migrants' norms and values are represented as archaic and backwards, whereas the Netherlands, as a 'Western society', is deemed a place where emancipation is complete. Opponents dubbed this aspect of Dutch family migration policies as racist, because the Dutch language and integration test requirement applied only to people originating from the less

industrially developed nations of Africa, Asia and South America. Human Rights Watch, in a 2008 report, qualified the Dutch policies as 'discrimination in the name of integration' (Human Rights Watch 2008; cf. Terlouw 2005; Groenendijk 2011; De Vries 2011, 2012). In more general terms, Dutch family migration policies have been compared to the racist policies that distinguished the rulers from the ruled in the former colony of the Dutch East Indies (De Hart 2003). Other authors have argued that the racial divides of the colonial past are part of the genealogy of current European modes of exclusion (Stoler 1995, 2011; Balibar 2004; Legêne 2011).

This chapter investigates the legacy of colonial discourses and practices in current discussions of belonging and practices of exclusion in the Netherlands, with a special focus on their gendered dimensions. Nonetheless, depicting the present as an automatic sequel to a past racist order in overseas colonial states and society is too simple a rhetoric for two reasons. First, jumping from the colonial era to the present day ignores post-Second World War society in the Netherlands. Yet this was an era of significant developments in which colonialism and racism were contested and sexual morality thoroughly changed. An important achievement of that period is the constitutional principle of equal treatment, which states that everyone in the Netherlands should be free from discrimination, regardless of race, creed or ethnic background. In 1983, this article replaced the original first clause, which since 1815 had served to define the territory of the Netherlands. The new non-discrimination clause thus changed the legal focus from indicating *where* the constitution was effective (it had not been effective for the colonial subjects in the overseas colonies) to *to whom* it applied: to anyone living in the Netherlands. The clause thus reflects changing views in Dutch society and in the international legal order (Legêne 2011: 245-247). We are well aware that formal equality is a necessary, but not a sufficient, condition for equal treatment in a broader sense. For successive post-war Dutch governments, it was not always easy to live up to the enacted ideal of equality regardless of 'race' or 'ethnicity'. This is demonstrated, for instance, by political discourses and restrictive policies concerning the right of free migration of overseas Dutch citizens from the former Dutch East Indies (in the 1950s) and West Indies (from the 1970s onwards) (Schuster 1999; Jones 2007). In that sense, colonialism certainly left its 'postcolonial' marks. However, depicting the present as an automatic sequel to the colonial past risks undermining the attention and activism needed for this constitutional principle of non-discrimination to survive as a vital element of Dutch politics, law and society.[3] It further ignores the impact of the sexual

revolution, which ousted marriage as the sole legitimate site of sexuality while rejecting, or at least challenging, the hierarchies between genders and generations that were laid down by *Dutch* family law of the pre-war period. If we wish to gain insight into current Dutch exclusionary immigration discourse and practices by tracing its genealogy back to the colonial past, we have to take these post-Second World War normative shifts into account.

In addition to focusing on recent changes within Dutch politics, law and society, we must more closely analyse the legacies of colonial racism and their gendered dimensions as such. What do we know about 'Dutch' overseas colonial citizenship regimes, both within the Dutch East Indies and in Suriname? How do we assess the plural legal systems in which these were based? And, what legacies can we find in contemporary immigration law? The overall picture seems clear. Stoler has argued that the racist regime of the former Dutch East Indies was grounded in assumptions concerning biologically determined differences deemed relevant to the quality of citizenship (Stoler 1995). Cribb (2010) states that, in a legal sense, this regime 'blurred' colonial pluralism and multiculturalism, ruling its subjects in ways that essentialised cultural differences, respected religious autonomy, recognised plural family law, and patronised specific communities within the archipelago. Establishing and maintaining cultural and racial distinctions within a plural legal order depended on the regulation of biological and cultural reproduction through the control of sexuality. The gendered and racist nature of this regime protected European men's privileges, as men and as Europeans. They were the ones who determined whether the children of their 'native' concubines could acquire the European status and full Dutch citizenship, while a marriage between a 'native' man and a European woman resulted in her losing the privileged status of European – not in his gaining it (De Hart 2003; Stoler 1995). Cribb (2010) concludes that legal pluralism and multiculturalism, at least in their colonial manifestation, amounted to a refusal by the Dutch to share their political morality with their subjects in the Indonesian archipelago. In addition, legal pluralism in a colonial context amounted to a refusal by the ruling colonial class to share its political and socio-economic privileges – such as senior positions in the colonial bureaucracy – with the 'native subjects' (Heijs 1991, 1994; Somers 2005; Jones 2007).[4]

Cribb, Stoler and others have analysed the effects of these Dutch colonial exclusive and gendered notions of citizenship in colonial and postcolonial *Indonesian* society. For our discussion it is relevant to investigate whether these citizenship regimes also influenced citizenship elsewhere: both in the colonies of Suriname and the Netherlands

Antilles, or in the Netherlands, and with respect to citizens who, in the process of decolonisation, were trapped between a former colonial and a new Dutch citizenship. Colonial family law turned out to produce various racial and gendered excluding effects for those who wanted to obtain Dutch citizenship and migrate to the Netherlands, both from Indonesia after 1945 and from Suriname and the Netherlands Antilles after 1954. But we argue here that the postcolonial paradigmatic shift away from the overseas racist mode of exclusion of the colonial period in the 1970s also created new including effects relevant for anyone living in the Netherlands. We discuss how both the decolonisation of Suriname and the sexual revolution in the Netherlands challenged Dutch immigration and family law based on a Western Christian sexual morality and its related institutions, like marriage and heteronormativity. As sexual norms became more contested, it became more difficult for the Dutch state to justify the exclusion of (postcolonial) migrants from its territory on the grounds of their 'non-European' sexual behaviour. At the same time, as the moral dominance of Western Christian norms became less self-evident in the (former) colonial powers, other normative orders acquired more legitimacy and could also serve to inspire those who, in what once had been the superior colonial metropole, were struggling to imagine and establish a new sexual order.

While Verdonk (as quoted in the introduction to this chapter) in 2005 suggested that the liberal, egalitarian and secular morality of current Western European (and specifically Dutch) society is inherent to those societies, our argument is that she ignores how, in the Netherlands, as probably in other Western European countries, the paradigmatic shift towards this new sexual order was also the result of a *two-way* decolonisation process. Decolonisation, and the immigration questions that came with it, helped make Dutch society receptive to normative orders that, only a few decades before, had been labelled within the Dutch overseas racial colonial order as 'non-European', backwards and morally reprehensible.

Materials and methods

We focus our argument on the dynamic interaction between Suriname's decolonisation, Dutch postcolonial migration and integration policies, and changes in Dutch family law. Our contention is that colonial history is important to understand recent migration policies in the Netherlands, both as a gendered history of segregation, exclusion and heteronormativity and as a history of legal pluralism and inclu-

sion. Family law, used within the colonial setting to regulate 'belonging', has played a key role in this history. It formed a normative system for regulating legitimate family bonds, and hence for establishing a person's legal status. Given that, from 1892 on, Dutch nationality was determined through the *jus sanguinis* principle, family law came to form part of the system for determining formal citizenship. However, grounded in culturally and religiously informed assumptions concerning gender norms and sexuality, family law also could serve to establish substantive cultural norms of citizenship (Stoler 1995; Van Walsum 2008). In the current postcolonial context, family law similarly interacts with migration law, and thus plays a role in both formally and culturally determining who is included and excluded from residence in the Netherlands (Van Walsum 2008).

A telling example of this dynamic interaction between family and migration law was provided in the 1980s by the Berrehab case (ECHR, 21 June 1988, application 10730/84). Abdellah Berrehab, a man of Moroccan nationality, had been admitted to the Netherlands on the grounds of his 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 his former wife, Berrehab devoted four days a week to his daughter's care. Nonetheless, the Dutch state refused to extend his residence permit, claiming that he and his daughter did not share family life. The European Court of Human Rights (ECHR) did not agree, and ruled that the Dutch state had violated the right to respect for family life of both father and daughter. Berrehab became a landmark case, not just in migration law, but also – perhaps even more so – in family law. By establishing that co-habitation is not a necessary prerequisite for family life, this case formed an important element in a series of later court judgements, both national and international, developing the concept of the right to respect for family life. This case law ultimately led to legislative reforms introduced in the 1990s that radically changed the nature of Dutch family law (Holtrust 1993; Loenen 2003).

This chapter focuses on the dynamic interaction between family law, immigration law and discourses of national belonging from the colonial past. Its methodology is grounded in the cross-disciplinary collaboration of its three authors, based in family migration law (Van Walsum), historical anthropology (Jones) and political history (Legêne). The overarching research question of this volume concerns implicitly gendered rules, explicit sexual norms, and the changes in migration policy in an era (1917-2010) that saw the heyday of imperialism, decolonisation, massive migration moments, the end of empires and estab-

lishment of 'single nations in a single territory', together with the emergence of a global sphere of international justice (Cooper 2005; Stuurman 2010). In addition to this volume's other chapters in which colonialism and decolonisation is not an issue, this chapter widens the scope of gender, sexuality and migration policy, by explicitly suggesting, with the example of the Netherlands, a legal-historical continuity between European colonialism and contemporary European immigration policies. The colonial history is especially instructive for understanding how pluralism in family norms and law and the associated differences in the regulation of gender relations and sexuality have interacted with regimes of inclusion and exclusion in the past. Awareness of these historical dynamics enriches our understanding of both political and legal discourses in the ex-colonial metropolis of today.

An international comparison of colonial legacies in postcolonial citizenship regimes in Europe should emphasise two aspects: colonial cross-overs and legal continuities. Both are vital to understanding recent migration policy issues. By cross-overs we mean, for instance, how the development of legal pluralism in the Dutch East Indies, after the introduction of the 1892 laws that revised Dutch nationality law and established various categories of colonial subjects, was 'applied' in Suriname in the first decades of the 20th century, and how experiences with Dutch citizenship for immigrants from Indonesia between 1950 and 1958 influenced provisions for Surinamese immigrants to the Netherlands after 1975. Such cross-overs and legal continuities must have existed *within* each of the other European empires, as well as *between* these empires in the broader European context, as suggested by Balibar (2004). Our focus is on the Dutch case, by tracing transnational legal continuities in the development of Dutch family law after Surinamese independence. Sources for this approach are, next to secondary literature, primary sources like legislative texts, published court judgements in migration law cases[5] and Dutch parliamentary proceedings.

With respect to the secondary sources, this implies that we also address current debates on Dutch 'depillarisation', or the secularisation process and the loosening of the confessional or ideological bonds that after 1945 were dominant in Dutch civil society (Kennedy 1995; Vuysje 1997; Van Dam 2011).[6] We argue that the impact of decolonisation should be analysed more thoroughly within the fragmentation of this pillarised society. The Treaty of 1975 concerning the admission of Surinamese nationals to the Netherlands, following Suriname's independence, provided for the admission of unmarried partners, both heterosexual and homosexual, at the request of the Surinamese and in recognition of the plurality of conjugal norms prevalent in the former colony

(Van Walsum 2008). Van Walsum has claimed that these treaty provisions – the first statutory regulations to acknowledge the legitimacy of (homosexual) non-marital relations – helped to pave the way for further reform in Dutch family migration policy, and that these reforms in turn formed a point of reference in legal debates that preceded reforms of Dutch family law. In another historical study of Dutch family migration policies in the post-Second World War period, Bonjour (2009) refutes this claim. In her view the reverse was the case: the Netherlands had been prepared to admit the unmarried (homosexual) partners of Surinamese residents thanks to emancipatory processes that had taken place within the Netherlands. We would like to re-examine this issue and its relationship to depillarisation, not because we want to prove Van Walsum right and Bonjour wrong. In the contemporary context of the Netherlands in which government policy's claim to a higher moral ground in the realm of sexuality once more serves to justify the exclusion of the putatively morally backward, we believe that it is important to critically examine the historical validity of that claim. Approaching decolonisation as a two-way process enriches our analysis of the paradigmatic shift in Dutch family law that has taken place since the 1970s, a shift that cannot just be explained as a result of the fragmentation of Dutch pillarised society.

Colonial cross-overs between East and West: The normative Surinamese landscape

In describing the Surinamese normative landscape in terms of family regulations prior to decolonisation, a periodisation of Surinamese state formation is needed. Until 25 November 1975, when the country became independent, Suriname was part of the Kingdom of the Netherlands. In the preceding period, political milestones had been the conservative *Staatsregeling* of 1936 that abandoned the word 'colony', but continued colonial bonds and contained many regulations that were contradictory to the Dutch Constitution, and the more liberal *Statuut* of 1954 allowing Suriname an autonomous status within the Kingdom of the Netherlands (Buiskool 1954: 17-41). After 1901, the Dutch government and colonial legislators, which differed in their degrees of interaction with Dutch legal systems, also worked on family law regulations that would serve the plural society of Suriname, while also accounting for the legacies of the past colonial organisation of plantation labour. The Dutch colonial authorities, via family law and socio-cultural regimes in general, were the dominant 'actors' in creating the Surinamese

plural society and the ethnic divisions therein. Colonial socio-cultural regimes, the subsequent regimes of labour by enslaved and indentured workers on the plantations, the support for small farming in the districts, and finally the emergence of male wage labour for (multinational) companies that exploited natural resources far away from the urban centres of Suriname, all had a deep and lasting influence on the organisation of social and family life in the colony.[7]

In the 19th century the regime of plantation slavery had an impact on the marital status of the enslaved African plantation workers. Despite the critique of Christian missionaries like the Hernhutters, enslaved Africans were not allowed to marry; a child born from an enslaved woman was legally classified as a slave, and the enslaved parents could not recognise the child as theirs. The protection of family life was socially weak and legally non-existent, since the enslaved were legally not 'persons' but 'goods'. In a number of cases, European fathers made possible the manumission of both the enslaved mothers and their children (Van Lier 1977). But enslaved mothers of a child whose biological father was a European, conceived in any form of enforced or voluntary intercourse and relationship, remained highly dependent on paternal decisions concerning the future of the child. The racist colonial regime of African slave labour had accommodated various forms of intimate relationships between people, many of whom had adopted Christianity as (a part of) their beliefs, who were none the less denied access to a decent family life.

Runaway Maroons, who since the 18th century had organised their communities with (almost) no involvement from colonial authorities, as well as Amerindian Surinamese, developed their own norms and customs that the authorities only after the *Staatsregeling* of 1936 tried to integrate into a common legal framework. Chinese, Hindustani and Javanese indentured labourers had since the middle of the 19th century been recruited in order to replace enslaved workers. They became large groups in Suriname. Most of these plantation labour immigrants in the early 20th century had become small farmers or middle-class entrepreneurs. Many were Muslim, Hindu or adherents of Confucianism, and hence initially did not adhere to the dominant Christian family norms. Containing those groups that did not share 'Western' values had been an argument for the conservative character of the 1936 *Staatsregeling* (Buiskool 1954: 27).

Pluralist marital law that would allow for differences with respect to especially Hindu and Muslim beliefs and customs was much-discussed from the beginning of the 20th century. Special provisions concerning marriages of Hindustani and Javanese were drawn up in 1907, but legal

unity remained the guiding principle in Suriname (Van Lier 1977: 144). Cultural and legal pluralism that would acknowledge all different population groups, while still favouring (Dutch) Western and Christianity-based family law, turned out to be a very complicated legal issue. Its contested implementation in Suriname was partly based on the example from the Dutch East Indies. Colonial family law in the Dutch East Indies had been an experiment with legal pluralism, which acknowledged *adat* and *sharia* combined with an affirmation of strict citizenship distinctions. The population in the Dutch East Indies was legally classified in three distinct groups: Europeans and those decreed equal to Europeans, foreign Orientals, and indigenous people. Qua nationality status, the population of the Dutch East Indies was classified as Dutch citizens (all of whom were also Europeans) and Dutch subjects (most of whom belonged to the category of indigenous people or foreign Orientals) from 1892 and 1910 onwards. As mentioned before, this legal order implied unequal career patterns for people in different categories.

The legal pluralism of the colonial Dutch East Indies was adapted in Surinamese society from 1937 onwards. However, the context was essentially different. In the Dutch East Indies, 300,000 Europeans ruled over 20 million indigenous persons in 1940. Suriname was a small settlement colony with population groups that, except for the community of Amerindian Surinamese, had been brought from Africa and Asia to Suriname under colonial labour regimes of slavery or indentured labour. The migration histories, the cultural and religious backgrounds of the various population groups, and their history of forced or indentured labour in the colony, made family law a complicated issue. Moreover, against the backdrop of the dominant cultural policies in Suriname at the time, legal pluralism with regard to family law became a contested issue. From 1863 to 1933, the colonial legal regimes and policies with regard to culture, language, education and family had been aimed at assimilation. The *Koloniale Staten,* the colonial representative body consisting of members of the influential local political elite, supported Dutch colonial policies. Assimilation policy, which after emancipation in 1863 was initially targeted at the formerly enslaved, was subsequently also directed at the indentured labourers who came from China, the Dutch East Indies and British India (Van Lier 1977; Ramsoedh 1995; Marshall 2003). The aim of these policies was, as Governor A.A.L. Rutgers stated in 1922, 'to re-melt the entire population, white, brown, black or yellow, regardless if they are Europeans, Americans, Africans or Asians, into one single language and culture community within one legal framework, even in the case of matrimonial law

and law of succession'. This policy was very different from that in the Dutch East Indies, which aimed to separate groups rather than to meld them into one. The Dutch colonial authorities were well aware of this difference. The Minister of Colonies J.C. Koningsberger in 1928 stated explicitly that 'preservation of language, morals and customs' was the aim in the Dutch East Indies, whereas 'the fusion of all races, including the Javanese, into one Dutch language and culture community' was the goal of colonial policies in Suriname (Van Lier 1977: 143).

The administration of Governor G.C. Kielstra (1933-1944) signalled a paradigmatic shift away from assimilation policies (Ramsoedh 1995). Before Kielstra became governor in Suriname, he held senior positions in the Dutch East Indies. Around 1914, as the Deputy Advisor for Administrative Affairs of the Outer Provinces (of the Dutch East Indies) he had been involved in the legal description in Christian bylaws for Toba Batak Christians, of customary or *adat* law concerning marriage and family arrangements (Van Bemmelen 2012: ch. 10). His relocation in 1933 from the Dutch East Indies to the West Indies meant a partial transposition of colonial policies from one colony to the other. Inspired by the regime of legal pluralism in the Dutch East Indies, Kielstra wanted to introduce 'Asian marital law', the establishment of separate villages and separate schools for the 'Asian' part of the population, in accordance with the Dutch East Indies model (Van Lier 1977: 143-146, cf. Van Walsum 2000: 29-37). He met fierce opposition from the representative body, which after 1936 was called the *Staten* and by then was dominated by members of the local 'white, Jewish and Creole elite'. These representatives[8] favoured the continuation of equal treatment (*rechtseenheid*) and assimilation, and criticised Kielstra's policies, which they compared with 'apartheid', as an obstruction of national unity. Kielstra, backed by Minister of Colonies Ch.J.I.M. Welter, used the special powers granted to him by the conservative *Staatsregeling* of 1936 to disregard the local representatives and enact his 'Asian marital law' in 1937.

As previously mentioned, legal pluralism in the Dutch East Indies before 1942 did not allow for the development of universal and shared notions of citizenship (Cribb 2010). This had an immediate impact on individual entitlements to, and exclusion from, Dutch citizenship after 1949, when the Dutch East Indies became independent Indonesia. In terms of migration options, the legal pluralism in colonial family law prior to Indonesian independence limited entitlements for migration to the Netherlands, whereas Indonesian society after 1950 established an exclusive Indonesian national citizenship that did not allow for cultural pluralism (Willems 2001: 112). The arrival of postcolonial immigrants

from the former Dutch East Indies did not directly impact Dutch family law. On the contrary, meeting the dominant norms of family life formed an important criterion to admitting immigrants from the colonies (Ringeling 1978; Willems 2001: 57-61, 105-111; Bosma 2009). In Suriname, however, legal pluralism with respect to family law between 1936 and 1975, and notably after 1954, when Suriname was an autonomous part of the Kingdom of the Netherlands, developed not only in interaction with Dutch legal reform, but also within an international context of an emerging sphere of global justice based on human rights (Stuurman 2010: 475).

Regardless of existing law, Surinamese society had allowed for cultural and legal pluralism in family regulations, based on the acceptance of Muslim and Hindu private life, as well as the awareness that during the nation's history many had been forced to live in enslavement. Between 1954 and 1975, the social legacies of this past, both for descendants of Afro-Surinamese and for Chinese, Hindustani and Javanese immigrants, were hardly discussed in terms of this history. Dutch perspectives on Surinamese nation-state formation were dominant in schools, in churches and in court. However, in society, cultural pluralism allowed for a family life that was not restricted to Western Christian values. To be sure, during colonial times the model of the 'nuclear' family (husband-wife-children), consisting of spouses married in accordance with civil law (*Burgerlijke Stand*) had been very influential among the Creole and Jewish elite and turned into 'the most frequent model in families, across ethnic groups that have attained or aspire to middle-class status', as observed by Wekker (2001: 187). At the same time, other family systems existed in parallel to the 'Western style nuclear family', such as the marriages according to Hinduism and Islamic faith mentioned above, the 'dual marriage structure' and 'the extended family' (ibid.). In some of these 'alternative' family systems, the husband-wife-children unit is absent. This is the case, for instance, in 'the Creole working-class matrifocal family', in which 'the mother-child and sibling relationships form the durable and dependable network in which an individual is embedded' (ibid.: 188). Matrifocal families can function as the locus for '*matiwerk*' relationships: socio-economic support networks between women, in which 'same-sex' relations can occur. Before Suriname's independence in 1975, a significant number of these 'parallel' family systems had been enacted in law, as in the case of marriage in accordance with Hinduism or Islam, laws recognising the authority of women over their biological children (which is of particular importance for matrifocal families), laws con-

cerning the rights of foster children, and laws concerning concubinage (Oedayrajsingh & Ahmad Ali 1989).

Conjugality and family migration policy in the negotiation of Suriname's secession

In the early 1970s, against the backdrop of worldwide decolonisation, the relationship between the Netherlands and its remaining colonies (Suriname and the Dutch Antilles) became a topic of parliamentary debate. This issue was connected to discussions on the regulation of immigration from Suriname to the Netherlands, which was increasing. The map of the world had changed dramatically. Former colonies, now a category of independent nations known as developing countries, played a role in East-West and North-South relationships. The US civil rights movement and protests against the war in Vietnam added urgency to anti-racism and anti-imperialism movements. In 1971, young Dutch lawyers and activists supported the American draft resister Ralph Waver in his claim to political asylum in the Netherlands, marking a renewal of professional support for migrants and refugees seeking admission to this country (Reurs & Stronks 2011: 15-29; Walaardt 2012; Walaardt in this volume).

Initial support had been given by NASSI (Nationale Actie Steunt Spijtoptanten in Indonesië), a volunteer advisory group founded by Tjalie Robinson and others in 1960, for postcolonial visa applicants who belonged to the 'last' thousands of people in Indonesia who opted for Indonesian citizenship and later regretted that choice (Willems 2001: 162; Bibo 2011). Their cases had been closed by the time that Ralph Waver applied for political asylum, in a context of increasing unemployment following the oil crisis. Following rising immigration from Suriname, racist violence within the Netherlands became a public issue. The year 1971 also saw the founding of the extreme right-wing party the Nederlandse Volks Unie (NVU) (Schuster 1999: 130), the first (and only) anti-immigrant party in the Netherlands in the post-Second World War period that anti-racist groups succeeded in having convicted for promoting racist ideas (Tinnemans 1994: 134-135).

In this polarising context, the debate concerning Suriname's decolonisation not only reflected anti-colonial sentiment, but also concerns over immigration control. As long as Suriname remained part of the Kingdom of the Netherlands, the Dutch government could not exclude Surinamese inhabitants without discriminating between Dutch subjects. Once Suriname was independent, its inhabitants would be for-

eigners, and the Dutch government could legitimately refuse their admission (Jones 2007). Meanwhile, family migration became a political issue connected to labour migrants from the Mediterranean. The centre-left cabinet, elected into power in May 1973 under the leadership of the socialist J. den Uyl appeared to struggle to reconcile both postcolonial and labour migration control with progressive aspirations (Bosma 2009). During a debate with parliament on the issue of labour migration, the cabinet put forward its position as follows:

> Seen from the perspective of the migrant worker himself and from the culture to which he belongs … it would be unreasonable to refuse entry to family members with whom he feels closely bound and for whom he feels responsible … The government is of the opinion that – also for moral reasons – it would be unjust to pursue a restrictive policy regarding the admission of family members to stay with foreign workers who, after all, have served the Dutch interest by coming here.[9]

On the other hand, taking the culture of migrant workers into account, raised issues of control:

> Another aspect of family reunification regards applications made, in the case of polygamous marriages, for the admission of more than one wife or of children born out of another marriage than the children who have already been admitted. A similar problem arises when foreign workers request the admission of children born out of wedlock. The list of possible requests that can be made on the basis of family reunification is by no means exhaustive. In practice, we are confronted with even more variations.[10]

It is against this background that the terms concerning family reunification following Suriname's secession would be negotiated. In 1972, a special committee on *Koninkrijkszaken* (the relations within the Kingdom of the Netherlands) was established to address the constitutional relationship between the Netherlands and its former colony Suriname, and to consider alternative regulations in terms of nationality and migration law that could serve to limit the number of persons leaving Suriname for the Netherlands. By then, secession had become an issue of political debate both in Suriname and the Netherlands. Dutch insistence on regulations for migration from Suriname to the Netherlands was to play a major role in the process that would eventually lead to Suriname's independence in 1975 (Jones 2007: 229-234).

Reminiscent of the painful and violent secession of the Dutch East Indies, Den Uyl and his cabinet were determined to have Suriname's independence form a model chapter in the history of decolonisation (Willemsen 1988: 130-131). In determining who was to belong to which nation, the racially neutral criterion of territory was adhered to, rather than the more suspect one of genealogy, which had been the determining factor following Indonesia's secession in 1949 and had turned out to be highly debatable and at times also embarrassing for those who apparently had believed in a strictly segregated colonial society (Ringeling 1978; Van Walsum 2008; Bibo 2010). Anyone who had been born in Suriname and was living there on 25 November 1975, the date of Suriname's independence, acquired Surinamese nationality. Dutch nationals from Suriname, who were resident in the Netherlands on that same date, could keep their Dutch nationality, regardless of parentage or 'cultural orientation' (Heijs 1991: 35-36).

While the ruling left-wing government in the Netherlands saw it as its historical mission to grant Suriname its independence, in Suriname itself secession was contested. To win support, Surinamese politicians had to negotiate guarantees that future Surinamese citizens would continue to have easy access to the Netherlands. During negotiations with the Dutch government, Surinamese representatives strove for a generous regime of admission that would account for family norms that were believed to be characteristic of Surinamese society, including non-marital familial relationships (Jones 2007: 252-254). The final text of the treaty between Suriname and the Netherlands concerning the admission of their respective citizens, which became effective as of 25 November 1975, did in fact include a provision, Article 5, allowing for the admission of the person with whom a citizen of one of the state parties, legally resident on the territory of the other, 'has a long lasting and exclusive personal relationship'. This article also applied to same-sex relationships (Ahmed Ali 1979: 17). This was a significant achievement when we consider that only a decade before, in the wake of Indonesia's secession, Dutch authorities were still being advised by social workers stationed in Indonesia, to refuse 'repatriation' to persons of Indonesian nationality who lived in cohabitation or had illegitimate children. Such practices were considered to be indicative of an 'oriental orientation' that rendered assimilation to Dutch society unlikely (Ringeling 1978: 127). Verton, who worked for the Dutch immigration authorities in the 1960s, reported that if the authorities saw reason to suspect that a foreigner guest worker was engaged in a non-marital sexual relationship with a Dutch woman, this could lead to deportation on the grounds that public order was being threatened (Verton 1971: 45). As late as 1970,

the Dutch Council of State ruled that a Turkish worker who had started a relationship with his Dutch landlady, while not having to leave the country, could be required to leave his lover's home.[11]

Swart, in a commentary on the Dutch immigration law of 1965 (published in 1978), remarks that Article 5 of the Dutch-Surinamese treaty concerning the admission of their respective citizens is the first statutory ruling in Dutch law in which persons involved in a non-marital relationship are granted the same rights as married couples. He points out that, by then, Dutch citizens were being enabled by Dutch family migration policies to bring over foreign non-marital partners, but only on the basis of decisions taken by officials with discretionary powers, or following litigation. These were, however, exceptional cases, where marriage was not an option and where the relationship was clearly of a long-lasting nature (Adema & Freezer 1975: 169-170).

In Swart's view, the statutory regulation for Surinamese citizens of a claim to family reunification with a non-marital partner, had to be seen against the background of the specific family norms that prevailed in Suriname at the time (Swart 1978: 411). This view is supported by information provided by Deputy Minister of Justice H.J. Zeevalking to the Dutch parliament in October 1975, one month before the treaty was to become effective (Jones 2007: 254).

Not everyone agrees with that interpretation. Bonjour (2009: 134), for instance, defends the position that the provision in the Dutch-Surinamese treaty allowing for admission of non-marital partners was prompted less by family norms prevalent in Suriname at the time, and more by normative shifts that had, by then, taken place in the Netherlands. These, she claims, had led to changes in Dutch migration policy, and it would have been problematic to impose a more restrictive regime upon former citizens coming from Suriname. It was not Surinamese norms 'imported' via migration law that served as a trigger for normative change in the Netherlands. Rather, normative changes in the Netherlands explain why Surinamese norms could be accommodated in Dutch migration law. Bonjour (ibid.) bases this interpretation on the account of Dutch politician J.F. Glastra van Loon (himself born in the Dutch East Indies) of his experiences as Deputy Minister of Justice in the Den Uyl cabinet between June 1973 and May 1975. He published his account one year after being forced to resign after conflicts with civil servants in his department (Glastra van Loon 1976). In his memoirs he describes how, during his first encounter with the civil servants responsible for immigration, he put forward his position on family migration policies which, among other things, would enable unmarried foreigners, whether heterosexual or homosexual, to stay in the Netherlands as

the partner of a Dutch citizen. That statement, he writes, caused a considerable stir in the department, which is understandable given that, until then, non-marital sex had been a grounds for withdrawing residence rights, not granting them.

Glastra van Loon went further than proposing that extra-marital sex (whether heterosexual or homosexual) should no longer lead to loss of residence rights and deportation. His intention was that it should serve as acceptable grounds for admission. Bonjour's (2009: 121) sources indicate that the civil servants of the immigration department accepted this proposal, but with some reservation. Dutch case law indicates that the change in policy was indeed implemented, but in a restrictive fashion. Residence permits were refused to applicants who could not meet income requirements.[12] In effect, this meant that they could only reside with their non-marital partner if they were in possession of a work permit. By then however, given rising unemployment, work permits were generally being refused to foreign workers who had not been officially recruited. As a result, the right to admission on the basis of a non-marital relationship remained illusionary. By contrast, foreign men married to Dutch women were granted work permits so that they could live up to their responsibilities as breadwinners.[13] In a decision of 7 July 1975, the Dutch Council of State advised that since foreigners could be admitted on the grounds of either a marital or a non-marital relationship with a Dutch woman, they should also be equally entitled to a work permit allowing them to fulfil their duties as a breadwinner, regardless of whether they had been officially recruited.[14] The case law referred to above refers only to foreign men living together with Dutch women. The lack of published case law concerning the reverse situation (i.e., a foreign woman living together with a Dutch man), suggests these cases were either less frequent or that foreign women experienced fewer problems in acquiring a residence permit solely on the grounds of their relationship with a Dutch man.

A further indication of the reluctance to implement this new policy, is the fact that an official letter presenting it to the head of the Dutch Immigration Department was only posted on the date of the above quoted decision by the Dutch Council of State, two years after Glastra van Loon had announced it, and after he had already left the Ministry. Furthermore, the letter only refers to the unmarried partners of *Dutch* citizens, not to those of legally resident foreign nationals, while the above quoted case law suggests that the new policy was only being applied to the partners of Dutch *women*. In this light, it is understandable that the Surinamese delegates negotiating the terms of the secession treaties were not convinced that the existing Dutch policies allow-

ing for the admission of foreigners on the grounds of a non-marital relationship would suffice to meet the needs of the future citizens of Suriname, and insisted on the statutory norms which were, in the end, granted (Bonjour 2009: 131).

Following the secession treaties with Suriname, Dutch family migration policies were modified in 1978 to allow for the admission of the non-marital partners of persons with refugee status[15] and in 1980 to allow for the admission of the non-marital partners of migrants with permanent residence status.[16] It is not evident, however, that these reforms were solely prompted by increasingly progressive family norms in the Netherlands, rather than by the relative openness, characteristic of this period, to the normative pluralism that international and post-colonial immigration implied and also needed in order to work out in a proper way. The reverse could equally be argued, namely, that the openness to normative pluralism in the era of decolonisation helped achieve reform in Dutch family law.

Challenging the institution of marriage in the context of multiculturalism

Thus, in the mid 1970s and nearly ten years before the Netherlands launched its ethnic minorities policy, Dutch politicians and policymakers had accepted the assumption that opening the Netherlands to family migrants from the so-called developing countries, meant opening Dutch society to normative pluralism. As Bonjour (2009) rightly observes, the 1960s and 1970s also marked a period of cultural revolution in the Netherlands. The dominance of religious institutions over family life came to be hotly contested. There was no new normative consensus concerning the merits of the 'permissive society', but Dutch family norms in this period were contested. Once the religious institutions in the Netherlands started to loosen their grip on family norms, a Pandora's Box of conflicting interests and desires opened. After decades of religious tutelage and sectarianism, there was a strong thirst for personal autonomy and normative freedom. Adolescents sought sexual autonomy and release from parental control; women sought freedom from male dominance and a larger say over the upbringing of their children; men sought more sexual freedom and release from the lifelong responsibility of having to provide financial support for dependent family members. Adolescents and women claimed the right to independent shelter and financial security; men insisted on maintaining ties with their children, regardless of the state of their relationship with the mother (Van Walsum 2008: 25-67).

Against this background of contestation, excluding migrants on the grounds that they did not conform to dominant Dutch norms became problematic. Next to an increased openness to normative pluralism outside of the Netherlands, there was therefore also a growing hesitation – embarrassment even – in applying Christian morality as a mechanism of inclusion and exclusion. Ringeling (1978: 127), for example, observes that, shortly before the programme allowing for the repatriation of 'socially Dutch' Indonesians ended in 1963, immigration officials no longer followed social workers' recommendations to exclude candidates on the grounds of co-habitation or promiscuity. And, as mentioned earlier, by the early 1970s legally resident migrants were no longer threatened with loss of status and deportation after having been involved in an extra-marital relationship.

Contrary to Bonjour's (2009) argument, however, non-marital relations were still far from entrenched in Dutch law. Against the background of moral ferment, the major political parties in the Netherlands at the time – the Christian Democrats rooted in the confessional politics of the past, and the Dutch Labour Party under the leadership of Den Uyl – persisted until well into the 1980s in staunchly defending the institution of the family as the keystone of Dutch society. For the Christian Democrats, the family formed the source of altruism that fuelled civil society; for the socialists the family served as a metaphor for national solidarity (Bussemaker 1993: 134). It would take nearly three decades for the dust to settle and a new consensus to be reached on the issue of family norms.

While successive Dutch cabinets continued to promote the institution of marriage, its libertarian opponents rallied forces to claim rights for alternative forms of family life. Interestingly, in pleading their case for regulating co-habitation and other alternatives to marriage, lawyers referred to both the changes taking place in Dutch migration law and the normative pluralism that migration implied. The acceptance, in the 1970s, of the validity of alternative normative systems – however limited and brief it may have been – added new impulses to campaigns for the reform of Dutch family law.

In 1974, the Dutch civil lawyer A.M. van de Wiel compiled an inventory of Dutch laws and policies that took co-habitation into account. These were very few. The still unpublished migration law policy change initiated in 1973 by Glastra van Loon was one of only two policy measures effective on a national level that granted a positive claim on the basis of co-habitation. The few other rules found all related to diminished claims to alimony or welfare benefits, on the grounds of co-habitation (Van de Wiel 1974). In response, J.M. Polak, law professor

and later a member of the Dutch Council of State (*Raad van State*), called for more regulation, although he conceded that the Netherlands was a country 'with a rich assortment of lifestyles and convictions', which public authorities would have to take into account (Polak 1974). As demands for change increased, Van de Wiel again provided an overview of the existing regulations, now to inform debate on possible reform. Interestingly, his conclusion – based largely on case law on family migration – was that no regulation of non-marital relations could do justice to the variety of conjugal arrangements that this concept covered. Rather than regulate an alternative to marriage, he recommended a more flexible regulation of marriage itself: 'It will become increasingly clear that the pattern of human relationships is too varied to be caught in a single legal concept' (Van de Wiel 1979: 116).

Five years later, the authoritative Dutch legal journal *Het Nederlands Juristenblad* (NJB), published a manifesto against the legal institution of marriage, written by Professor H. van Maarseveen and two other lawyers: D. Verlegh and S. Korthuis (Verlegh, Van Maarseveen & Korthuis 1984). By then, the Dutch Constitution had been thoroughly revised, including the non-discrimination clause in Article 1. In their manifesto, the three authors expressed their objections to the constrictions imposed by the Dutch state, through the institution of marriage, upon an individual's private affairs. They pointed to the vast variety of conceivable conjugal relations: heterosexual, homosexual, bisexual or non-sexual; monogamous, bigamous, polygamous; temporary or permanent or somewhere in between; living together or living apart. Because a broad array of legal arrangements, from tax benefits to housing permits to social security took marriage as their point of reference, people were more or less forced, in their eyes, to choose this particular form of family life. The authors drew parallels between normative pluralism in the intimate sphere and religious freedom and cultural pluralism in general, pointing out that the Netherlands had become a multicultural society in which a variety of family norms had found a home. By then, Dutch government had launched an ethnic minorities policy indeed, grounded in the principle of cultural diversity (see Schrover in this volume). Verlegh, Van Maarseveen and Korthuis argued that Dutch civil law, in maintaining the institution of heterosexual and monogamous marriage, privileged the normative order of one religion (Christianity) over others, thus violating fundamental principles of freedom of religion, freedom of conscience, privacy and non-discrimination. They warned, 'The government will run into problems since ethnic minorities can now claim acknowledgement of alternative conjugal arrangements on religious grounds' (Verlegh, Van Maarseveen & Korthuis

1984: 859). The authors were apparently unaware of the fact that in another part of the Kingdom of the Netherlands, Suriname, this had already been the case since the 1950s.

Conclusion: Changing family law and contemporary debates on immigration policies with respect to Muslims

In the fall of 2009, two decades after Abdellah Berrehab contributed to a further reform of Dutch family law by claiming his right to family life with his daughter, even though he did not adhere to the dominant family norms of the time, a Dutch policy document on family migration was published. That document proposed preventing any cross-border form of conjugality that fell short of what was explicitly advanced as the official Dutch norm, based on 'the mutually and equally shared responsibility of partners for each other and for their children':

> The Dutch legal order does not allow for violent forms of parenting, nor for polygamy or marriages contracted under force. All couples are treated equally, regardless of whether or not they are composed of persons of the same or different sexes.[17]

Concerning cross-border unions, this policy document warned that these may be 'concluded under force, and this is unacceptable':

> A forced marriage can indicate honour-related violence; polygamy and marriages between cousins can, in turn, indicate an involuntary union or fraud. Estimates are that roughly 25% of people in the Netherlands of Turkish and Moroccan origin marries within the family. Not only are the children of migrants in the Netherlands being pressured into marrying a cousin from their country of origin so as to help him or her acquire a residence permit; such marriages also result in spouses being forced into providing care to the extended family.

Consequently, any request for family reunification that 'does not concern an already long established relationship, but rather appears to be the result of "matchmaking", with or without the consent of those involved (such as arranged child marriages), should be critically examined by the state. This requires more than controlling for fraudulent marriages.'[18]

The recommended measures not only target the migrating partners or spouses (depicted as 'dependent and uneducated women'), but also

the partner or spouse in the Netherlands who, remarkably, is consistently assumed to be heterosexual, male and – generally – of 'non-Western' origin. To the extent that this document acknowledges that men of ethnically Dutch origin also engage in relationships with 'non-Western' women, it assumes they do so because they want a woman who is less emancipated, more compliant, subservient and 'willing to provide sexual services' than a woman raised in the Netherlands. As such, these men are accused of displaying an attitude that 'does not coincide with the Dutch premise of equality within marriage'. Implicitly, like their 'non-Western' countrymen, they are disqualified as proper Dutch citizens.

In the economic and political climate of the first decade of the 21st century, norms concerning family relations and sexuality are again being mobilised to physically exclude specific categories of migrants from legal residence within Dutch territory, while symbolically excluding specific categories among the legally resident population (including Dutch nationals) from substantive citizenship. Ideas about what constitutes family life travel between countries and have travelled between colonies and metropolis. The reforms leading to the current codification of family law in the Netherlands were preceded by an openness to a normative pluralism. This included forms of family life that, at the time, were more common and more widely accepted and legally framed in late colonial societies now referred to as 'non-Western' or developing countries. Immigrants from the Dutch East Indies with its huge Muslim population, and from Suriname, with its complex history of legal pluralism after 1936, rooted in a long history of forced immigration and labour, inspired struggles to legitimate other than dominant forms of (nuclear) family life. Through treaty negotiations or litigation, those with 'non-Western' backgrounds were actively involved in realising these normative changes. Ironically, they (whether as members of other Muslim populations, or of postcolonial immigrant communities), were portrayed in official documents as a threat to the new normative order in the Netherlands, which in different roles they themselves helped to create.

Conservative political and policy rhetoric suggests that emancipation is a one-way street, starting in 'the West' and leading to 'the rest'. Our analysis suggests that the emancipatory changes that occurred in Dutch family law during the second half of the 20th century arose from cross-border and cross-cultural interaction between 'the West' and 'the rest', based on a dynamic colonial relationship that reaches back into the 19th century. Taking 'the West' seriously, implies the need for a European comparative approach to the impact of the various colo-

nial citizenship regimes on postcolonial immigration policies, both national and at a European level. We see more when we approach the road to emancipation, which is implicitly connected to the intention of immigrants to apply for citizenship in Europe, as a two-way street, or, maybe even a roundabout, if we apply this metaphor to the crossovers between Indonesia, Suriname and the Netherlands in the colonial era and in the aftermath of decolonisation. The Dutch and their immigrants have walked that road before. We propose to explore it again.

Notes

1 Wet Inburgering Buitenland, *Staatsblad* 2006: 26 & 75. This legislation was made effective as of 15 March 2006.
2 Proceedings Lower House session 2004-2005, 29 700, no. 6: 46-47. These and other quotes from Dutch sources have been translated by the authors of this chapter.
3 There is at present in the Netherlands, no research programme that focuses on legal instruments against racism.
4 Proceedings Lower House, session 1892-1893: 156-158.
5 Unless otherwise indicated, the cases quoted have been published in the annual overview of Dutch migration case law, *Rechtspraak Vreemdelingenrecht* (*RV*).
6 We thank the organisers of the Amsterdam conference on Dutch 20th century history *Uitsluitend emancipatie* (Excusively emancipation, 14-15 October 2011) for the opportunity to discuss drafts of this chapter in a panel session on decolonisation and migration.
7 Inspired by postcolonial theory, we consciously opt for the term 'enslaved' instead of 'slaves', since the latter term (slaves) naturalises the condition and the identity of the people concerned, whereas the former (enslaved) represents their condition as a result of colonial policy.
8 Christian Hindustani representatives, like Clemens Biswamitre, opposed the policies of Kielstra as well.
9 Proceedings Lower House, session 1973-1974, 10 503, no. 9-10: 16.
10 Proceedings Lower House, session 1973-1974, 10 503, no. 9-10: 16.
11 KB 4 March 1970, no. 99, *RV* 1970/2.
12 KB 30 August 1974 no. 65, *RV* 1974/19; KB 29 March 1974 no. 83, *RV* 1974/7.
13 KB 13 August 1974, *RV* 1974/18.
14 KB 7 July 1975, no. 45, *RV* 1975: 18.
15 Comment by Rb Alkmaar 18 July 1978, *RV* 1978/57.
16 Comment by ABRvS 2 March 1981, *RV* 1981/11.
17 Proceedings Lower House, session 2009-2010, 32 175, no. 1: 6.
18 Proceedings Lower House, session 2009-2010, 32 175, no. 1: 7-8.

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