

in their application of the rules.¹⁶³ All the same, non-marital relations between foreign men and Dutch women continued to be a matter of official concern for some time. In 1968 for example, the authorities refused to extend the permit of a Turkish worker who had started a relationship with the Dutch woman he had been boarding with while he was still married to his wife in Turkey. In appeal, the Ministry of Justice ruled that this man's permit could be extended, but only under the condition that he leave his boarding lady's home and break all contact with her.¹⁶⁴

In the following chapter, we shall see how the regime regulating migration to the Netherlands would fare in the context of growing attacks on the family norms that had underpinned that regime throughout the period of post-war reconstruction.

¹⁶³ Verton 1971, p. 45.

¹⁶⁴ Objecting to these conditions, the man in question appealed his case before the administrative court. This court upheld the decision to the extent that the man had to move out of his lover's house. The condition that he should stop seeing her was however too arbitrary, in the eyes of the court, and this part of the decision was not upheld, KB 4 March 1970, nr. 99, RV 1970/2.

CHAPTER THREE

DUTCH NATIONALITY AND IMMIGRATION LAW IN A PERIOD OF NORMATIVE PLURALISM: 1975-1990

By 1975, the map of the world had literally changed. European colonialism was in its last throws. Former colonies, now a category of independent nations referred to as developing countries, formed a force to be reckoned with. The civil rights movement in the United States and the Viet Nam War added urgency to the issues of anti-racism and anti-imperialism. Both within newly constituted nations and already established ones, minority groups were giving vent to claims to cultural rights and self-determination. The cultures of minorities and the so-called developing nations were still perceived of as exotic, but it was no longer *bon ton* to depict them as a threat to civilisation.

Besides traditional Dutch notions on family and sexuality, with the accompanying hierarchies between the genders and the generations, notions of western superiority and racial hierarchies were also under attack.¹ Even if there had still been a consensus within the Netherlands concerning family norms, it would have been problematic under these circumstances, to unilaterally impose Dutch family norms upon Third World migrants seeking admittance on the grounds of family reunification. But if the traditional Dutch family norms no longer sufficed to determine who could and who could not be admitted to the national territory and/or accepted as a national citizen, how then were such distinctions to be made?

The Advent of a Minorities Policy

The following chapter will examine how Dutch authorities, responsible for immigration policy, tried to establish new ways to regulate access to Dutch territory and nationality via family norms. A distinction will be made

¹ Righart 2006.

between the initial period, that lasted until the late 1970's, in which the assumption of return migration still continued to linger, and the period following the publication of the Dutch government's first general minorities policy in 1983, which signalled acceptance of the fact that the Netherlands would have to contend with the permanent presence of cultural minorities within its borders—a period that coincided with a political shift to the right, and significant reforms of the Dutch Welfare State, as seen in Chapter One.

In the first period, the start of which was marked by the oil crisis of 1973, the main focus of concern for the Den Uyl cabinet, the most left-wing cabinet of the post-war period, was to gain more control over labour migration. Besides developing initiatives to further restrict the employment of foreign labour, this cabinet would seek to prevent foreign workers from entering the country by masquerading as family migrants. The key question then was: who is a genuine family member. Once family members had been admitted into the country, the main concern was that they remain part of the family unit, falling under the moral and financial responsibility of the primary migrant, until they all return home.

As the realisation started to dawn that various immigrant communities were not in the Netherlands on a temporary basis, but were going to form a permanent presence within the Dutch nation, the scope of concern broadened. From the early 1980's on, the question that would preoccupy the more conservative coalitions led by the Christian Democrat Ruud Lubbers, was not only how to apply family norms as a mode of inclusion and exclusion, but also how to relate transnational family norms and the social relations that they regulated to a national project of social integration.

A: Renegotiating Immigration Control

By 1975, due to a number of circumstances, the left-wing Den Uyl cabinet was starting to feel pressure to further restrict immigration. Already before the oil crisis of 1973, the Netherlands had felt the early symptoms of a recession, and companies were starting to lay off employees. For the time being however, the most labour-intensive sectors managed to keep functioning, partly due to the continuing availability of relatively cheap foreign labour.² In 1971, 16,750 new recruits were still being brought in from the Mediterranean area.³ As the crisis deepened, however, the sectors

² Tinnemans 1994, p. 105-106.

³ Ibid. p. 106.

in which these foreigners worked also started to falter and by 1975 the recruitment of foreign labour had more or less ground to a halt.⁴ Already in the late 1960's, rules regarding the issue of labour permits had been sharpened, making it more difficult for labour migrants who entered the country on their own initiative, skirting the official recruitment channels, to qualify for a labour permit.⁵ In 1975 the Den Uyl cabinet presented a proposal to further restrict labour migration from outside of the European Community. This proposal led to a new law on labour migration that came into effect in 1979.⁶

By then however, many foreign workers from the Mediterranean area had started to settle in the Netherlands. A study conducted by the Dutch Statistical Society (*Nederlandse Stichting voor Statistiek*) and published in 1971 revealed that the Italian, Spanish and Turkish workers still present in the Netherlands had, on the average, been living there for three-and-a-half to six years. Only the Moroccans, whom Dutch employers had only recently started to recruit, reported shorter stays.⁷ Roughly half of the Italian workers, who had, after all, come as bachelors, were married to Dutch women. The vast majority of the other foreign workers had married a woman in their country of origin. One in ten had already brought their families over and well over thirty percent of those who had not yet done so, indicated they would do so as soon as they had found suitable housing.⁸

By 1972, the number of family migrants entering the Netherlands already equalled the number of foreign recruits coming into the country. By 1975 the number of immigrants from the Mediterranean area residing in the Netherlands was more than 153,000—60,000 more than in 1970.⁹ In this same period, ongoing economic instability was causing social tension in the remaining colonies of Surinam and the Antilles. A growing number of people started to leave for the Netherlands in search of better opportunities, following in the wake of students who had traditionally sought advancement in the metropole.¹⁰ Between 1960 and 1970, the number of migrants from the remaining Dutch colonies increased from 12,700 to 42,500.¹¹ By then, skilled and semi-skilled jobs were already

⁴ Ibid. p. 157; Schumacher 1981, p. 186.

⁵ Tinnemans 1994, p. 86-88; De Lange 2007, p. 123-128.

⁶ Wet arbeid buitenlandse werknemers, *Stb.* 1978, 737.

⁷ Tinnemans 1994, p. 104-105.

⁸ Ibid. p. 104.

⁹ Schumacher 1981, p. 183; 186.

¹⁰ Tinnemans 1994, p. 134.

¹¹ Schumacher 1981, p. 23.

starting to become scarce in the Netherlands.¹² As unemployment increased, racial prejudices started to affect the labour market. To a greater extent than the recruits from the Mediterranean area, migrants from Surinam were starting to experience difficulty finding employment.¹³

Coming as citizens, and not as foreign recruits, the people coming from the remaining colonies came with their families, or had their families join them shortly after arrival.¹⁴ They experienced considerable difficulties on the housing market, where the still existing shortages were becoming more acute as a result of a number of demographic changes: the baby-boom generation was coming of age; the number of divorces was starting to rise and foreign workers were starting to bring over their families, leaving their barracks and boarding houses to settle in working class neighbourhoods. In 1972 there were violent incidents between the Amsterdam police and newcomers from Surinam who, fed up with the seemingly endless waiting lists for public housing, had squatted a number of flats in the newly built residential area the Bijlmer Meer.¹⁵

Immigration as a Political Issue

Reports of criminal behaviour among the new arrivals from the remaining colonies started to appear in the Dutch media, particularly in the right-wing press.¹⁶ Racism in Dutch society became a topic of public concern. In 1971 the extreme right-wing party De Volks Unie was founded.¹⁷ In August of 1972, race riots, chiefly directed against Turkish labour migrants, broke out in Rotterdam's Afrikaander Wijk. As the economic recession deepened following the oil crisis, tensions grew. In 1974 the Nederlandse Volks Unie took part in the municipal elections in The Hague, under leadership of Glimmerveen. He conducted an explicitly racist campaign and was prosecuted as a result on the basis of the recently introduced criminal legislation against racial discrimination.¹⁸

Under the pressure of growing unemployment and the accompanying social unrest, the Den Uyl cabinet looked for ways to further restrict

¹² Tinnemans 1994, p. 134.

¹³ Schumacher 1981, p. 121-122.

¹⁴ Statistics published by the Dutch Central Bureau of Statistics (CBS) indicate that, in 1985, 75% of the Surinamese households consisted of families, CBS 1986, p. 17.

¹⁵ Schumacher 1981, p. 26.

¹⁶ Schuster 1999, p. 130.

¹⁷ Ibid. p. 134.

¹⁸ Tinnemans 1994, p. 134-135.

immigration. In doing so, however, it had to take certain moral strictures into account. Given the spirit of the times, measures restricting the admission of black colonial subjects to the predominantly white metropole would be problematic, to say the least. And while there was a broad measure of political support for limiting the recruitment of foreign labour, the social claims of those foreign workers who had already been admitted could not easily be ignored by a government of strong social democratic signature. Even the more conservative Biesheuvel coalition had already had to make concessions in the early 1970's. Despite the firm stand that they had taken against family migration, they had in the end been forced, under the pressure of public opinion, to reduce the period during which foreign recruits had to have worked in the Netherlands before they could bring over their families from two years to one.¹⁹

Granting the Surinamese Political Independence

In the mid 1970's, the future of the last remaining Dutch colonies stood high on the political agenda of the progressive Den Uyl cabinet. Debate on the issue had been triggered by strikes that took place in both Surinam and Curaçao in 1969. In Surinam these strikes led to the fall of the colony's government. In Curaçao they escalated into violence and the Dutch military was sent in to restore order. Troubled memories of the violence surrounding the secession of Indonesia and the ensuing reprimands from the UN resurfaced. Students from Surinam, active in the Dutch Third World movement and left-wing political parties, lobbied for independence. Den Uyl's Labour Party, in particular, stood open for their ideas.²⁰

Following the increase in migration from Surinam and the Dutch Antilles in the early 1970's, a number of proposals were made to restrict the admission of people originating from these two remaining colonies. All of these suggestions were however rejected as being too discriminatory.²¹ Since the Dutch government had done away with all distinctions between Dutch citizens and Dutch subject-non citizens in 1951, all Dutch subjects had become Dutch citizens, regardless of where they resided within the Empire.²² It was difficult to see how migration from the colonies to the metropole could be restricted, without re-

¹⁹ Nota buitenlandse werknemers, *Kamerstukken II* 1973-1974, 10 504, 9-10, p.15.

²⁰ Willemsen 1988, p. 130-131; Ahmad Ali 1998, p. 10;12.

²¹ Schuster 1999, p. 132.

²² Heijs 1995, p. 144.

introducing the kind distinctions that had been prevalent in the Dutch East Indies under colonial rule.

When premier Arron of Surinam announced in 1974 that his country wished to achieve its independence within the next two years, Den Uyl and his cabinet were only too happy to comply. In contrast to the painful and violent secession of the former Dutch East Indies, Surinam's independence was to form a model chapter in the history of decolonisation.²³ In determining who was to belong to which nation, any suspicion of racial distinction was to be avoided. The criteria finally agreed upon were primarily geographical in nature, rather than genealogical. Anyone born in Surinam who was still living there on 25 November 1975, the date of Surinam's independence, acquired the Surinamese nationality.²⁴ All Dutch nationals originating from Surinam, who were resident in the Netherlands on the day of Surinam's independence, were to be allowed to keep their Dutch nationality, regardless of parentage and/or "cultural orientation".²⁵ In anticipation of the impending independence, large numbers of people left Surinam for the Netherlands in order to maintain their Dutch nationality. By the time independence had become a fact, on 25 November 1975, more than 100,000 people originating from Surinam—one third of the former colony's population—was residing in the Netherlands.²⁶

In negotiating the immigration rights of their future citizens, the Surinamese representatives strove for a special immigration regime for Surinamese citizens. Specifically, they asked that certain family norms, characteristic of Surinamese society, be respected, particularly: common law marriages and extended family relations. These demands were met to some extent.²⁷ Particularly striking—certainly in comparison to the rules that had previously regulated the admission of the former subjects of Indonesia—was the rule allowing for the admission of the unmarried partner "with whom the applicant maintained a lasting and exclusive relationship."²⁸ This specific immigration regime also allowed for the admission of children who "effectively belong to the applicant's family, provided at least one of the parents holds parental authority"—i.e. children

²³ Willemsen 1988, p. 130-131.

²⁴ An exception was made for people whose parents had been born in the Netherlands. They were given the possibility to opt for Dutch nationality. To that extent, genealogy did, still, play a role, Heijs 1991, p. 35-36.

²⁵ Ibid. p. 32-36.

²⁶ Verschuuren 1994, p. 117.

²⁷ Artikel 5 Vestigingsovereenkomst.

²⁸ Vreemdelingen-circulair G-9, p.9.

born out of wedlock and foster children, to the extent that at least one of the (foster) parents had been given legal custody.²⁹

Labour Migrants as Potential Citizens

By then, in a statement published in 1974, the Den Uyl cabinet had finally acknowledged that a "sizeable percentage"—it remained conservative in its estimate of 25%—of the foreign workers originating from the Mediterranean area was permanently settled in the Netherlands. That these workers would want to bring over their family members was seen as normal, proof in fact of their positive orientation towards Dutch society.³⁰ In 1970, with cheap and flexible labour still in demand, the confessional-conservative Biesheuvel cabinet had defended the position that the Netherlands needed foreign workers, not settler families.³¹ By 1974 the socialist Den Uyl cabinet was arguing that family migration should be privileged over labour migration:

"Seen from the perspective of the present labour market situation, family migration will put added pressure on a labour market that already is all but flourishing, at least to the extent that the family members arriving here will be taking part in paid labour, or working for themselves. Seen from the perspective of the migrant worker himself and from the culture to which he belongs, however, it would be unreasonable to refuse entry to family members with whom he feels closely bound and for whom he feels responsible. This tension undeniably touches at the very core of the problem surrounding labour migration. 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. Rather, considering recent experiences in the area of family reunification, policies in the future should be geared at reducing the number of foreign workers (my translation SvW)."³²

This change of heart reveals a new assessment of the foreign worker as a potential citizen. Until then, foreign workers had been viewed as

²⁹ See further: Ahmad Ali 1979a, p. 21-23.

³⁰ Nota buitenlandse werknemers, *Kamerstukken II* 1973/1974, 10 503, nr. 9-10, p. 4.

³¹ Nota buitenlandse werknemers, *Kamerstukken II* 1969/1970, 10 503 (R 723), nr. 3, p. 9.

³² Nota buitenlandse werknemers, *Kamerstukken II* 1973/1974, 10 503, nr. 9-10, p. 16.

temporary extensions of the companies they worked for, to be housed and cared for by those. What little social support there was, had largely been provided by categorical associations, primarily focussed on return migration. Separated from their own families, excluded from residential neighbourhoods populated by Dutch families and beyond the ambit of the regular Dutch welfare system, foreign workers had been largely excluded from mainstream Dutch society. Now however the government was prepared to concede that some, at least, had earned a place in the Dutch nation and should, at last, be able to participate as a fully-fledged citizens, that is: as breadwinners with family responsibilities.

Making Concessions to Changing Family Norms

While they acknowledged the importance of family reunification for the successful integration of long term resident immigrants, Dutch policy makers of the mid 1970's also worried that family migration might prove difficult to control—particularly if the scope of reunification policies was to be expanded to include more than the familiar model of the monogamous patriarchal family, founded on a formal marriage contract. As the Den Uyl cabinet described in 1974 in its final policy statement that rounded off the Dutch parliamentary debate on foreign workers:

"Besides the arrival of large numbers of wives and children, we have also signalled a number of other problems. There is an ever increasing tendency on the part of adult unmarried daughters and male adults, coming over on the basis of so-called reverse family reunification, to enter the country, as well as on the part of elderly parents and other family members who are brought over to take over the housekeeping in those families in which both husband and wife are working. The term reverse family reunification refers to the situation in which a foreign woman who has settled here after having entered for purposes of family reunification or work, subsequently marries a foreigner. There are also instances of so-called split or partial reunification. These terms refer respectively to the situation in which the wife arrives alone, leaving the children behind in the country of origin, and the situation in which a child arrives alone, often in the ages between 16 and 21 years, while the rest of the family remains abroad. For some cases family dissolution seems a better term than family reunification. On a lesser scale we have also been confronted with the problem that young children staying here in this country have been brought under in families—sometimes of low social standing—to be looked after while both of their parents are employed here.

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.

This 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 (my translation SvW).³³

In the course of the following years, successive Dutch cabinets, along with the immigration authorities, would struggle to come to terms with all the challenges mentioned in this passage. Given the context of shifting family norms within Dutch society at the time, this was no easy task. Married and unmarried couples; children born in and out of wedlock; single parents and couples—all were claiming equal entitlement to full acceptance as members of Dutch society.

At the same time, the legitimacy of hierarchies and distinctions based on gender and generation was also being put to question. It was becoming increasingly difficult to justify the exclusion of wives and young adults from the rights and benefits that breadwinner-husbands enjoyed as fully-fledged participants in the Dutch Welfare State. All these changes were to have consequences for the application of family norms in Dutch nationality and immigration law.

Opening Up Family Migration to Non-Marital Relations

One of the most striking examples of how changing family norms affected Dutch immigration law, was the inclusion of unmarried couples in family reunification policies. Into the early 1970's decisions on administrative appeal had continued to support the exclusion of foreign workers who became romantically involved with Dutch women without subsequently marrying them.³⁴ In effect these men were being sanctioned for behaviour which, among Dutch nationals, was no longer considered a threat to public morality.³⁵ This fact led to criticism both within the Dutch parliament and outside.³⁶ When pleading their cases before the courts, foreigners with a cohabitee in the Netherlands were also quick to point out the hypocritical nature of the Dutch immigration policies on this point.³⁷ But although deportation of foreigners involved in non-marital relationships became less

³³ Nota buitenlandse werknemers, *Kamerstukken II* 1973/1974, 10 503, nr. 9-10, p. 16, my translation SvW.

³⁴ See for example KB 13 August 1974 nr. 76, *RV* 1974/18.

³⁵ Verton 1971, p. 46.

³⁶ *Ibid.* p. 46.; De Gooijer 1973, p. 391.

³⁷ See for example: ABRvS 4 August 1977, *RV* 1977/41.

frequent, the conservative Biesheuvel cabinets continued to be reluctant to acknowledge non-marital relationships as a ground for admittance.³⁸ As a result, foreign workers who had started to cohabit in the Netherlands still risked deportation in the event of loss of employment. This was even the case when they had children with their Dutch partner.³⁹

Shortly after the de-colonisation agreement with Surinam had been settled, Dutch family migration policies were amended allowing for admission on the grounds of family reunification for the foreign partners of all Dutch citizens, not just those originating from the former colony. No distinction was made between heterosexual and homosexual couples.⁴⁰ The administrative court (at that time still the Kroon) followed suit and determined that a foreign worker involved in a long-term relationship with a Dutch woman should not only be admitted on those grounds, but should also be given permission to work in the Netherlands on the same basis as a husband, even if he would normally have been refused a work permit.⁴¹

Initially admission was restricted to only the cohabiting partners of Dutch citizens. However, in 1976 the Dutch Ministry of Justice presented its budget for the coming year. Referring to the recently completed debate on foreign workers, it confirmed the Den Uyl cabinet's commitment to strengthening the legal position of permanently settled immigrants and announced the intention to grant foreign workers the possibility to apply for the admission of other family members than their spouse and (minor) children, as long as these family members "effectively belonged to his family unit and were financially dependent of him as head of the household".⁴² The similarity in wording with the rules regulating the admission of family migrants from Surinam is striking, and can hardly be coincidental. By 1978 it had become possible for the non-marital partners of admitted refugees to qualify for admission on the basis of family

³⁸ In exceptional cases, where marriage was not an option, and where the relationship was clearly of a long-lasting nature, residence permits were sometimes granted, see: Adema en Freezer 1975, p. 169-170.

³⁹ See: KB 28 March 1970 nr. 47, RV 1970/3; KB 19 February 1971 nr. 85, RV 1971/1; KB 30 August 1974 nr. 65, RV 1974/19; KB 28 March 1974 nr. 83, RV 1974/7.

⁴⁰ Letter of 7 July 1975, from the deputy minister of Justice to the Dutch parliament, nr. AJZ 4012/E-2979-A-294. See further: Swart 1978, p. 165-166.

⁴¹ KB 7 July 1975 nr. 45, RV 1975/18. See also: KB 7 July 1975 nr. 96, RV 1975/20.

⁴² *Bijlage Handelingen II* 1975/76, 13600, 2, p. 47.

reunification.⁴³ By 1980 the partners of labour migrants with permanent status could also qualify.⁴⁴

None the less, the legal status of cohabiters remained less secure than that of (female) spouses in the sense that cohabiters could not qualify for the protected article 10, paragraph 2 status.⁴⁵ Although the loss of employment no longer necessarily meant loss of status and deportation, a criminal conviction could very well.

Gender Equality in Immigration Law

If Dutch immigration law adapted quite smoothly to accommodate non-marital relationships, certainly after the independence of Surinam, achieving equal treatment for women proved to be a more contentious issue. Although by the 1970's a growing percentage of immigrants coming to the European Community actually consisted of women travelling on their own,⁴⁶ the general assumption continued to be that men migrated in search of work, and that women followed. Despite a growing consensus that women should be treated equally to men, women were clearly still not being conceived of in terms of the model breadwinner citizen in the same way that men were. While differences in the treatment of men and women in Dutch immigration law would come to be increasingly under attack, it wasn't until the late 1970's, when the Dutch feminist movement was at its peak and the left-wing parties had come to dominate Dutch politics, that full equality was finally reached.

In 1974, immigrant women were finally granted the right to have family members join them. Unlike their male counterparts however, these women had to have been married for at least one year before they could have their spouse and/or children join them.⁴⁷ This one year waiting period was introduced to prevent male labour migrants from entering the Netherlands under false pretences.⁴⁸ Foreign men who followed their wives rather than the other way around continued to be seen as an anomaly, as was made evident by the use of the term "reverse family migration" in such situations.

⁴³ Comment by Rb Alkmaar 18 July 1978, RV 1978/57.

⁴⁴ Comment by ABRvS 2 March 1981, RV 1981/11.

⁴⁵ Article 47 Vb 1965.

⁴⁶ De Troy 1986, p. 19.

⁴⁷ Nota buitenlandse werknemers, *Kamerstukken II* 1974/75, 10 504, nr. 12, p. 30; see also: Aanhangel *Handelingen II*, 1978/79, nr. 968.

⁴⁸ De Hart 2003, p. 104; Notitie Vreemdelingenbeleid *Kamerstukken II* 1978/79, 15 649, nrs. 1-2, p. 15.

By 1975 the formal recruitment of foreign labour had largely been brought to a halt. However, the foreign spouses and unmarried partners of Dutch citizens did continue to enjoy free access to the Dutch labour market, on the grounds that they (the men, in particular) had to be able to fulfil their responsibilities as breadwinners. Similarly, adolescents coming to the Netherlands to join parents who had settled there also had free access to the Dutch labour market, as well as to services such as health care and education. As restrictions on labour migration became tighter, the Dutch government became wary of possible attempts to circumvent those restrictions.

Judging from published case law from this period, the main concern seems to have been that older sons—already past majority and hence unable to join their parents via family reunification—might try to gain admittance by marrying a young woman—an acquaintance or relative of the family—who *had* been admitted via family reunification. In one case, for example, the Regional Court of Utrecht rejected a young man's request for a staying order by remarking that the word "reunification" implied that a marriage should have already been contracted before the spouse came to the Netherlands, and not afterwards.⁴⁹ No similar considerations seem to have disqualified the applications of young women entering the Netherlands as the wives of settled immigrants' sons.

Even after they had acquired the right to bring over their family members, immigrant women continued to experience problems in doing so. In 1975, when recruitment was virtually stopped, those foreign workers who had already found employment in the Netherlands outside of the official recruitment channels were offered the opportunity to regularise their stay. Not only men took advantage of this opportunity. Some women did as well. When their husbands applied for a residence permit as the dependent spouse, they were rejected on the grounds that they themselves did not qualify for this regularisation programme. The authorities had difficulty acknowledging the fact that in these cases it was the wife, and not the husband, who figured as the breadwinner and primary migrant and hence that it was she, and not her husband, who had to meet the stipulated requirements for regularisation.⁵⁰

While Dutch women no longer automatically lost their nationality upon marrying a foreigner, and while foreign women could—as of 1974—qualify for family reunification, both groups still lacked the certainty that they would always be able to remain in the Netherlands together with their

⁴⁹ President Rb Utrecht 3 October 1978, *RV* 1978/6.

⁵⁰ See the comment by ABRvS 28 februari 1978, *RV* 1978/10.

foreign family members. Until the late 1970's, the family members of Dutch and foreign women continued to be excluded from the protected status afforded by article 10 paragraph 2 of the Dutch immigration law, which guaranteed the foreign family members of Dutch men and male settled immigrants an unconditional right to stay in the Netherlands as long as the family bond remained intact. The assumption remained that the husband, not the wife, should form the prime anchor of the family. Should there be cause to have him expelled, then his wife and children were expected to follow.⁵¹

In 1977, under pressure from Dutch parliament, the protected article 10 paragraph 2 status was finally extended to include the family members of women with Dutch nationality or permanent residence status.⁵² In 1979 the Dutch government—by then under the leadership of the Christian Democrat Lubbers—finally conceded that female immigrants should have the same rights as men when it came to family reunification. The requirement that a foreign woman should have been married at least one year before family members could be admitted was scrapped.⁵³

More Controls of Substantive Family Life

As formal discrimination between married and unmarried couples and between men and women became more problematic, other means had to be found to preclude the use of family bonds for circumventing restrictive labour migration policies. As Dutch family law lawyers were pointing out in the late 1970's, once marital status lost its function as a distinguishing characteristic, other more substantive norms were likely to take its place, resulting in a new type of state involvement in intimate affairs.⁵⁴ If marital vows no longer defined what a marriage was, how was such a relationship then to be defined? And if state authorities were to apply other, more substantive norms, what would this mean for individual privacy? The history of Dutch immigration law shows that such fears were not

⁵¹ In 1976 policies were modified in the sense that foreign men married to Dutch women were, in principle, protected against deportation on the grounds that their forced departure from the Netherlands would be "entirely irresponsible" vis a vis their wife and children. Case law indicates however that this protection was not absolute, and that deportations did still occur, De Hart 2003, p. 105; Swart 1978, p. 157.

⁵² Decision of 7 June 1977, *Stb* 1977, 341, De Hart 2003, p. 106.

⁵³ *Aanhangsel Handelingen II* 1978/79, 1464, quoted in De Hart 2003, p. 104. See further: Groenendijk 1989: 217-218.

⁵⁴ Van de Wiel 1979, 114-116.

unfounded. Moreover, given the still prevalent notions regarding gender roles within the family, the substantive norms that were developed to distinguish "real" from "feigned" relationships were inevitably gendered as well.

Suspect Relationships

To prevent immigrant men from abusing the possibilities offered by marriage to a Dutch woman, Deputy Minister Zeevalking under Den Uyl and, following him, Deputy Minister Haars under the more conservative Van Agt cabinet, did in fact empower Dutch immigration authorities to assess (marriage) relations between Dutch women and their foreign husbands/partners on the basis of substantive, rather than formal criteria. Such relationships could be deemed fraudulent if they had been entered into shortly after the foreign partner had been refused a work permit. Unless the couple could prove the relationship had already lasted for some time, the foreign partner could be assumed to have entered into it with the sole intention of circumventing the restrictions on labour migration.⁵⁵

Once foreign women were allowed to bring over their family members immediately, without first having to wait until they had been married for at least one year, they too became subject to these same controls. Since sex discrimination was to be eliminated from immigration law, this had to apply to settled immigrant men with foreign wives as well. Immigration authorities were now instructed to refuse to admit the foreign spouse, male or female, of a settled immigrant if they had reason to assume the marriage wasn't genuine. This would be the case if the marriage had been entered into exclusively to acquire a residence permit for other purposes than family migration.⁵⁶

In effect, this now meant that all transnational marriages and non-marital relationships had to be critically assessed before a residence permit could be granted to the foreign spouse/partner. The only couples who could escape such scrutiny were those composed of a Dutch husband and his foreign wife. The latter still had the unconditional right to opt for her Dutch nationality directly after having taken her marriage vows, and could hence avoid the immigration law procedures.

⁵⁵ Letters of the Deputy Minister of Justice nr. AJZ 4012/E-2979-A-294, dated 7 July 1975 and 29 June 1978, included in the Vc 1975 part C: Chapter B.19.2.2.1 Vc 1982: Chapter B.19.3.2.1 Vc 1982. See also: Boeles 1984, p. 37; RV 1974/18 & 21.

⁵⁶ Circular of the Ministry of Justice, 3 October 1979, quoted in Koens 1983, p. 28.

In some respects, non-marital relationships were subject to further-reaching controls than marital ones. Besides having to prove that their relationship was lasting and genuine,⁵⁷ cohabiters also had to convince the authorities that their relationship fitted the template of a (potential) breadwinner citizen willing and able to support a dependent partner. They had to share the same household and the partner with Dutch nationality or (later) refugee or permanent immigrant status had to sign a written declaration stating that he or she was willing and able to bear the costs of supporting the foreign partner, as well as those of an eventual deportation.⁵⁸ These requirements were introduced to compensate for the fact that cohabiters, unlike spouses, were not legally bound to live together or to support each other. Finally, both partners had to provide documentary evidence of their unmarried state or, if the foreign partner was still married, of legal impediments to divorce.⁵⁹

Suspect Children

As noted above, the policy document in which the Den Uyl cabinet announced its intention to admit cohabiting partners, also indicated that, besides spouses and minor children, other family members too could be admitted for purposes of family reunification: provided, at least, they "effectively belonged" to the family and were dependent of the head of the family.⁶⁰ Subsequently, the Dutch immigration circular was modified to include the possibility of admitting other children than those of a married couple. Children from a former marriage and foster children were specifically named. Such children could be admitted if they had a parent with parental authority residing in the Netherlands, and also had "effectively belonged" to that parent's family prior to migration.⁶¹

Initially, the courts expanded further along these lines, allowing for the admission of illegitimate children as well, particularly in cases involving families from the Cape Verde Islands where, as in Surinam, non-marital relationships were common.⁶² But also in more general terms, the courts

⁵⁷ An indication that this was not the case could be that previously there had been no significant bond between the partners or that the relationship was started at a moment that the couple knew, or could have known, that the partner applying for admission was susceptible to deportation. B.19.3. Vc 1982

⁵⁸ De Hart 2003, p. 106. If necessary, a third party could figure as guarantor.

⁵⁹ B.19.3. Vc 1982. See also: Boeles 1984 p. 37.

⁶⁰ Justitiebegroting 1975, *Kamerstukken II* 1975/76, 13 600, nr. 2, p. 47.

⁶¹ G-4-14 Vc 1975

⁶² ABRvS 14 June 1979, RV 1979/31.

were prepared to assume that unmarried or divorced parents should be allowed to bring over children with whom they had lived together in the past for any length of time and/or for whom they had taken on parental responsibility, in terms of both financial maintenance and moral guidance.⁶³

For the Dutch immigration authorities this went too far. In a decision of 29 March 1982 of the Administrative Jurisdiction Division of the Dutch Council of State, by then empowered to decide on administrative appeal, the Dutch Deputy Minister of Justice is quoted as stating that it was government policy to refuse admission to the illegitimate children of foreign workers residing in the Netherlands, unless the parents had, in the meantime, married each other.⁶⁴ Although these criteria were not taken up in the published immigration circular, this administrative adjudicator accepted refusals based on these grounds.⁶⁵

Single or divorced parents, who had remarried in the Netherlands and subsequently applied to have a child they had left behind admitted to the Netherlands, were also refused permission on the grounds that the child in question didn't belong to the new family that had been established in the Netherlands.⁶⁶ In the event unmarried or divorced parents succeeded in being reunited with their children, this only seems to have occurred when there was no suitable care available for the child in the country of origin.⁶⁷ This, however, was a criterion that officially applied only to foster children who had never before lived with the foster parent applying for the child's admission—not one that explicitly applied to a parent's own child.

In effect, the children of single, divorced and unmarried parents were being treated as if they had been born out of a polygamous marriage. Polygamous marriages that had been contracted in a country in which they were legally accepted could be recognised according to Dutch law of conflicts, but polygamous men were restricted by Dutch immigration law in their rights to family reunification. Only one of their wives could be

⁶³ Koens 1983, p. 34; ABRvS 15 November 1979, RV 1979/33; ABRvS 26 April 1979, Rekens D13 no. 37.

⁶⁴ ABRvS 29 March 1982, RV 1982/18.

⁶⁵ In this respect it is interesting to note that in this same period illegitimate children of foreign nationality, born in the Netherlands, came to be excluded from the protected article 10.2 Vw status, Koens 1983, p. 42.

⁶⁶ ABRvS 31 January 1984, RV 1984/3; Koens 1983, p. 227; see also minutes Werkgroep Rechtsbijstand in Vreemdelingenzaken, 1985/10, p. 337.

⁶⁷ See for example: ABRvS 15 November 1979, Rekens D 13 no. 44; ABRvS 17 September 1981, Rekens D 13 no. 79.

admitted, and only her children—not those of another wife.⁶⁸ Similarly, men who co-habited with a new partner in the Netherlands while they were still married to the wife they had left behind in their country of origin, were being refused permission to bring over their children, basically on the same grounds on which children born out of polygamous relationships were being excluded.⁶⁹ Furthermore, as mentioned above, unmarried men also were being refused permission to bring over their illegitimate children, unless they had married the mother of those children in the meantime.

Altogether, in practice, little remained of the extension, suggested in the 1979 policy paper on immigration, of family reunification to children other than those born out of a couple's marriage. While in the field of Dutch family law, pressure was growing to radically reduce the significance of marriage for determining the legal relationship between parent and child, Dutch immigration authorities quickly shied away from the consequences of accepting such an open definition of family life. As with the introduction of substantive criteria for judging the genuineness of marital and non-marital relationships, here too a desire to be able to control family migration seems to have played an important role. In a decision of the Administrative Jurisdiction Division of the Dutch Council of State of 31 January 1984⁷⁰ the Deputy Minister of Justice's representative is quoted as having pleaded that: "if all that was needed to allow a child's admission for purposes of family reunification was that the parent in question had been appointed its legal guardian, then our immigration policies would become entirely ineffective."

For foreign fathers, there was still one way to circumvent restrictions on the admission of children born out of a former relationship or marriage. Once a father had acquired Dutch nationality via naturalisation, the principle of family unity once more prevailed. His children followed in his change of nationality, regardless of where they were residing at the time.⁷¹ The situation for single or divorced foreign mothers was different. Unlike Dutch men, Dutch women still could not pass on their nationality to their children. When a foreign woman acquired Dutch nationality through naturalisation, her children didn't follow suit. They had to apply for Dutch nationality, and could only do so once they had spent at least one year with

⁶⁸ G4, p. 16, 17 Vc 1975.

⁶⁹ Cf the comment following: ABRvS 13 November 1979, RV 1979/32.

⁷⁰ ABRvS 31 januari 1984, RV 1984/13.

⁷¹ Article 6 Wet op Nederlanschap 1892.

their mother in the Netherlands.⁷² Hence, in a situation where the children had been denied admission, the mother's naturalisation offered no immediate solution.

One of the reasons for this restrictive attitude towards the admission of children was that children too were coming to be viewed with suspicion as soon as they diverged from traditional patterns of family life. Particularly adolescents travelling without parental guidance were suspected of coming over to work, rather than joining their parents. The Dutch labour party member, Mrs. Haas-Berger, expressed these worries during a political debate held in March of 1982, when the Van Agt cabinet had put Dutch immigration policies up for review. During this debate, she questioned whether children older than 16 years and travelling alone shouldn't be excluded from admission on grounds of family reunification.⁷³

In the end, it was decided not to restrict the admission of these adolescents. The then active Deputy Minister of Justice, the Christian Democrat Korte-Van Hemel, pointed out that the effects of a policy change would be limited, since European treaties precluded further restrictions to family reunification with foreign workers originating from within the EC. She pointed out, moreover, that the age of majority would soon be brought back from 21 to 18 years, thus making it possible to limit the family migration of children from outside of the European Community to those younger than 18 years.⁷⁴

Maintaining The Norm of Dependency

Once foreign children had been admitted to the Netherlands, the involvement of their parents in their (financial) care and upbringing continued to be a matter of concern for the Dutch government. The residence permit given on grounds of family reunification was a dependent status and lost its validity as soon as the child reached the age of twenty-one or established a family of its own. The dependent residence permit also lost its validity once the "effective family bond" between parent and child had ended as the result of divorce or death. Similarly, the parent's departure from the family home, or that of the child, put an end to the validity of the child's dependent status. Even when the family bond remained intact, the residence permit could—initially at least—be revoked

⁷² Article 5 sub e Wet op Nederlanderschap 1892. The child could only acquire the Dutch nationality if his father was no longer married to his mother, had died, or could no longer be traced.

⁷³ Notitie gezinshereniging, *Kamerstukken II* 1982/83, 17 984, nr. 2, p. 4.

⁷⁴ Notitie gezinshereniging, *Kamerstukken II* 1982/83, 17 984, nr. 2, p. 12.

for reasons of public order or because the child involved had worked without being in possession of a work permit.⁷⁵ Again we see the concern to exclude young labour migrants "being passed off" as dependent children.

As of 1977, the children of all Dutch citizens, refugees and immigrants with a permanent residence status were entitled to the protected article 10, paragraph 2 status after their first year of legal residence in the Netherlands. This status protected them against deportation on grounds of public order, for example. However this status was also a dependent one and lost its validity as soon as the child reached majority, established a family of his own, or no longer "effectively belonged" to the parents' family unit. Once youngsters reached the age of 21 years they could apply for a permanent residence status of their own, but they could only qualify if they had already spent five years in the Netherlands, could prove they could meet the set income requirements and had a clean criminal record. Youngsters who were still studying could be refused a status of their own on the grounds that they weren't self-supporting. And youngsters who had had problems with the Dutch police in the past could suddenly face deportation upon reaching majority, at which point they lost their protected status.⁷⁶ One young man for example risked losing his residence permit after having lost his job and having been fined a few times for traffic infractions.⁷⁷

Foreign spouses who had been admitted for purposes of family reunification similarly found themselves in a dependent position. Even if they stayed formally married, they could still lose their residence permit. As soon as they or their permanently resident spouse left the marital home, the dependent status ceased to be valid.⁷⁸ Up until 1979 foreign spouses could only apply for an independent resident status after five years of residence in the Netherlands—and even then only if they could meet the set income requirements. Those who could not, had to wait ten years before they could qualify for a permanent residence status of their own.⁷⁹

⁷⁵ Koens 1983a, p. 953.

⁷⁶ Ibid.

⁷⁷ ABRvS 28 December 1981, RV 1981/14.

⁷⁸ See for example: ABRvS 5 October 1981, RV 1981/13.

⁷⁹ In actual fact, the dependent status most strongly affected family members coming to join foreign workers from the Mediterranean area. The foreign wives of Dutch citizens could, at the time, still opt for Dutch nationality and thus secure their position. Most of the foreign men who were married to Dutch women in this period had originally entered the country as labour migrants and, as long as they remained employed and kept out of trouble with the police, continued to hold

It should be noted that, in this period, only foreign heads of families were forced, by Dutch family migration policies, to take on the full financial responsibility for their foreign family members. Since the foreign wife of a Dutch citizen could opt for Dutch nationality, her admission to the Netherlands—and that of her children—was always possible, regardless of her Dutch husband's financial situation. Dutch women, for their part, were not expected to support their foreign husbands. Nor was a Dutch woman expected to follow her foreign husband back to his country of origin in the event he should become unemployed. Only in the event that both he and his Dutch wife patently refused to look for work, could a residence permit be denied on the grounds of insufficient income.⁸⁰

Initially, no such consideration was shown towards settled immigrants (male or female) with foreign family members. Not only did they have to meet housing requirements that didn't apply to Dutch citizens when applying to bring over their families, they also had to give proof of sufficient earnings to provide the necessary financial support. Although the progressive Den Uyl cabinet had been willing to facilitate family reunification in the interests of settled immigrants' integration into Dutch society, the accompanying risks remained for their own account, not for that of the Dutch Welfare State. It wasn't until 1981, under the more conservative Van Agt regime, that immigrants with permanent status who were unemployed through no fault of their own were made exempt from income requirements when applying for family reunification.⁸¹

The Persistence of Distinctions Based on Gendered Family Norms

Dutch married men continued to form the only group unconditionally entitled to residence in the Netherlands with foreign family members.

status on those grounds, independent of their relationship to their wives. Until 1980 migrants from Surinam had a relatively privileged position on the Dutch labour market. In the event they lost their dependent status, they stood a reasonable chance of acquiring a residence permit for work in the Netherlands, Ahmad Ali 1979, p. 17-18. Indonesians who had settled in the Netherlands before 1 October 1975 were completely exempt from labour permit requirements and hence remained in a position to acquire residence rights on the grounds of employment, rather than marriage, *Stcrt* 9 October 1975, nr.195.

⁸⁰ *Bijlage Handelingen II* 1979/80, 15649, nr. 4 p. 16; also see comment following ABRvS 22 August 1979, RV 79/35.

⁸¹ 33e adapted version Vc 1 October 1981 quoted in: Rb Haarlem 14 May 1981, RV 1981/16.

Unmarried couples had to subject themselves, and their children, to state scrutiny of their intimate lives. They also had to prove their relationship was formally monogamous and that the partner with Dutch nationality or settled status would be able to house and support his or her foreign family members according to set norms. Basically, the same requirements applied to settled immigrants applying for family reunification, whether married or not. In other words, settled immigrants and unmarried couples could qualify for family reunification, but only if they conformed to the traditional Dutch model of a long lasting and monogamous family bond between a financially responsible breadwinner and dependent partner and children, along with the concomitant division of labour between (male) provider and (female) care-giver.

Although the debate on "partial family reunification" did not result in any new restrictive measures regarding the admission of children, it too made clear that, even if the government had declared its willingness to open up family reunification to "other members of the family than the spouse and minor children", only those family relations that met certain assumptions concerning the substantive nature of family life could continue to bank on the traditional assumption that the family unit should be preserved.

While married Dutch women were not expected to figure as a breadwinner, their marriages to a foreign husband were made subject to scrutiny. The fact that in this case the *wife* determined the family's place of domicile, and not the breadwinner-husband, made the relationship suspect. In all cases, except that of Dutch married men, foreign family members could risk losing their residence rights as soon as they left the family home.

The continuing restrictions on family reunification could, to a large degree, be explained by anxiety for labour migrants masquerading as family members. But this anxiety itself was largely informed by preconceived notions regarding gender relations and family morals. Women were still expected to follow their husbands, not the other way around, and children were expected to stay in the company of their parents. Although couples no longer had to be formally married to be accepted as fully-fledged participants in Dutch society, they did have to adhere to the commitments that the formal institution of marriage stood for.

Another persistent assumption was that immigrants would, ultimately, return to their countries of origin, together with their dependent family members—even if these had been born and bred in the Netherlands. Hence, however long immigrants and their families might have settled in the

Netherlands, the ultimate responsibility for their welfare was still assumed to lie with their own national community. Although by the late 1970's the Den Uyl cabinet had been willing to concede that the Netherlands was on its way to becoming a multicultural society,⁸² it is important to bear in mind that this concession was still grounded in the assumption that the vast majority of immigrants originating from the Mediterranean area, Surinam and the Dutch Antilles—even from the Moluccans—was in the Netherlands on a temporary basis.

The policy slogan of the time, integration without loss of identity, should be interpreted in this context. The idea was not so much that immigrants were to maintain their own traditions in order to transform the Netherlands into a cultural mosaic, but that they, and in particular their children, should remain in tune with their own culture, so as to stay primed for their return back home. To this end, immigrants' children were still being given instruction in the language and culture of their countries of origin.⁸³

Moreover, despite the repeated assertions that a more liberal policy was to be pursued regarding family reunification, it is striking to note that the chief target group of the promised reforms, the male foreign workers who had been recruited in the 1960's and 1970's, would have to wait until 1981 before policies would be introduced to their specific benefit, namely those exempting them from income requirements on the same grounds as Dutch women requesting the admission of a foreign husband.⁸⁴ Even then, housing requirements—still probably the main obstacle to family reunification—continued to apply to foreigners applying for family reunification, but not to Dutch married citizens.⁸⁵ Members—specifically the adult male members—of a foreign national community were expected to go on belonging to that community, not only in formal legal terms, but in

⁸² Notitie vreemdelingenbeleid, *Kamerstukken II* 1978/79, 15 649, nr. 2, p. 32n.

⁸³ Tinnemans 1994, p. 195-198.

⁸⁴ The only other concession to settled immigrants wishing to reunite with their families were a couple of measures introduced to allow some children to be admitted even though they had passed the age of majority (21 years). Up to the age of 23, children could still be admitted if family reunification had been delayed as a result of the long waiting periods involved in acquiring suitable housing, Koens 1983, p. 29; Vc G4, p. 19. Also, sons who had been incarcerated as minors, or who had had to serve in their national armies, could be admitted as long as they applied for family reunification within six months following their release from prison or discharge from the army, Vc 1982, B-21.

⁸⁵ See for example: Rb Zutphen 7 May 1979, RV 1979/37; ABRvS 18 November 1980, RV 1980/13; Rb Den Haag 17 October 1978, RV 1978/68.

moral and cultural ones as well. Women and children belonging to their family units were expected to follow in their wake.

Despite the growing pressure to eliminate any forms of discrimination on the grounds of marital status, sex or ethnic origin, such distinctions continued to be made throughout the 1970's—albeit in subtler ways than before.

B: Negotiating the Terms of a Multi-Cultural Society

In the early 1980's, under the leadership of the conservative Van Agt coalition, the Dutch government finally did come to acknowledge that the assumption of return migration had been mistaken. The Moluccans, in particular, made it painfully obvious that immigration was not an issue that would resolve itself through spontaneous return migration. Since the majority of the Moluccans had not elected to acquire Dutch nationality, even though by then they had lost their original Indonesian nationality, they had become stateless. Up until 1978 however, no steps were taken to regulate their status in the Netherlands. In legal terms then, this group of about 35,000 people occupied a no man's land,⁸⁶ while they also remained socially isolated, housed in separate neighbourhoods, and largely excluded from the Dutch labour market. The younger generation growing up under these conditions felt doubly rejected. While they were explicitly being treated as outsiders within Dutch society, the Dutch government did precious little, in their eyes, to support the establishment of an independent Moluccan nation where they might resettle. In the course of the 1960's and 1970's, Moluccan youth startled Dutch society with a number of violent actions. These started with an attack on the Indonesian Embassy in 1966, and culminated with a train hijack in 1977.⁸⁷

Meanwhile, hopes that Surinamese immigrants would be inclined to go back to Surinam once it had become an independent nation, also turned out to be mistaken.⁸⁸ Although there had, initially, been a movement towards return migration, this trend reversed following the military coup of 1980 and the subsequent political executions of December 1982.⁸⁹ By

⁸⁶ Problematiek van de Molukse minderheid in Nederland, *Kamerstukken II* 1977/78, 14 915 nr. 2, p. 25.

⁸⁷ Schumacher 1981, p. 20; 48.

⁸⁸ Van Amersfoort en Surie 1987, p. 185-187.

⁸⁹ Broër 1997, p. 611.

1982, there were 17,000 people in the Netherlands with Surinamese nationality.⁹⁰

Although many Spanish, Greeks and Portuguese did return to their countries of origin after these had become members of the European Community, those foreign workers originating from outside Europe were proving less inclined to leave the Netherlands. Rather than returning home, more were opting to stay, bringing their families over and raising children in the Netherlands. In 1980, a peak year for family reunification, the number of people of Turkish and Moroccan origin living in the Netherlands increased by about 24,000.⁹¹ By 1982 there were close to 148,000 people of Turkish origin living in the Netherlands and about 93,000 of Moroccan origin.⁹²

Unfortunately, the conditions in the Netherlands at the time were not conducive to successful integration. The economic crisis was reaching a climax. Particularly the heavy industry—steelworks, the shipbuilding industry and car and aeroplane factories—were either closing down or producing under capacity. Textile factories that had once flourished in the east of the Netherlands disappeared, while the confection industry either moved to cheaper Third World countries, or went underground in a clandestine circuit of sweat shops.⁹³ In 1979 there were more than 280,000 people officially unemployed in the Netherlands (more than 5% of the working population). Two years later their number rose to 385,000. By 1983 the number of people unemployed increased once again to more than 800,000.

Foreign workers were over represented in the industries that were hardest hit by the recession. Their children also experienced difficulties finding a job after leaving school.⁹⁴ In 1983, 27% of the Dutch inhabitants of Surinamese origin were unemployed; 23% of those originating from the Dutch Antilles; 23 % of the migrant labourers from the Mediterranean area and their family members; 40% of the Moluccans and 50% of the refugees—by then a growing category of immigrants.⁹⁵

⁹⁰ Notitie gezinshereniging, *Kamerstukken II* 1982/83, 17 984, nr. 2, p. 8.

⁹¹ Tinnemans 1994, p. 215.

⁹² Notitie gezinshereniging, *Kamerstukken II* 1982/83, 17 984, nr. 2, p. 8. The total population of the Netherlands at the time was about 14 million, Schumacher 1981, p. 7.

⁹³ Van Putten & Lucas 1985.

⁹⁴ Tinnemans 1994, p. 215-216; Schumacher 1981, p. 33.

⁹⁵ Minderheden nota, *Kamerstukken II* 1982/83, 16102, nr. 21. By 1970, there were less than 10,000 people with refugee status in the Netherlands, mostly of Eastern European origin: Poles admitted directly after the Second World War, Hungarians

Besides unemployment, members of the various immigrant communities also experienced discrimination on the housing market.⁹⁶ Racial tensions increased and various municipalities started to introduce anti-racism programmes.⁹⁷ On 26 September 1982 Janmaat, the leader of a new extreme right wing party, the *Centrumpartij*, entered the Dutch parliament as an elected member.⁹⁸

By then, organisations of settled immigrants were starting to become more politically active. In 1981, a number of these organisations joined forces to establish an umbrella organisation: the *Landelijke Samenwerking van Organisaties van Buitenlandse Arbeiders* (LSOBA, loosely translated: the national collaboration of migrant workers' associations). By combining their resources, these organisations hoped to be able to achieve a more professional degree of organisation and therefore exert more influence over government policies.⁹⁹

Tensions Between Dependency and Emancipation Policies

By the late 1970's, the recently established Women's Shelters were being confronted with the effects of migrant women's dependent status.¹⁰⁰ Many women coming to the Netherlands at the time as migrant wives had spent

(1956) and Tchechoslovakians (1968). In the course of the 1970's, refugees also started to arrive from Africa (Uganda, South Africa and, later, Eritrea) and Latin America. In the late 1970's, a contingent of 1000 boat-refugees from Vietnam was let into the country. Schumacher 1981, p. 45. Up until the early 1980's, asylum seekers were offered public housing and regular welfare benefits. With the influx of Tamil asylum seekers in 1986, policies changed and asylum seekers were institutionalised until a decision was made on their request for admission. If an asylum seeker was granted refugee status, his or her family members shared in that status, if they held the same nationality and had entered the Netherlands at the same time. Family members of people with subsidiary status, family members with a different nationality, and family members who followed a refugee after he or she had been granted status, generally had to meet the regular family reunification requirements, despite the fact that, given the specific circumstances under which asylum seekers and their family members generally migrate, family reunification in their case raises specific legal issues, see: Fernhout 1990, p. 185-189. Although these issues are well worth exploring, they unfortunately fall beyond the scope of this present study.

⁹⁶ Loth 1981; see also: Jansen 2006, p. 201-221.

⁹⁷ Schumacher 1981, p. 115-126.

⁹⁸ Tinnemans 1994, p. 249.

⁹⁹ Tinnemans 1994, p. 238-239; LSOBA 1991

¹⁰⁰ Stichting 'Blijf van m'n lijf' 1981.

the previous years alone with their children, seeing their husbands only during vacations. Readjusting to married life in a foreign country, often in relatively cramped living quarters, and lacking the support networks they had enjoyed at home, could be problematic. Similarly, their husbands had to switch back from what had basically been a bachelor existence to the routine and discipline of married life—often complicated, moreover, by growing unemployment. When tensions escalated in violence, the women involved were caught in a dilemma. Leaving their husband meant risking deportation, not only for themselves, but for their children as well.

In her *Notitie Vreemdelingenbeleid* (Report on Immigration Policy), the Christian Democrat Deputy Minister of Justice, Haars, explained her position on this issue. Although she repeatedly acknowledged the importance of an independent status for foreign wives' emancipation, the dependent status was justified, in her eyes, by the fact that spouses were admitted to the Netherlands in order to join a husband willing and able to bear the responsibility of financial support. None the less, she was prepared to grant migrant spouses an independent residence status once they had lived in the Netherlands for at least three years. By then they could be assumed to have become so settled in the Netherlands that the break-down of their relationship could no longer justify deportation.¹⁰¹ However, given that these women would still have to prove that they could support themselves after having left their spouse, this proposed solution remained problematic; even leaving aside the fact that many women would experience problems staying the requisite three years in the company of an abusive partner.

In 1980 a group of Women's Shelters organised a press conference to draw attention to the continuing plight of migrant wives with dependent status.¹⁰² The issue was picked up both by the parliamentary commission for minorities' policy and by the parliamentary commission for women's emancipation.¹⁰³ Questions in parliament followed, resulting in a motion expressing concern "over the situation of foreign women of Mediterranean origin, married to migrant workers".¹⁰⁴

Inspired by the success of these actions, LSOBA helped young people who had come to the Netherlands as the dependent children of their guest worker parents to organise as well. In 1983 these young people took to the

¹⁰¹ *Notitie Vreemdelingenbeleid*, *Kamerstukken II* 1978-1979, 15 649, nrs. 1-2, p. 17.

¹⁰² Stichting 'Blijf van m'n lijf' 1981.

¹⁰³ *Bijlage Handelingen II* 1980/81, 16102, nr. 9.; *Handelingen II*, 1981/82, UCV

13.

¹⁰⁴ *Kamerstukken II* 1981/82, 17 501, nr.2, p.3.

streets, protesting against immigration rules that kept them in a dependent position vis à vis their parents and otherwise threatened their chances of building up a future in the Netherlands.¹⁰⁵

By the early 1980's, debates on immigration, integration and anti-racism had become strongly polarised. The left was drawing anxious parallels with fascist and anti-Semitic sentiments that had preceded the Second World War.¹⁰⁶ The murder of a young black boy, Kervin Duynmeijer, in 1983 by a couple of skin-heads increased the general sense of urgency. The right wing Lubbers cabinet, a coalition of the Christian Democratic CDA and the liberal VVD that had come to power in 1982, felt a growing pressure to come up with a general policy on ethnic minorities.¹⁰⁷

Establishing a Minorities Policy

A first step towards such a policy was made under the Van Agt cabinet in reaction to the 1977 train hijacking by Moluccan youth. In 1978, a new law was brought into effect, providing the Moluccans resident in the Netherlands with a legal status for the first time.¹⁰⁸ Although they were not given Dutch citizenship, their legal position came close to that of Dutch citizens. The only points of difference lay in their not having the right to vote, nor the obligation to enter into military service. well, marking an important turning point in the Dutch government's attitude towards the Moluccans.¹⁰⁹ While many among this group still fostered the dream of an independent Moluccan nation, the Dutch government finally accepted the likelihood of their permanent settlement in the Netherlands. Social-cultural provisions, better housing, education and employment opportunities formed the main points for action. As a concession to Moluccan nationalist aspirations, their cultural identity was also to be protected.

In the course of the debates following the publication of the policy paper on the Moluccans, the Dutch Labour Party member Molleman in particular urged that the scope of these policies be extended to include all ethnic minorities residing in the Netherlands.¹¹⁰ In 1978 a special commission was set up by the Ministry of Culture, Recreation and Social

¹⁰⁵ Tinnemans 1994, p. 245.

¹⁰⁶ *Ibid.* p. 254.

¹⁰⁷ *Ibid.* p. 263.

¹⁰⁸ Wet betreffende de positie van Molukkers, *Stb.* 1976, 468.

¹⁰⁹ De problematiek van de molukse minderheid in Nederland, *Kamerstukken II* 1977/78, 14 915, nr. 2.

¹¹⁰ *Kamerstukken II* 1977/78, 14 915, nr. 13; Schumacher 1981, p. 66.

Work, to make an inventory of the research that was needed concerning the position of all cultural minorities in the Netherlands. A year later, this commission published its findings. While it was rather ambiguous in its recommendations regarding the cultural rights of cultural minorities, it did take a clear stand on the issue of legal status. A strong legal status was seen to be an important prerequisite for successful integration into Dutch society. The commission particularly recommended that women and adolescents, admitted on the grounds of family reunification, be given a more secure position. It also suggested that impediments to naturalisation and to the acquisition of a permanent residence status be looked into.¹¹¹

In that same year, another commission, the Dutch Scientific Commission for Government Policy (Wetenschappelijke Raad voor het Regeringsbeleid: WRR) also brought out a report on cultural minorities in the Netherlands.¹¹² This commission took a more principled stand on cultural policies. In its opinion, the longstanding assumption that immigrants would eventually return home had seriously impeded their integration into Dutch society. Moreover, policies based on the notion of "integration without loss of cultural identity" gave expression to a far too simplistic and static notion of culture. This commission pleaded for a more dynamic approach, taking interaction and mutual adjustment

Besides this improvement in the Moluccan's legal position, an extensive policy paper was also presented, proposing social reforms as between majority and minority cultures into account. Members of cultural minorities should be expected to know and respect the laws of the land, but in return, measures should be taken to guarantee respect for the cultural rights of those minorities. In this regard, and also in view of the permanent rather than temporary involvement of cultural minorities with Dutch society, this commission also recommended a more secure legal position for immigrants residing in the Netherlands. It recommended that naturalisation be made more accessible for immigrants or, alternatively, that all permanently resident foreigners in the Netherlands be offered a status equal to that which had just been introduced for the Moluccans.

In was in reaction to the WRR report, that the Van Agt cabinet—finally—relinquished the assumption of return migration. From then on, immigrant communities settled in the Netherlands were to be accepted as a permanent presence. Cultural policies were, therefore, to be geared towards their integration into Dutch society rather than towards their return home. At the same time, however, cultural rights were still to be

¹¹¹ ACOM 1979.

¹¹² WRR 1979.

respected. Following both advisory commissions in this respect, the Van Agt cabinet rejected forced assimilation as a policy goal.¹¹³

Multi-Culturalism as the New Policy Paradigm

In rejecting the notion of assimilation, the Van Agt cabinet also avoided the thorny question of determining a moral order that would have to be assimilated into—no easy task in a period in which not only traditional family values but all beliefs and values seemed liable to contestation. Dutch political culture was still strongly polarised between a socialist Left, which championed nationally orchestrated solidarity to the benefit of paid labour, a liberal Right that supported entrepreneurial freedom, and confessional conservatives who still held to the remnants of the older, religiously inspired, moral order. Social divisions reached beyond family relations and political loyalties. A squatters' movement in the cities was actively engaged in contesting the notion of private property. Frisian nationalists in the north of the Netherlands were vociferous in challenging national unity. In the agricultural east of the country, the popular rock band *Normaal* was singing the praises of rural culture in dialect, giving expression to regional rebellion against the perceived arrogance of the city folk in the west. With so little consensus over what mainstream culture entailed in the Netherlands, it was hard to conceive of a viable policy of cultural assimilation.

This is not to deny that there were shared cultural norms in the Netherlands at the time. There were—the persistent ideal of the stay-at-home wife and mother is a clear example. So is the shared memory of the normative tutelage that had been exercised by the religious communities directly after the war.¹¹⁴ It may well have been this shared recollection of conformity that produced such a thirst for personal freedom, as well as a widespread resistance to any set moral order—not only for citizens, but for immigrants as well.

On the whole, then, there was considerable political support for multiculturalism. Although there was some anti-Islamic sentiment on the extreme left of the political spectrum (SP, Socialist Party), the dominant position was that the emancipation of ethnic minorities should take place as a group process, and that each ethnic group's own language, history, normative structures and cultural organisations should play an important role in facilitating that group's full participation in Dutch society. It was

¹¹³ *Kamerstukken II* 1980/81, 16102, nr. 6.

¹¹⁴ C.f. Kooy 1975; Kennedy 1995.

seen as the Dutch state's responsibility to foster this emancipation process by encouraging the various ethnic groups to organise around their own particular cultural backgrounds, and to support these groups in maintaining their cultural identity.¹¹⁵

Three years later, in 1983, the Dutch government published its Policy paper on Minorities,¹¹⁶ covering a wide variety of groups resident in the Netherlands, differing not only in terms of culture but in terms of legal position as well: the Moluccans, with their recently acquired strong legal status; migrants from Surinam—of both Dutch and Surinamese nationality—; the legally resident labour migrants from the Mediterranean area; officially recognised refugees and the legally admitted family members of all these categories. What's more, the term "minorities" also included Dutch nationals originating from the Dutch West Indies—the last remnant of the Dutch Empire—as well as Dutch gypsies and mobile home dwellers.¹¹⁷ The writers of the Policy paper expressed the conviction that, regardless of these differences, all targeted groups were morally linked to the Dutch nation—whether through the historical ties of the (colonial) past, the imported labour that had helped enable post-war reconstruction, or the moral claims that accrued to asylum. In the interests of integration, minority groups who were thus linked to the Dutch national project deserved to be granted a secure legal position.¹¹⁸

The chief goal of the proposed minorities' policy was to prevent further marginalisation of the target groups and to promote their full integration into Dutch society.¹¹⁹ To these ends, measures were to be taken to improve their social and economic position; to stimulate their emancipation and participation within society; to grant them more rights and to combat discrimination. At the same time, cultural isolation was to be discouraged. While Dutch society was perceived of as being pluriform and culturally fragmented at the time, it was hoped that the various participating cultural groups would eventually co-operate in producing a new culturally hybrid society of the future. For settled immigrants, this implied more active involvement in the future of the Netherlands, and a decreased orientation towards their own national origins. To encourage them in this process, naturalisation was to be made more accessible and immigrants with permanent status were to be granted the right to take part in local Dutch elections.

¹¹⁵ Tinnemans 1994, p. 265.

¹¹⁶ Minderhedennota, *Kamerstukken II* 1982/83, 16102, nr.21.

¹¹⁷ Ibid. p.11.

¹¹⁸ Ibid. p. 144.

¹¹⁹ Ibid. p. 11-13; 175.

Because integration was perceived of as a long term process, involving adjustments by both majority and minority groups, cultural rights continued to form an important theme—but now as a preparatory step towards the successful integration of cultural minorities into mainstream Dutch society, rather than as a guarantee of their smooth re-entry into their societies of origin. Immigrants' children were still to be entitled to education in their own language and culture; "intercultural" learning programmes were to be introduced in the elementary schools and measures were still to be taken to provide each of the cultural minorities with specific welfare services, adapted to their cultural needs.¹²⁰ Moreover, as long as they took the law of the land into account, cultural minorities were to be left free to shape their own cultural identity as they saw fit.¹²¹ Still, there was a significant difference with preceding policies. Now, special efforts were to be made to adapt mainstream welfare services to accommodate minority groups. Those providing these services had to be able to deal with various languages, become sensitised to different sets of norms and values. At the same time, minority groups were emphatically expected to conform to the basic tenets of Dutch society. For the first time, immigrant communities other than those of repatriates from Indonesia became a target group of the national project of social integration that had been set into motion in the 1960's, under the auspices of the professional social workers and social welfare policy-makers of the maturing Dutch Welfare State.

Limiting Immigration in the Interest of Integration

Despite the economic difficulties of the time, the right wing Lubbers cabinet was prepared to invest in the proposed policies. But these investments would have to be temporary.¹²² In the long run, minority groups would have to progress sufficiently to be able to hold their own within mainstream Dutch society. Costly integration policies could then be brought to an end.

In the eyes of the Lubbers cabinet, integration policies could only be made redundant if measures were taken to prevent further immigration:

"The success of these minority policy goals will depend to a large extent on restrictive immigration policies, now more necessary than ever, given the present financial and economic circumstances. The effective application

¹²⁰ Mulder 1993, p. 6-7.

¹²¹ Minderhedennota, *Kamerstukken II* 1982/83, 16102, nr.21, p.108.

¹²² Ibid. p. 13.

of border and immigration controls should therefore be seen as a prerequisite for a successful minorities policy. (my translation-SvW)¹²³

This was easier said than done. By the 1980's, family reunification had become the most important vector of migration to the Netherlands.¹²⁴ If the Lubbers cabinet wished to limit immigration, it would have to take measures to reduce the number of family migrants. But this same cabinet, in which the CDA played a leading role, also continued to see family reunification as an essential prerequisite for the successful integration of the already existing immigrant communities into Dutch society.¹²⁵ It would require considerable political finesse to be able to justify any further restrictions in this area.

Distinguishing between the Generations

The inherent tension between facilitating family migration while limiting it at the same time was eventually solved by making a distinction between first and second generation immigrants, and between those who were and those who were not assumed to be oriented towards Dutch society.

The older generation was still assumed to be culturally oriented towards its country of origin. Although its right to bring over family members and settle in the Netherlands had finally been recognised, the Dutch government still assumed that a substantial number of this generation would eventually return home, taking their spouses with them.¹²⁶ The second generation however was depicted as a distinct group, whose future lay in the Netherlands. Given the proper guidance and support, it would, in good time, become completely integrated into mainstream Dutch society.¹²⁷

In making this distinction between the two generations, the Policy Paper on minorities may well have reflected the notion of a generation gap as it prevailed at the time: an older generation that had been brought up in the traditions of the religious columns, and a new secularly oriented

¹²³ Ibid. p. 144.

¹²⁴ Between 1976 and 1981, the number of married Turkish and Moroccan women living in the Netherlands increased from 17,300 to 39,200—an increase that was largely due to family migration, Notitie Afhankelijke verblijfstitel, *Kamerstukken II* 1981/82, 17 501, nr. 2 p. 4.

¹²⁵ Minderhedennota, *Kamerstukken II* 1982/83, 16102, nr.21, p.144.

¹²⁶ Ibid. p. 155-161.

¹²⁷ Ibid. p. 135-143.

generation clamouring for rights of its own, independent of its parents' authority and tutelage.

The Conditional Inclusion of the Second Generation

On the one hand, the legal security of second generation adolescents was to be improved. After having spent a year in the Netherlands with their parents, these young people were to be granted an independent status which could be extended without them having to meet income requirements. As soon as they reached majority and had resided legally in the Netherlands for at least five years, they were to qualify for permanent status, again without having to comply with income requirements. Furthermore, these adolescents and young adults were to be protected from expulsion on grounds of public order. This particularly applied to those born in the Netherlands and those who had arrived as young children. Their individual position in the Netherlands was to be made as secure as possible.¹²⁸ Children who were born in the Netherlands and had continued to live there from the date of their birth, were even to be given the right to opt for Dutch nationality upon reaching majority.¹²⁹

By introducing these measures, the Dutch government granted immigrants of the second generation a claim to residence in the Netherlands on their own merits, and no longer as the appendages of their parents. As such, these measures can be seen as an acknowledgement of the second generation's claim to a degree of emancipation that was on a par with that granted to Dutch citizen youth.

At the same time however, this degree of inclusion of second generation immigrants into the Dutch nation was made conditional of their continuing orientation towards Dutch society. Spending years with family abroad, bringing over a spouse from their parents' country of origin or returning there themselves to marry—all these formed indications of a failed orientation towards Dutch society that justified exclusionary measures.

Excluding Children With a Foreign Upbringing

The Policy Paper on minorities indicated that children should be brought over at a young age so that they could acquire the skills they would need

¹²⁸ Ibid. p. 146-148.

¹²⁹ Heijs 1995, p. 188.

for their future in Dutch society.¹³⁰ In the mid 1980's, immigration lawyers started to complain that their clients were being refused permission to bring over their adolescent children. This occurred for example when children had been left behind in the parents' country of origin, or sent back temporarily, for education or disciplinary purposes. Like the children of unmarried or divorced parents who had remarried in the Netherlands, these children were being refused (re)admission on the grounds that they no longer "effectively belonged" to the family unit.¹³¹

In response to questions posed by a Dutch association of immigration lawyers, the Christian Democrat Deputy Minister of Justice Korte-van Hemel added an explanatory paragraph to the rules regarding the admission of children, as published in the immigration circular. This paragraph explained that children could only be admitted for purposes of family reunification if there had already been a family bond with (one of) the parents in the country of origin. The effective bond was not only assumed to have ended in the event the child was living on its own and supporting itself, or in the event the child had established a family of its own. It was also assumed to be broken once the child had been taken up in another family on a permanent basis, while the parents in the Netherlands had either lost their parental authority or had ceased supporting the child financially.¹³²

This interpretation of the effective family bond criterion reveals a different approach to parent-child relationships than the legislative text underlying the original requirement, formulated in the second half of the 1960's, that children must be dependent of their parents in order to qualify for the protected article 10, paragraph 2 status *after* having been admitted for family reunification. While the latter requirement was primarily intended to exclude children who were self-supporting and who could, as such, be seen as independent migrants, the requirement as it was formulated in the circular in 1985 made it possible to also exclude children who were still in a both emotionally and financially dependent situation. Not the maturity of the child in question was now the criterion, but the degree of involvement of the parent in its upbringing. Moreover, the fact that the children of parents who were still married to each other were now being denied admission, indicates that the underlying concern was not so

¹³⁰ Minderhedennota, *Kamerstukken II* 1982/83, 16102, nr. 21, p. 146.

¹³¹ Minutes Werkgroep Rechtsbijstand in Vreemdelingenzaken 1985/2 p. 89; Minutes Werkgroep Rechtsbijstand in Vreemdelingenzaken 1985/6 p. 204. See also: ABRvS 11 June 1985, RV 1985/23; ABRvS 11 June 1985, *Weekoverzicht Raad van State* 1985 nr. 2/103.

¹³² B19.2.2.2. Vc 1982

much that pluralist family norms rendered selection impossible, but that children who had been left behind abroad would have trouble adapting to life with their parents in the Netherlands.

Trying to Influence The Second Generation's Choice of Mate

Similarly, second generation immigrants who chose to marry a spouse from abroad, rather than one resident in the Netherlands, were assumed to miss the required orientation towards Dutch society. Other than Dutch citizens, refugees and first generation immigrants with permanent status, second generation immigrants were no longer to be made exempt from income requirements when requesting the admission of a foreign spouse, not even if they had acquired permanent status and their lack of income was not due to any fault of their own.¹³³ The implicit assumption was that anyone so committed to their parents' society of origin that they would espouse one of its members, had failed to become an integral part of Dutch society, and didn't deserve the rights that accrued to full citizenship and could reasonably be expected to join their spouse in his or her country of origin.¹³⁴

The Administrative Jurisdiction Division of the Dutch Council of State followed this reasoning. In its view, the Dutch state could justifiably expect second generation immigrants to opt for their partner's country of domicile should they prove unable to meet the stipulated housing and income requirements.¹³⁵ Such reasoning is very reminiscent of the arguments used during the Dutch colonial regime in Indonesia for denying European status to Dutch women who chose to marry a "native" husband. The fact that they made such a choice proved that they had become estranged from European Dutch society, and justified denying them the rights of full Dutch citizenship.¹³⁶

In order to be able to enjoy family life in the Netherlands with a foreign spouse, immigrants of the second generation first had to prove their worth. Their parents had earned their exemption from income requirements with the years' worth of work that they had performed in the Netherlands while their spouses and children patiently waited in the

¹³³ *Kamerstukken II* 1982/83, 17 984, nr. 2, p. 13. It should be noted that the Dutch minimum wage was related to age, and that only full-time employees aged 23 years old or older were ensured of sufficient income to qualify for family reunification.

¹³⁴ *Kamerstukken II* 1984/85, 17 984, nr. 7, p. 4.

¹³⁵ Vr. ABRvS 25 September 1984, RV 1984/17.

¹³⁶ De Hart 2003, p. 87-88.

wings.¹³⁷ Young people of the second generation who wished to remain assured of their right to residence in the Netherlands had to show that they too could perform as breadwinner citizens, before they could settle there with a foreign spouse. Clearly gender roles were in play here, although no longer explicitly linked to gender identities, but to notions of cultural orientation. This placed the supposedly secure position of the second generation immigrants in a new light.

Excluding Second Generation Immigrants Who Married Abroad

As children of the second generation started to come of age, their parents entered into negotiations with friends and family in their countries of origin concerning marriage arrangements. It transpired that some young girls who had (largely) grown up in the Netherlands ended up marrying a husband in their parents' country of origin and subsequently moving to that country to join the husband. Other than the Dutch government assumed, such choices did not necessarily reflect alienation from Dutch society on the part of the young women and girls involved, as a number of court cases from the late 1980's made clear. Not all of these marriages proved a success, and when they failed, the young women and girls involved sometimes wished to return to their families in the Netherlands. Their applications were rejected, however. Even when the girls involved were still younger than 21 years and hence, at the time, young enough to qualify for reunification with their parents, their applications were rejected on the grounds that they had broken all effective ties with their family (and, implicitly, with the Dutch society in which they had, to a large degree, grown up) by getting married. Thus, in a decision on an application for a staying order, the Chairman (voorzitter) of the Administrative Jurisdiction Division of the Dutch Council of State took into consideration that the applicant, who had been sent to Turkey when she was twelve, married off at the age of fifteen, and divorced a few years later, couldn't possibly qualify for reunification with her parents: "... as a result of her marriage, ... the applicant has distanced herself from the parental home. The fact that this was an arranged marriage doesn't lead to a different conclusion, now that it has been established that the marriage has in fact been consummated (my translation-SvW)."¹³⁸

¹³⁷ *Kamerstukken II* 1984/85, 17 984, nr. 7 p. 4.

¹³⁸ *Vr. ABRvS* 23 January 1990, nr. R02.98.3208-S444 (unpublished).

*Less Security for the Foreign Spouses of Second
Generation Immigrants*

In 1981 Haars, the first Deputy Minister of Justice to serve under the more conservative regime led by the Christian Democrat Van Agt, had already introduced special measures to provide migrant wives an independent status following divorce, in the event that a return to their country of origin would lead to extreme hardship.¹³⁹ In September of 1982, after the Kijkduin conference on gendered violence had once more drawn attention to this issue,¹⁴⁰ the then responsible Deputy Minister of Justice Scheltema (of D-66, a liberal democratic party) presented a new policy paper on family migrants with dependent status.¹⁴¹

Again a distinction was made between the spouses of first and second generation immigrants, albeit in a more roundabout way than with the income requirements. Like its children, the first generation's spouses too could now qualify for an independent status in the Netherlands after one year's residence—if they had been married for at least three years. However, since the foreign spouses of second generation immigrants were normally newly weds or, in some cases, not even married but only betrothed, they did not benefit from these reforms. In most cases, they still had to spend at least three years with their already settled spouses in the Netherlands before they could qualify for an independent status.

While on the one hand the dependent status was presented as an instrument to prevent settlement on the basis of a fraudulent marriages (implicitly, a marriage that failed within three years was assumed not to have been genuine in the first place), on the other hand it, too, reflected the government's reluctance to take up any more young immigrants entering the country on the basis of family reunification:

"the admission of newly weds would amount to the admission of immigrants who are at an age at which great difficulties are to be expected in all respects—jobs, housing, schooling. They are only too likely to end up among the long-term unemployed, for whom—even in the long run—we can provide very little hope (...). When it comes to marriage migration, the focus will be on restrictive measures. This category's bleak expectations form the main underlying reason... In negotiating the tensions between the need to effectively restrict further immigration and the desire to protect immigrants' rights, particularly those of the second generation, priority in

¹³⁹ C-26r Vc 1975.

¹⁴⁰ Acker & Rawie 1982, p. 54, 87.

¹⁴¹ *Notitie afhankelijkke verblijfstitel, Kamerstukken II* 1981/82, 17 501, nr. 2.

this instance goes to limiting further immigration. The bleak prospect for this category of potential immigrants was decisive." (my translation, SvW)¹⁴²

Incidentally, many foreign men married to Dutch women also fell under the "suspect category" of newly-weds. Besides the newly-wed partners of second generation immigrants and Dutch women, unmarried partners of foreign origin also continued to be subject to a probation period of three years, regardless of whether their relationship with a Dutch citizen or settled immigrant had originated in the Netherlands or elsewhere.

Nationality Law Reforms

In this same period, Dutch nationality law was subject to reform because of the distinctions still being made between men and women.¹⁴³ While the foreign wife of a Dutchman could opt for Dutch nationality immediately following her marriage, and regardless of where she was living at the time, the foreign husband of a Dutch woman could only acquire Dutch nationality through naturalisation, that is: after five years of legal residence in the Netherlands. Moreover, Dutch men could pass on their nationality to their children; Dutch women could not.

The original proposal for reform, presented in 1976, was amended to grant both men and women the right to opt for Dutch nationality upon marrying a Dutch citizen. This amendment was controversial, however. It was feared that foreign men would take advantage of Dutch women by marrying them to acquire Dutch nationality and, therefore, access to the Dutch labour market and the accompanying social benefits. As a member of the upper chamber of the Dutch Parliament argued:

"However much I favour equal treatment of men and women—although the differences, too, are dear to me—I must emphasise that in this instance it is unjustified. Dutch women may well become too attractive to the large numbers of foreigners on the loose (...) Marrying a Dutch woman will

¹⁴² Minderhedennota *Kamerstukken II* 1982/83, 16102, nr.21, p. 149-150. Significantly, the immigration circular as it was published in 1982 didn't allow for the scrutiny of marriages that had been contracted *before* one of the spouses settled in the Netherlands; only those contracted between a spouse already settled in the Netherlands and a foreign spouse not yet in the possession of a resident permit merited suspicion, Koens 1983, p. 28. In this sense, too, the admission of the family members of the first generation was privileged over the admission of the family members of the second generation.

¹⁴³ De Hart 2003, p. 81.

become very attractive for foreigners because, by doing so, they will acquire all the rights of a Dutch citizen, even though they may know nothing about our country and may never have lived there, or ever plan to do so, while having no other ties with it either. The marriage can be a fraudulent one, entered only in order to acquire Dutch nationality (...) We should therefore not be overly generous in conceiving the new law on Dutch nationality. To my mind a difference in the rules regarding foreign men and women is justified, considering that, in the rule, the marital home will be situated in the husband's habitual place of residence." (my translation SvW)¹⁴⁴

When the issue of the dependent status of immigrant spouses first reached the political agenda in the early 1980's, the link with the proposed nationality law reforms was quickly laid. In the wake of the discussion concerning dependent status and its significance for discouraging fraudulent marriages, it was decided to amend the proposed nationality law reforms by eliminating the possibility of opting for Dutch nationality, and requiring that foreign spouses of Dutch citizens follow the route of naturalisation instead.¹⁴⁵

As a concession to the bond with Dutch society that marriage to one of its citizens implied, it was decided to allow for naturalisation after three years of marriage—rather than requiring five years of residence in the Netherlands, the normal requirement for naturalisation. The reforms, finally introduced in 1985, included an extra requirement however: namely that the foreign spouse be legally resident in the Netherlands at the moment of naturalisation. In the Dutch government's eyes:

"should a couple have settled in the foreign partner's country of origin, it is to be expected that the Dutch partner will become estranged of his or her own national community. Therefore it seems only reasonable to exclude the foreign spouse of Dutch citizens from naturalisation in the event that he or she should still be resident in his or her 'own' country."¹⁴⁶

De Hart suggests that an underlying assumption behind this added condition may very well have been that Dutch women would be more likely to follow a foreign spouse to his country of origin than Dutch men and that, in effect, this provision was intended to continue excluding the

¹⁴⁴ *Kamerstukken I* 1976/77, 12 837, p. 258.

¹⁴⁵ *Kamerstukken II* 1982/83, 17 501, nr. 4.

¹⁴⁶ *Kamerstukken II* 1974/75, 12 837 nr 3, p.11, as cited in De Hart 2003, p. 83.

foreign husbands of Dutch women, despite the elimination of formal sex discrimination in the reformed nationality law.¹⁴⁷

What these reforms expressed was that the foreign spouse of a Dutch citizen no longer acquired Dutch nationality in the interests of preserving the family unit, but as an expression of his or her connection, as an individual, to the Dutch nation.¹⁴⁸ In this sense the equal treatment of men and women in Dutch nationality law amounted to a levelling down. The situation of Dutch women with a foreign husband had admittedly become more secure than before, but the security was a far cry from what had been promised by the original proposal to allow foreign spouses of both Dutch men and Dutch women to opt for Dutch nationality. Moreover, once the foreign wives of Dutch men lost their right to opt for Dutch nationality, they were placed in an equally dependent and hence insecure position as the foreign wives of settled immigrants.

Another reform introduced with the new nationality law was the official recognition of non-marital relationships as a ground for according Dutch nationality. Like the foreign spouse of a Dutch national, the foreign cohabiter could apply for Dutch nationality once his or her relationship with a Dutch citizen had lasted at least three years. Other than the foreign spouse, however, he or she had to have lived in the Netherlands with the Dutch partner during those three years—in effect the same conditions that applied to the unmarried partners of Dutch citizens or settled immigrants applying for an independent residence permit.¹⁴⁹ Here again, the significance of the nationality law reforms should not be exaggerated.

As these reforms, with their intention of neutralising the role that patriarchal family norms had previously played in regulating access to Dutch nationality, were introduced, another debate arose. In practice, granting Dutch nationality to foreigners had always been made subject to a number of normative criteria which, while not formally codified, played a role in the application of the law. One criterion was that the candidate should be integrated (*ingeburgerd*) into Dutch society. It was not until

¹⁴⁷ De Hart 2003, p. 82-83.

¹⁴⁸ During the debates regarding independent status that were carried out in the same period that the nationality law reforms were being discussed, the Dutch government argued against granting a permanent status to the spouses of permanently settled immigrants immediately upon their arrival in the Netherlands, on the grounds that these spouses would then acquire permanent status on the basis of their family ties, and not on the basis of their long term involvement with Dutch society, which was what such a status was meant to reflect, *notitie afhankelijke verblijfsrecht*, *Kamerstukken* 1981/82, 17 501, nr. 2.

¹⁴⁹ Article 8 sub 4 Rijkswet op het Nederlandschap.

1977 however that this practice was explicitly codified in an administrative circular.¹⁵⁰

In the initial proposal for a reformed nationality law as presented in 1981, this criterion was given a central place.¹⁵¹ This proposal met with considerable resistance, particularly from the left. The smaller and more extreme left-wing parties objected to imposing any type of integration criterion at all. Their position was that immigrants could only be expected to integrate into Dutch society once they had been accepted, via naturalisation, as first class citizens. The Dutch Labour Party was sympathetic to the notion that foreigners should only be accepted into the nation once they had become absorbed into Dutch society, but in their view anyone who had already spent five years in the Netherlands and who had taken the decision to adopt Dutch nationality, could be assumed to be sufficiently integrated, unless there was reason to conclude otherwise. Even the more right wing parties objected to the proposed criterion as it stood—not for substantive reasons, but because its vague wording could lead to arbitrary decisions.

In the end, the criterion was maintained, but with the specification that the level of participation in Dutch society would be determined on the basis of proficiency in the Dutch language and the extent of the candidate's social contacts with members of Dutch society. In the years immediately following the introduction of the reformed nationality law, a rudimentary proficiency in spoken Dutch was deemed sufficient to meet the integration requirement. Only those immigrants who pursued a "bigamous lifestyle" could be refused Dutch nationality on the grounds that they were insufficiently integrated, even if they did have sufficient command of the Dutch language.¹⁵²

Thus, some last traces of traditional Christian family morality still lingered on. At the same time, an alternative normative mode of inclusion and exclusion—that of cultural integration—was starting to become more explicitly anchored in Dutch nationality law.

Excluding Dutch Citizens' Children, Born and Bred Abroad

Perhaps the most important change brought about by the new nationality law, was that it enabled Dutch women to pass on their nationality to their

¹⁵⁰ *Richtlijnen voor naturalisatie*, *Stcrt*, 27 April 1977, nr. 81, p. 4. See further: Heijs 1995, p. 169-172.

¹⁵¹ Heijs 1995, p. 193.

¹⁵² *Ibid.* p. 195.

children on the same basis as Dutch men.¹⁵³ Children of a Dutch mother and a foreign father who had been born before the new law came into effect on 1 January 1985 and who had not yet reached majority, were given the opportunity before 1 January 1988, to opt for Dutch nationality.¹⁵⁴ Children who failed to make use of this possibility, remained foreigners. One of the reasons given for this limited transitional period was that the government was worried that otherwise "an incalculably large number of foreigners" would be enabled to acquire Dutch nationality.¹⁵⁵

This was a rather remarkable argument, since the group of children who could have opted for Dutch nationality was well defined. It consisted solely of those born between 1964 and 1985. But because of the limited period in which they could opt for Dutch nationality, not all of the children living outside of the Netherlands at the time were able to make use of this opportunity. In many cases, the information provided by the Dutch consulates was insufficient and mothers did not find out until it was too late.¹⁵⁶ As a result, their children remained foreigners.

Also, in another way the new Dutch law on nationality was to pave the way to the exclusion of children growing up outside the Netherlands. Article 11 of the new law stipulated that when a foreign parent acquired Dutch nationality through naturalisation, the naturalisation of his or her children could be made subject to certain conditions. In an administrative circular of 31 March 1992, the general condition was introduced that the child should first have been legally admitted to the Netherlands. Children who had been denied admission on the grounds that the effective family bond between them and their parent had been broken could, as a result, continue to be excluded even after their parent had acquired Dutch nationality.¹⁵⁷

New Modes of Resistance

By 1985, the way in which family norms were deployed in regulating immigration had changed quite significantly. Key concepts which had

¹⁵³ Article 3 Rijkwet op het Nederlanderschap 1985.

¹⁵⁴ Article 27, sub 2 Rijkwet op het Nederlanderschap 1985.

¹⁵⁵ *Kamerstukken II* 1982/83, 16 947, nr. 7, p. 33 (MvA)

¹⁵⁶ See for example: the report of the Dutch Ombudsman concerning complaint number 90/R302, 89.03335, quoted in De Voer 2005, p.28.

¹⁵⁷ The text of this circular can be found in: *Nationaliteitswetgeving*, Editie Schuurman & Jordens, 209, 7th print, Part B, p. 110-111. See also: HR 13 October 1995, RvdW 1995, 204.

served well until 1975 had lost their legitimacy. Gender was no longer an acceptable ground for distinction; marriage no longer served to define legitimate family bonds; and family life with foreign family members in the Netherlands was no longer a privilege reserved for married Dutch male citizens. The original model of the married Dutch male breadwinner citizen still held steady, but increasingly, substantive rather than formal norms determined who fitted this model. Individuals applying to have family members join them in the Netherlands no longer necessarily had to be Dutch, male and married but did have to prove that they possessed the substantive equivalents to these qualities: that they could perform as a breadwinner; that their relationship was lasting, monogamous and delineated by a single household; and that they were "oriented to Dutch society".

The new regime as it started to take shape in the second half of the 1980's was not without problems, however. Changing the parameters of exclusion also implied changing the parameters of inclusion. Treating settled immigrants and citizens differently on the grounds of "cultural orientation" was difficult to reconcile with the Dutch government's commitment, as stated in its Policy Paper on Minorities, to granting settled immigrants equal rights to Dutch citizens, without prejudicing their cultural rights. And with substantive norms taking the place of formal ones, the rights that formerly accrued to gender, nationality and formal marital status started to lose their potency. Married Dutch men, immune from the effects of restrictive family migration policies until Dutch nationality law was reformed in 1985, now risked being denied rights they had always taken for granted. They were not likely to accept this willingly.

Moreover, such an increase in state interference in the relationships between partners and between parents and children was ideologically risky, given the claims being made at the time within Dutch society for more freedom in the sphere of family relations and to further deregulation of family law. All in all, the new regime for regulating immigration through family norms was to meet with resistance from a number of quarters.

Challenging the Discrimination of Second Generation Immigrants

The stricter income requirements for second generation migrants had no sooner been introduced in 1984, when they came under attack. In December 1984, thousands of young immigrants of the second generation

convened in Rotterdam to protest against the requirements.¹⁵⁸ Members of parliament, ranging from small left-wing PSP (pacifist socialist party) to the well entrenched CDA all pointed out that second generation immigrants wishing to bring over a partner from abroad were now being obstructed in ways that did not apply to first generation immigrants or to Dutch citizens belonging to the same age bracket. This reeked of discrimination.¹⁵⁹

In response to these objections, the then active Deputy Minister of Justice, the Christian Democrat Korte-van Hemel, had the effects of the new policies evaluated. On the basis of the ensuing report, she concluded that the number of second generation immigrants bringing over spouses from abroad was not as alarmingly high as had first been anticipated. Moreover, those who decided to marry a partner from their parents' country of origin did not appear deterred by the income requirements—at least, not to the degree that the Deputy Minister had originally expected. She therefore decided to put an end to this distinction between immigrants of the first and second generation.

As of 16 April 1985, all holders of a permanent residence status—both first and second generation—could be exempted from the income requirements, if their lack of income was not considered to be their own fault.¹⁶⁰ Besides its practical implications, this reversal in policies concerning the second generation also had an ideological impact. The reasoning that settled immigrants of the second generation could be disqualified as full participants in Dutch society on the grounds that they were “oriented” towards their parents' country of origin had not held sway. This shift in perception was reflected in subsequent court judgements. The Regional Court of The Hague in its decision on a staying order held that a young girl, sent to Turkey by her parents, had not left the Netherlands of her own accord and therefore should not be denied the rights that she had built up there as a second generation immigrant.¹⁶¹

Dutch Male Citizens Reclaim Their Privacy

Until Dutch nationality law was reformed in 1985, married Dutch men had remained immune from restrictions to family reunification. After Dutch nationality law had been reformed, they still continued to hold some

¹⁵⁸ Tinnemans 1994, p. 245-246.

¹⁵⁹ *Kamerstukken II* 1983/84, 17 984, nr. 3.

¹⁶⁰ *Kamerstukken II* 1984/85, 17 984, nr. 8.

¹⁶¹ RB Den Haag, zp Zwolle, 9 August 1990, vr 528-1990 (unpublished, available in database Forum, quoted in Van Walsum 1992, p. 203).

privileges as Dutch citizens—particularly exemption from housing and income requirements, the assumption still being that Dutch citizens (both male and female) should be protected from practical impediments to family reunification, since they could not reasonably be expected to move to a foreign country where their own admission was not assured.¹⁶² However the chief privilege that married Dutch male citizens had enjoyed—namely that their wives and step-children could immediately acquire Dutch nationality as soon as the marriage had been contracted—no longer applied. This meant that, like Dutch women, second generation immigrants and unmarried couples, married Dutch men could also become subjected to bureaucratic control of their intimate relations.

Even before nationality law was reformed, Dutch men were given a taste of things to come. In June 1984, a young Moroccan woman residing illegally in the Netherlands was getting ready to get married to a Dutchman. The Dutch police, warned by an anonymous tip, arrested the woman and put her into detention. Their intention was to have her deported so that she could not marry her prospective husband and subsequently opt for Dutch nationality. The woman went to court, demanding a staying order to delay deportation long enough for her to get married. The staying order was granted, and two days after her release from detention she got married and immediately opted for Dutch nationality. Six months later, the Amsterdam Court of Appeal granted her fl.300 (the equivalent of about €600) in damages because of wrongful detention. The Court of Appeal in Amsterdam ruled that the Dutch State had in effect used measures of immigration control to prevent a marriage, which was not the purpose of those measures. The Dutch State put in an appeal before the Dutch Supreme Court, but lost its case.¹⁶³

Once the Dutch nationality law had been reformed, Dutch immigration authorities were entitled to interfere in the marriages of Dutch men to foreign wives, if they suspected these marriages were being contracted for ulterior motives. Dutch men affected by such interference did not take this lying down.¹⁶⁴ Previously, Dutch women with foreign husbands had often challenged the negative decisions of immigration authorities in court. In many cases, the courts had been quite critical,¹⁶⁵ but it was not until after the Dutch nationality law had been reformed to the detriment of married Dutch men, that the Jurisdiction Division of the Dutch Council of State

¹⁶² *Kamerstukken II* 1984/85, 17 984, nr. 7, p. 4.

¹⁶³ HR 27 November 1987, RV 1987/18.

¹⁶⁴ See for example: ABRvS 31 January 1985, *Migrantenrecht* 1986, nr. 10.

¹⁶⁵ KB 30 August 1974, no 66, RV 1974/20; ABRvS 8 May 1983, RV 1983/17.

radically reduced the Dutch State's freedom to scrutinise marital relations. In a judgement of 31 October 1985, the Jurisdictional Division of the Council of State determined that the burden of proof in determining the genuineness of a marriage lay with the State.¹⁶⁶ In a later judgement this same court determined that the criteria set down in the immigration circular, taken either separately or in combination with each other, provided insufficient evidence to support the conclusion that a marriage was not genuine.¹⁶⁷ The immigration circular was subsequently changed. After 1986, foreign spouses qualified for admission on the grounds of their marital status alone. From then on, for nearly a decade to come, only the intimate relations of unmarried couples would remain subject to control.

Foreign Fathers Assert their Right to Family Life

What is striking about the debates which took place in the early 1980's on dependent status, is that these had focussed exclusively on the implications of that status for migrant wives and children. That men with dependent status could also face painful dilemmas in the event of losing their dependent status, was apparently not a relevant consideration. Especially when divorced fathers had to leave children behind, their deportation could become problematic, not only for themselves, but for their children as well—and, not infrequently, the mothers of those children.¹⁶⁸

Certainly by 1985, when both the wives and the children of foreign men could hold or maintain Dutch nationality, the problematic implications of a foreign father's deportation were starting to become evident. Because young children couldn't meet income and housing requirements on their own, it wasn't possible for a foreign parent to obtain a residence permit to stay in the Netherlands with a Dutch child.¹⁶⁹ In the eyes of the Dutch state, the fact that a divorced father had been granted visiting rights formed no obstruction to his deportation, a position that found support with the Dutch courts.¹⁷⁰ In response to a foreign father's complaint that his right to family life would be violated in the event of his deportation, the Court of Appeals in Amsterdam (in a decision on a staying order) retorted that "not every form of contact between a foreign parent lacking parental authority and his children should be seen as a form

¹⁶⁶ ABRvS 31 October 1985, *Migrantenrecht* 1986 nr. 10.

¹⁶⁷ ABRvS 22 October 1986, *RV* 1986/17.

¹⁶⁸ Van Walsum 1988, p. 24.

¹⁶⁹ Boeles 1984, p. 32-33.

¹⁷⁰ Claassen 1986, p. 37-39.

of family life [as protected by article 8 of the European Convention of Human Rights, SvW]".¹⁷¹

In that same year, Mr. Berrehab, the Moroccan ex-husband of a Dutch woman, was declared admissible by the European Commission of Human Rights in his complaint that his deportation out of the Netherlands amounted to violation of his right to respect for family life with his infant daughter Rebecca whom, up until his forced departure, he had been looking after four days a week. The Dutch government had denied this was the case on the grounds that the child had been born after the parents had divorced, and that as a result, she had never in effect formed part of her father's family.

In 1988 the case came before the European Court of Human Rights. In what was to become a ground-breaking judgement, not only in immigration law but in family law as well, the European Court of Human Rights determined that the mere fact that a parent and child didn't sleep under the same roof, did not preclude the existence of family life in the sense of article 8 of the European Convention of Human Rights.¹⁷² Remarkably, (as we have also seen in Chapter One) the Dutch Supreme Court had already come to this same conclusion in 1983.¹⁷³

Following the European Court of Human Rights' judgement, and subsequent judgements by the Dutch courts, the immigration circular was amended. Following a divorce, foreign parents with dependent status could now appeal on the basis of their right to respect for family life with their children in the Netherlands in order to gain the right to continued residence. In deciding on such requests, the immigration authorities were instructed to take into consideration: whether or not the child was young enough to still have a real interest in maintaining regular contact with the parent in question; to what extent parent and child had a reasonably intense visiting arrangement (in practice an average of two weekend visits per month figured as minimum); to what extent the parent in question contributed to the financial maintenance of the child.¹⁷⁴

Although the Dutch immigration authorities were now prepared to accept that divorced foreign parents continued to maintain family life with their children, they were still considerably more critical in their assessment of those foreign fathers' family life than Dutch family law judges of the same period were in their assessment of Dutch divorced and single fathers'

¹⁷¹ Hof Amsterdam, 3 April 1986, rolno. 2186 skg (unpublished).

¹⁷² Berrehab vs. The Netherlands, ECHR 21 June 1988, application nr. 10730/84.

¹⁷³ HR 28 January 1983, *NJ* 1984 nr. 764.

¹⁷⁴ *Stcr.* 1989, nr. 23; B19/4.1. Vc 1982

claims to visiting rights, parental authority and the right to recognise a child against the express wishes of the mother.¹⁷⁵

Foreign Wives Claim More Relational Freedom

An important effect of the *Berrehab* case was that it opened a new possibility for immigrant family members to challenge the increasing involvement of the Dutch state in their intimate relations. After *Berrehab*, the Dutch courts started to take a more critical attitude towards decisions to deport foreign spouses on the grounds that their marriages had effectively ended. While the Jurisdictional Division of the Dutch Council of State had determined in 1986 that "one may assume the marriage has been effectively ruptured (...) in any event once a couple no longer co-habits"¹⁷⁶ it determined in 1988 that "the sole circumstance that the applicant and her husband are no longer living together provides insufficient grounds to assume that she ... has lost her dependent status."¹⁷⁷ In another judgement, dating from that same year, the Jurisdictional Division of the Dutch Council of State determined that a woman should qualify for an independent status, even though she and her husband had lived separately from each other for a short period during the first three years of their marriage.¹⁷⁸ A year before, not long after the European Commission had declared *Berrehab* admissible, the Jurisdictional Division of the Dutch Council of State decided that a young Moroccan woman should be allowed to keep her dependent status, even though she had left her husband temporarily, following a quarrel, and had only continued to be with him on weekends.¹⁷⁹

Until then, foreign wives had been forced to depict their family relations in their country of origin as excessively oppressive in order to win the right to remain in the Netherlands once marital tensions had forced them to temporarily quit their husband's abode. The discourse of private and family rights offered these women an alternative, namely: to claim more flexibility and freedom within their own marital relationship—something that, by then, was increasingly being taken for granted by people in mainstream Dutch society.¹⁸⁰

¹⁷⁵ C.f. Van Blokland 1999, p. 141-143.

¹⁷⁶ ABRvS 11 June 1986, RV 1986/15.

¹⁷⁷ ABRvS 24 October 1988, RV 1988/19.

¹⁷⁸ ABRvS 13 January 1988, RV 1988/28.

¹⁷⁹ ABRvS 8 September 1987, *Migrantenrecht* 1988, nr. 1.

¹⁸⁰ Van Walsum 1992, p.202-203.

Protection as a Ground for Exclusion

However promising these appeals to family life and privacy seemed to be, they soon met their limits. A possible explanation may be that, where privacy and family rights were brought into play, the Dutch immigration authorities could parry such claims with the critical feminist discourse concerning the oppressive side to these rights. In the late 1970's, restrictions on family migration had been justified by pointing out how family relations could be abused in order to circumvent immigration controls, thus disadvantaging the state. By the mid 1980's, immigration authorities could borrow from feminist discourse to highlight the dangers of abusive relations for family members themselves—particularly those in a dependent position: wives and children. In the context of Dutch asylum law, for example, feminist lawyers, inspired by colleagues in the United States, Canada and elsewhere, started to promote the idea that modern and emancipated nations like the Netherlands should offer protection to women subjected to patriarchal violence in "traditional" societies, particularly those identified as Islamic.¹⁸¹

As this critical feminist discourse emerged, in which the family relations in immigrants' countries of origin were being depicted as oppressively patriarchal, policies that prevented immigrant men from bringing over their spouses and vice versa could be presented as serving both the national interest and that of the individual women and children involved. If men originating from these countries were so abusive, their wives and children were better off staying separated from them.

Protecting the Rights of Mothers Abroad

Such reasoning can help explain why foreign parents failed in their attempts to mobilise article 8 of the European Convention of Human Rights when requesting the admission of children born out of a former relationship. Initially, things looked quite promising for parents in such a position. One such case was actually declared admissible by the European Commission of Human Rights in 1984.¹⁸² And in 1986 the Dutch Supreme Court, in a decision concerning a staying order to prevent the expulsion of the adopted child of a Turkish couple, held that in view of the protection afforded by article 8 of the European Convention of Human Rights, the

¹⁸¹ Spijkerboer 2000.

¹⁸² *Taspinar vs. The Netherlands*, EComHR 3 December 1984, application nr. 11026/84, Eur. H.R. Rep. 47 (1984).. This case never came as far as the ECHR.

individual rights of all concerned should be weighed against the concrete interests of the state in the specific instance.¹⁸³ None the less, no change occurred in Dutch policies regarding the admission of children, except to include a standard clause in all negative decisions stating that it was in the interest of a democratic society to be able to control immigration in order to protect its economic well-being, and that this general interest outweighed the individual interests in the case at hand.¹⁸⁴

In this respect it is interesting to note that in some court judgements, the representative of the Dutch Deputy Minister of Justice is quoted as saying that the children of divorced fathers were being refused admission to the Netherlands in the interests of the mother who had remained behind with her children, when the father had migrated to the Netherlands. Allowing the children to join their father in the Netherlands would, according to this reasoning, lead to an infringement in the mother's right to respect for family life.¹⁸⁵ While Dutch feminists were making little headway in Dutch family law with their claim that parental rights should be related to involvement in the day to day care of children, their approach was being enthusiastically embraced by the Dutch immigration authorities to legitimate the exclusion of children left behind in the country of origin. This concern for mothers' rights should be taken with a grain of salt. As we shall see in the next chapter, in the end the desire to keep children out of the Netherlands came to prevail over any concern for mothers' rights to be able to look after their children themselves.

Denying Foreign Wives Rights in Their Own Interests

As marriage migration came to consist more of newly-weds, and less of spouses coming to join first generation migrants, Women's Shelters were once more confronted with the problems that arose when foreign wives were forced to spend years in the Netherlands on the basis of a dependent status. In 1988, a coalition of predominantly migrant women's organisations sought publicity.¹⁸⁶ This new attempt to reform Dutch policies regarding the dependent status would prove less successful however than the lobby that had been set up a short decade before by the Women's Shelters.

¹⁸³ HR 12 December 1986, RV 1986/95.

¹⁸⁴ Comment by EComHR 8 September 1988, RVR 186.

¹⁸⁵ ABRvS 3 February 1989, R0287.0337-quoted in the comment following EC 8 September 1988, RVR, p. 636.

¹⁸⁶ Land et al. 1988.

Again, restrictive immigration policies found support in feminist arguments. In the period leading up to the nationality law reforms, alarming reports started to emerge in the Dutch media concerning the situation of foreign prostitutes working in the Netherlands. There was increasing concern that criminals were luring these women to the Netherlands by promising them easy access to Dutch nationality via marriage, against payment of a sizeable sum. In order to pay back their debts, so the reports claimed, these women were subsequently forced to work in the sex industry. The nationality law reforms in 1985 were seen as a necessary measure to prevent such trafficking. Eliminating the possibility of acquiring Dutch nationality through this option would, it was assumed, discourage foreign women from falling into this trap.¹⁸⁷ This may explain why those reforms were warmly supported by feminists in the Netherlands, even though they would lead to a more dependent position for the foreign wives of Dutch citizens. It may also explain why migrant women, agitating against dependent status in the late 1980's, received little support. After all, the dependent status had also been introduced to prevent people from abusing the institution of marriage to gain access to legal residence in the Netherlands.

The Second Generation and the Elusive Gains of Early Majority

By 1988, the age of majority in the Netherlands was finally reduced from 21 to 18. From then on, young people of the second generation, applying to have a foreign spouse join them in the Netherlands, would no longer have to wait until they were 21 before they could bring over their spouse without having to meet the set income requirements. In the end however, this shift in policy may well have prevented family migration more than it facilitated it. The flip side to the lowered age of majority was namely that children aged between 18 and 21 years could no longer qualify for admission for the purpose of joining their parents, unless they could appeal on the basis of some sort of exceptional circumstances, such as military conscription, or specific reasons why leaving them behind would be unreasonably harsh.¹⁸⁸

Moreover, although relaxed income requirements now applied to a larger group than before, housing requirements continued to apply, and these still formed a serious obstacle. Many newly-weds of the second generation had little alternative but to move into their parental home until

¹⁸⁷ Bolten 1984, p. 103.

¹⁸⁸ Boeles 1984, p. 33-34.

they had finally progressed far enough up the public housing waiting list to qualify for a home of their own. Housing authorities however generally refused to approve such intensive use of the parents' (usually modest) quarters, so that admission was denied to the foreign spouse after all, not because of insufficient means, but because of unsuitable housing.¹⁸⁹

Here again we see how an emancipatory measure (the lowering of the age of majority) could result in further exclusion, and how policies designed to protect social welfare—in this case minimal housing norms—could be used to frustrate individuals in their personal endeavours.

C: Drawing and Redrawing the Borders of the Nation

If we compare how immigration to the Netherlands was being regulated in the late 1970's and early 1980's with how it had been regulated in the period immediately following the war, then it is clear that, in one way or another, all of the previously employed techniques of inclusion and exclusion had lost some of their effectiveness. In part, this was due to fundamental shifts that had taken place in the normative structures that helped shape the imagined community of the Dutch nation. As these changed, the techniques used to delineate the limits of that community had to change as well.

In Search of a New Normative Touchstone for the Nation

As the worldwide movement towards decolonisation took hold, for example, the legitimacy of European imperialism evaporated. Racist notions of European superiority were challenged and, with them, the validity of lines of distinction drawn along the religious and cultural norms of the former colonial powers—such as European family norms grounded in the Christian tradition. By the time the former Dutch colony of Surinam was up for political secession in 1975, other criteria than those deployed following Indonesia's independence had to be devised to distinguish between the national subjects of the former Dutch metropole and those of the newly established nation of Surinam. Now that distinctions based on genealogy and sexual behaviour had become suspect, notions of shared territory came to play a more prominent role in distinguishing between these two bodies of national citizens.

In the meantime, as we have seen in Chapter One, parallel to the emancipation of the former colonies, a normative revolution was also

¹⁸⁹ See for example: ABRvS 5 July 1982, RV 1982/16.

taking place within post-war Dutch society. As the post-war Dutch Welfare State reached maturity, new forms of interdependency between the breadwinner-citizen and the Dutch state were being forged, softening and in the end eliminating financial dependency on religiously motivated charity. While initially, religious institutions and affiliated organisations had been engaged in restoring moral order following the war, this form of engagement in family welfare later became taken over by professionals, paid by the Dutch state. These state-sponsored social workers started to promote the national community as a source of collective welfare and the concept of national solidarity as an emancipatory alternative to religious charity.

By the mid 1970's, maintaining Christian family norms as a criterion for inclusion into and exclusion from the nation had therefore become doubly incongruous—both because these norms had lost their validity, in the international context, as a "measure of civilisation", and because their validity was being challenged within Dutch society itself. But if there was a growing agreement to reject the moral dominance that the religious columns had held over the personal lives of the Dutch nation's citizens, there was no consensus yet regarding an alternative moral regime for regulating family relations.

As seen in Chapter One, the dominant political parties: the Dutch Labour Party and the CDA, presented the nuclear family as the natural site for both the physical and the moral generation of a new, integrated version of the Dutch nation. For the Dutch Labour Party it served as a metaphor for a new model of national solidarity, while for Christian Democrats, it could serve as the moral touchstone of a national identity still grounded in the shared Christian value of altruism, but no longer fought over by competing religious columns.

At the same time however, there was a growing tension between this continuing adherence to the nuclear family as the "cornerstone of society" and the more liberal aspirations of the Dutch Welfare State that focussed on individual rights. This became evident as the scope of national welfare services and benefits expanded to include singles and divorcees, while family law reforms helped lift the taboo on divorce. Once they had access to the material means that could enable them to experiment with alternative forms of family life, men, women and adolescents seized their chances to expand the scope of their personal freedom.

New Challenges to the Control of Family Migration

In the course of the 1970's, rules regulating inclusion into the Dutch nation had to be adapted to meet the ideological exigencies of contested family norms, as well as those of decolonisation and the concomitant rejection of racism. In contrast to what had happened during the decolonisation of Indonesia, family migrants who applied for admission after the decolonisation of Surinam were not necessarily excluded on the grounds of formal family status. Unmarried partners and their children could qualify for admission for purposes of family reunification. In the wake of these measures, specifically introduced for family migrants from Surinam, family migration was opened to unmarried couples in general—providing new ammunition for those activists campaigning for more legal recognition and facilitation of non-marital relationships within Dutch society.¹⁹⁰ Not only did the contested nature of family norms in the Netherlands make it problematic to exclude migrants on account of their family norms; the growing acceptance of the validity of “non-Western” cultures also provided new arguments for challenging dominant family norms in the Netherlands.¹⁹¹

The growing concern regarding the status of ethnic minorities within Dutch society had other implications as well for Dutch immigration law. As seen in Chapter Two, a technique for excluding migrant workers from definitive inclusion in the Dutch nation had been to prevent or at least delay family reunification, thus hindering these migrants' participation in Dutch society as breadwinner-citizens. Increasingly however, this form of exclusion came into conflict with the egalitarian aspirations of the Dutch Welfare State. By 1975, the Dutch government had to accept a moral obligation to facilitate family reunification among those labour migrants who had decided to settle permanently in the Netherlands. Moreover, as pressure to redress gender discrimination increased, women were finally enabled in 1979—albeit somewhat grudgingly—to bring family members to the Netherlands on the basis of the same criteria as those that applied to men. By 1985 women and men had also acquired equal rights under the regime of Dutch nationality law, so that all children born of a Dutch mother now acquired Dutch nationality, regardless of their father's country of origin.

¹⁹⁰ See for example: Van de Wiel 1974, p. 39.

¹⁹¹ Verlegh et al 1984 referred explicitly to the acceptance of polygamy among certain ethnic minorities in the article they wrote debunking marriage as an institution. See further Chapter One.

Finally, restricting migration through the manipulation of time and/or space had also become more problematic. As a point of destination, the Netherlands was relatively accessible for many of the people migrating there during the 1970's and '80's, this given the fact that they originated from the Mediterranean area. But thanks to the advances in international travel, even those coming from farther afield were better able to reach the Netherlands on their own resources than those wishing to leave the (former) Dutch colony of Indonesia had been in the period immediately following the war.

At the same time, the decline in racist ideology together with the growing acceptance of the social democratic ideal of equality made it difficult to justify making distinctions between formal citizens and foreigners settled within the nation's borders. The official assumption that large groups of immigrants, namely: the Moluccans, the Surinamese and the labour migrants originating from the Mediterranean area, were all poised for return to their countries of origin and could hence be kept to the margins of Dutch society, was no longer tenable. Under pressure from active members within these immigrant groups and their Dutch allies (political parties, Women's Shelters, NGO's active in the fields of migration issues and anti-racism) the Dutch government was forced to revise its position and accept that these immigrants, having become rooted in Dutch society, were to be accepted as full members of Dutch society.

Taken as a whole then, the profound shifts that had taken place in the normative landscape of the Netherlands, along with technological changes making international travel more broadly accessible, raised serious challenges to the regulation of family migration to the Netherlands.

New Techniques of Inclusion and Exclusion

The period between 1975 and 1990 was characterised by a deepening economic crisis in the Netherlands, social unrest and the emergence of a small but alarmingly racist political movement. In this context of social and political tension, pressure to restrict labour migration from outside of the European Community increased, resulting in stricter regulation. In order to also be able to control the number of family migrants entering and staying in the country, new techniques for excluding family migrants also had to be devised, now that the old ones were proving to be either unacceptable or ineffective.

One of the new techniques that were deployed was to apply substantive family norms in the stead of the former more formal ones. Immigrant men and women in the Netherlands who wished to bring over their spouses

and/or children not only had to prove that they could provide the necessary financial means and suitable housing, they now also had to prove their relationship was a lasting and monogamous one. As an added insurance against the fraudulent use of family migration policies, family members lacking Dutch nationality were kept in a dependent position for at least the first five years of their stay. Although Dutch women with foreign family members continued to be exempt from income and housing requirements, they too had to accept state scrutiny of their family lives to a degree that would have been deemed unacceptable under the norms of Dutch family law of the time—although, as we have seen in Chapter One, there was political support in this same period for controlling the private lives of single and divorced women to prevent fraudulent claims to welfare benefits.

Although immigrants, cohabitants and women had become formally accepted as (potential) citizens, entitled to family life in the Netherlands and the full social security benefits that this entailed, their foreign (marital) partners and children were not automatically admitted, nor immediately perceived of as full and permanent participants in Dutch society. The admission of these family members was conditional and dependent. The only transnational families, who, for a while at least, remained exempt from this regime of substantively controlled relationships, were those of married Dutch men. Up until 1985, the foreign spouses of Dutch men were able to opt for Dutch nationality directly upon marrying. For the families of male Dutch citizens, formal grounds for admission still prevailed over substantive grounds for refusal. Their right to family life in the Netherlands remained unconditional. Indirectly then, the patriarchal family norms of the 1950's and 60's continued to influence family migration policies in the Netherlands throughout the 1970's and early 1980's.

As the challenge to patriarchal family norms increased under the pressure of an emerging youth culture and the second feminist wave, even a subtly patriarchal regime was likely to become untenable. As gender, marital status and nationality ceased to form legitimate grounds for refusing people rights that were accorded to Dutch male breadwinner-citizens, new grounds for exclusion would have to be fabricated. Ironically, the introduction of a minorities policy—that was explicitly intended to facilitate the inclusion of immigrants into the Dutch nation—actually helped reinstate culture as a new mode of exclusion. By focussing on minorities as ethnically distinct groups, the Dutch government signalled that for them, and the nations from which they originated, culture still

formed a coherent whole, a meaningful marker of identity.¹⁹² While family norms in the Netherlands were still being hotly debated, those of the designated ethnic minorities were presented as coherent, seamless and unchanging. Thus a distinction could once more be made on normative grounds, namely between those who still were and those who were no longer oriented towards "traditional family norms". This mark of distinction could be applied to persons residing in the Netherlands, or to family members living abroad.

This assumed divergence between mainstream Dutch society and minorities perceived of as still culturally linked to their countries of origin, may explain why in Dutch immigration law, patriarchal family notions could in fact continue to inform the substantive controls of transnational family relations, even after these norms had ceased to apply in the formal regulation of family migration. Since immigrants—and particularly first generation immigrants—were not assumed to share in the emergent Dutch ethos of individual freedom and autonomy within the family, the rights related to that ethos were apparently not deemed relevant for them either.

New Perspectives on the Integration of Family Migrants

By the mid 1980's, the Dutch government was prepared to accept that the ethnic minorities, that is the Moluccans, Surinamese, Dutch nationals from the Antilles and labour migrants from the Mediterranean area, had become a permanent feature of Dutch society. In contrast to the repatriates from Indonesia however, these groups were not assumed to have become definitively absorbed into Dutch society. The assumption that the older generation of ethnic minorities was primed for return to their countries of origin continued. But even the second generation's orientation towards the Netherlands was not taken for granted as an automatic corollary to settlement, but was seen to be a matter for public concern—something to be monitored and directed. Moreover, given the costs and efforts that this process of integration would involve, further family migration was to be discouraged. While the spouses of first generation immigrants, and any children accompanying them, were still welcome, (marriage) partners coming to the Netherlands to join immigrants of the second generation were not. Neither were children who had been left behind in their parents' country of origin or who had been sent back for whatever reason. Exclusion of these family members was justified on the grounds that they lacked the needed orientation towards Dutch society.

¹⁹² C.f. Rath 1991.

Similarly, once men and women with Dutch nationality became equally enabled, through the nationality law reforms of 1985, to settle in the Netherlands with a foreign partner and to pass on their nationality to their children, this did not result in a broader welcome for foreign family members. Instead these nationality law reforms brought the families of Dutch men to the same level of insecurity that had always marked those of their female counterparts, as well as those of migrant breadwinners. Men and women may have come to be seen as equal; marriage to a Dutch citizen, male or female, was no longer assumed to eliminate a migrant spouse's orientation towards his or her country of origin. On the contrary, the migrant spouse's assumed orientation towards his or her country of origin was now presented as a hindrance to automatic naturalisation, justifying the requirement that the couple be married at least three years, and that the foreign spouse be legally resident in the Netherlands for at least one year, before he or she could acquire the status of citizen. Certainly as telling was that children who had been born and bred outside of the Netherlands no longer shared in their parent's naturalisation.

Modes of Resistance

For the time being however, the scope for exclusion on the grounds of cultural orientation remained limited. Part of the reason was that, for lack of normative consensus over what Dutch culture actually entailed, "orientation towards Dutch society" was still primarily measured in terms of attachment to Dutch territory. If the older generation of immigrants was still assumed to identify with a certain "traditional" set of norms and values, this was because that generation was assumed to be primed for return to a location elsewhere, where the national community was still grounded in those norms and values. It was precisely because the second generation was not perceived as linked to a community abroad, but anchored in Dutch territory, that it was assumed to eventually merge with the rest of Dutch society, and to play its part in the "modern" contestation of tradition.

Similarly, the longer any immigrant had spent within Dutch territory, the more he or she was assumed to have become a participant in the national society and, on those grounds, entitled to the same rights and treatment as any other participant. Acts to exclude such a person became increasingly unacceptable. It was on such assumptions that the other main tenet of the newly implemented minorities policy—the principle of non discrimination—was after all grounded. And it was largely thanks to that

principle that opposition to further restrictions on family migration continued to be effective.

Besides the successful campaigns already mentioned in this chapter—for independent status for migrant wives and adolescents; against the discriminatory income requirements imposed upon young people of the second generation—it is also interesting to note the widespread protest that occurred against government proposals to link immigration control to social security. Because of the weakening control of immigration at the national borders, due to European integration, the coalition of confessionals and liberals in power in the 1980's suggested that officials charged with evaluating social security claims should also control the residence status of the claimants. These proposals met with furious reactions from immigrant organisations who accused the Dutch government of promoting racist distinctions and drew parallels with the pass laws still in effect in South Africa at the time. Once the proposed measures were put into effect, settled immigrants would have to show their identity papers every time they engaged with Dutch bureaucracy. Once obliged to constantly legitimate their presence, they feared they would never be accepted as an integral part of Dutch society. Thousands of people took to the street in November of 1986, and under the moral pressure of their protests, the acting Deputy Minister of Justice Korte-Van Hemel retracted her proposal.¹⁹³

In this sense, factors of time and space still played an important role in regulating family migration, but more to the advantage of immigrants seeking the right to reside than to that of the state seeking to limit claims to admission and continued residence. While the Dutch state lacked the means to prevent people from physically entering the country, once they had entered and established their physical presence, their claim to full inclusion became increasingly strong.

Moreover, the cult of personal freedom that had become prevalent in mainstream Dutch society of the time, in combination with the strongly entrenched equality principle, offered additional opportunities for transnational families to resist exclusionary measures. Married Dutch men, appealing to still prevailing notions of personal privacy, successfully resisted official scrutiny of their relationship with a foreign spouse—relieving other transnational married couples of such controls at the same time. Divorced immigrant fathers, taking their cue from their Dutch counterparts, appealed to their right to respect for family life in order to obtain the right to continued residence in the vicinity of children who were

¹⁹³ Tinnemans 1994, p. 306. See also: LSOBA 1991.

permanently resident in the Netherlands. Abused immigrant wives engaged with Dutch feminist discourse in campaigning for a stronger claim to independent status.

But at the same time, in appealing to newly won rights and freedoms within Dutch society, family migrants were also inadvertently deepening the distinctions that were being made—in the context of Dutch minority and family migration policies—between what was coming to be seen as the dominant normative order within the Netherlands and that which was assumed to prevail in ethnic minorities' countries of origin. Thus divorced migrant wives, in campaigning for rights that would protect them against deportation, helped evoke a stereotypical representation of their countries of origin as oppressively patriarchal, and of the Netherlands as a feminist haven. They thus fed the notion that ethnic minority cultures not only were distinct from the effervescence that characterised Dutch mainstream society of the time, but that they actually posed a threat to the whole notion of personal freedom.

Meanwhile, even if the *de facto* residence of immigrants had become difficult to restrain, housing requirements could and did form a major hurdle to the legal settlement of migrant families. As long as housing continued to be scarce and municipal authorities and (semi)public housing corporations controlled the distribution of the available stock, housing requirements remained an effective technique of exclusion. They too provide a striking example of how the protective mission of the Welfare State—in this case protection against overcrowded housing—could be mobilised to justify restrictive immigration policies.

By the late 1980's social relations in immigrants' countries of origin—particularly those associated with the Islamic faith—were being depicted as reminiscent of Dutch society as it had been under the tutelage of the religious columns: hierarchical, discriminatory towards women and homosexuals, highly interdependent and sexually repressive. By that time, as explained in Chapter One, national policies that had been designed to deal with ongoing tensions and inequalities between the genders and the generations in mainstream Dutch society, were being ended as part of a general move towards budgetary cuts, privatisation and decentralisation. No longer seen as issues of national concern, such tensions and inequalities were now being projected onto what was referred to as the developing world—consisting largely of former European colonies, and of those parts of the world that immigrants and ethnic minorities were associated with in the public imagination.

In the next chapter it will be observed that as divergence and contestation no longer came to be acknowledged as characteristic of Dutch society, a shared normative order once more became credible, making it possible to postulate what being "a true Dutch citizen" entailed. Also, as the contours of this new normative order started to take shape, the notion of a threat to that order would also become more credible, allowing for a more successful deployment of normative criteria for determining who ought to be included in the nation, and who ought not.