



VU Migration Law Series No 9

## **Intimate Strangers**

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Honoured Rector, Ladies and Gentlemen,

## Introduction

The title of this talk, *Intimate Strangers*, is also the English title given to a French movie, directed by Patrice Leconte: *Confidences trop intimes*. That movie is about two people who meet by accident as complete strangers, and subsequently became intimately involved with each other. I wish to talk to you today about a reverse process: how people who are intimately related can be designated as strangers by nationality and migration law, and what this implies for their mutual relationship.

I want to start with an example that shows how intimacy and the divide between citizen and stranger can intersect, and how problematic and unstable such points of intersection can be. I shall subsequently place that example in an historical context, to give more profile to the normative issues that current Dutch migration policies raise, and explain why I believe these are urgent. I shall then explore these issues on a more theoretical level, with the help of a couple of images, in search of an alternative perspective. I shall end by presenting my research plans for the coming years. But let me start by introducing you to an intimate stranger: John.

### *John: an intimate stranger*

John was born in 1969 in the Hague, the son of a Dutch mother and an American father. When he was eight years old, the family moved to the States, where John went to high school and college as well. In 1991 his parents returned to the Hague, and John followed a year later at the age of twenty-three.

At the time of John's birth, Dutch nationality could only be passed on by a Dutch father, not by a Dutch mother. Preserving the unity of the family was at the time a guiding principle of Dutch nationality law – and migration law as well. The dominant assumption was that family unity could best be achieved by having the entire family share in the nationality of its male head. Although Dutch women no longer automatically lost their Dutch nationality upon marrying a foreigner, their children were still assumed to bear their father's foreign nationality, and not her Dutch one. Conversely, if a foreign woman married a Dutchman, she could acquire his Dutch nationality simply by signing a declaration to that effect, and any children born out of that marriage automatically acquired their father's Dutch nationality.<sup>1</sup>

This gendered logic stood under pressure however. The second feminist wave was well under way by the late 1970's and early 1980's, and Dutch mothers were claiming the right to pass on their nationality on the same basis as

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<sup>1</sup> B. De Hart, *Onbezonnen vrouwen. Gemengde relaties in het nationaliteitsrecht en het vreemdelingenrecht*, Amsterdam: Aksant, 2003.

Dutch fathers. In December 1984 Dutch nationality law was reformed, and from then on, all children born of a Dutch parent received their Dutch parent's nationality, regardless of whether that parent was their father or their mother.<sup>2</sup> For children like John however, born before 1985, the old rule still applied. Dutch mothers were offered the opportunity to have their minor children naturalised, but they had to apply before 1 January 1988.<sup>3</sup> John's mother lived on the East Coast of the United States at the time. She was married to an academic and was well educated herself. Yet, like many other Dutch mothers, she remained unaware of these developments in Dutch nationality law. When John followed his parents to the Hague in 1992, he was still an American and by then it was too late to apply for Dutch nationality. John quickly found a job in Amsterdam with an English language bookstore. However the Dutch authorities refused to give his employer a work-permit, and in the end John was forced to leave his job.

By then, he had fallen in love with a Dutch woman, and fathered a Dutch child. But although his Dutch partner earned enough to meet the set income requirements, her contract was for less than the required year. Her employer did promise to extend her contract, but when he unexpectedly went bankrupt, John's chances of acquiring legal status suddenly evaporated. So there he was. Born and bred in the Netherlands, a native Dutch speaker, the son of a Dutch mother, with a Dutch partner and child – whom he could only support as an undocumented migrant worker. Well, some might sigh, one has to draw the line somewhere, and to be honest – they would have a point. I shall get back to that later. But now let me continue my story.

John and his partner managed to cope, largely thanks to the baby-sitting and financial support provided by John's Dutch mother and legally resident American father. And then, in 2010, Dutch nationality law changed, making it possible for people born before 1985 of a Dutch mother and a foreign father, to opt for Dutch nationality after all.<sup>4</sup> John was one of the first to do so. Apparently the Dutch government was no longer worried about “an incalculably large number of aliens” making use of this port of entry into the Dutch nation, as it had in the 1980's.<sup>5</sup> We in the Netherlands have finally gotten used to the idea that the child of a Dutch mother is as Dutch as that of a Dutch father.

### *Current family migration policies in the Netherlands*

John's story has a happy end, but this doesn't mean the tension between intimacy and alienage has been resolved in Dutch migration law. The explicitly gendered distinctions of the past have given way to new ones that, in their own way, create situations as painful and absurd as what John and his family

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<sup>2</sup> Rijkswet op het Nederlanderschap 1984, *Staatsblad*, 1984, nr 628.

<sup>3</sup> Art.27, sub 2 Rijkswet op het Nederlanderschap 1984.

<sup>4</sup> *Staatsblad* 2010, nr. 242.

<sup>5</sup> *Kamerstukken II* 1982/83, 16 947, nr. 7, p. 33 (MvA)

experienced in the not so distant past. I will name just two examples. The first has received considerable attention from the media, and many of you may be familiar with it: the introduction, in 2006, of a language and civil integration test that migrants must pass in their country of origin before they can be admitted to reside in the Netherlands. Although framed in general terms, this requirement only applies to migrant partners and spouses, and only to those coming from non-western countries and not accompanying a highly skilled labour migrant.

The second current restriction on family migration that I would like to mention has received less public attention, but is as, if not more, disruptive of family life as the “integration abroad” criterion. This particular restriction only applies to the family members of status-holding refugees, a category of residents for whom return to the country of origin is out of the question. Consequently, family reunification can only occur in the Netherlands. In accordance with EU law, refugees do not have to meet income requirements to qualify for family reunification. Nor do their family members have to take an integration test abroad or pay administrative fees. And yet in recent years around 80% of the applications for family reunification put in by family members of status holding refugees have been refused by the Dutch authorities.<sup>6</sup> Even in cases in which there are no doubts concerning the validity of the marriage and where DNA tests have proven the genetic link between parents and children, Dutch authorities have refused admission because of conflicting testimonies on details of daily life.<sup>7</sup> Of course rules can be abused, and government authorities should take measures to prevent fraud. But is it reasonable to assume that 80% of the refugees who travelled to the Netherlands on their own, often because they had to opt for dangerous routes run by smugglers, and who claim to have left a spouse and/or children behind, are all in fact single and making false claims?

Up until 1985 Dutch nationality and migration law drew a line between families along gendered lines. The wives and children of a Dutch male family head belonged to his nation, the Netherlands; those of a foreign male family head belonged to his. Nowadays these fields of law have become gender neutral. They now regulate inclusion and exclusion along different lines, that not only distinguish between families, but also cut straight through them, separating spouse from spouse and parent from child. And yet, until the mid 1990’s, protection of the family as a unit still stood solidly at the base of Dutch migration policies. Why is this no longer the case?

### **How did we reach this point?**

That was the question that I set out to answer in my book: *The Family and the Nation: Dutch family migration policies in the context of changing family*

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<sup>6</sup> Letter from the Minister for Immigration and Asylum affairs, 13 December 2012, nr. 5711168/11, in response to a request for information from Defense for Children.

<sup>7</sup> Rechtbank Den Haag, zp Amsterdam, 11 november 2011, nr. AWB 11/22096.

*norms*.<sup>8</sup> In the first chapter of that book, I discuss the changes that have occurred, in the Netherlands, since the Second World War, in dominant family norms, and what these changes have meant for the notion of the citizen as an active and responsible member of the national community. I trace how, in the period of reconstruction that immediately followed the Second World War, the Dutch established a modern welfare state that took the gendered nuclear family as its basic unit. There were two sides to this project. The first focussed on the family income; the second on a modern lifestyle.

The chief addressee of the first project was the male breadwinner and head of the family. He received the family wage and benefits under public housing, health insurance, and social insurance schemes guaranteed by the welfare state – all meant to ensure he could fulfil his financial obligations as a breadwinner.<sup>9</sup> His wife was the main protagonist of the second and parallel project of modernity. Initially through religious institutions but increasingly through secular and professional social services, it was through wives and mothers that Dutch society was groomed for the post-war industrialized consumer society. Marga Klompé, the first Dutch minister of welfare, described the mission of social services as one of helping various groups or categories who risked being left behind – and here she specifically names migrants, repatriates, refugees and so-called maladapted families – to adapt to society as a whole. Housewives – referred to as “social pace setters” – were encouraged, informed and, if need be, actively instructed in their role as home-makers, care providers and mothers of a new generation.<sup>10</sup>

Even though the work women performed in the home was not validated in economic terms, it was validated in normative terms. Although subordinate to and dependent of her male breadwinner husband, the wife and mother was, nonetheless, relevant for the notion of citizenship that he stood for. Without a family to support, a wife to groom him and a mother who could pass on the virtues of citizenship to his children, a man was no true and proper citizen. As long as the male breadwinner remained emblematic of substantive citizenship, preserving the unity of his family remained a key principle of Dutch nationality and migration law.<sup>11</sup>

In the course of the 1970s, the women’s movement started to take hold in the Netherlands. The sexual revolution took off. Legal reforms and the introduction of welfare benefits made divorce a real option, and other limits to sexual freedom were challenged: heteronormativity; parental control over the sexual freedom of minors. Marriage as an institution was put to the test. Initially,

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<sup>8</sup> Newcastle upon Tyne: Cambridge Scholars Publishing, 2008.

<sup>9</sup> J. Bussemaker, *Betwiste zelfstandigheid. Individualisering, sekse en verzorgingsstaat*, Amsterdam: SUA, 1993. R. Holtmaat, *Met zorg een recht? Een analyse van het politiek-juridische vertoog over bijstandsrecht*, Zwolle: Tjeenk Willink, 1992.

<sup>10</sup> M. Gastelaars, *Een geregeld leven. Sociologie en sociale politiek in Nederland 1925-1968*, Amsterdam: SUA, 1985, p. 177- 182.

<sup>11</sup> B. de Hart *supra* note 1.

this moral ferment did not lead to significant changes in Dutch family law, for the simple reason that debates on sexuality had resulted in a political deadlock between Christian morality, feminist ethics of care and libertarian ideals of sexual freedom.<sup>12</sup> It took considerable debate and lengthy legal procedures that went as far as the European Court of Human Rights, before a new consensus finally emerged. Once that point had been reached, legislative changes followed each other in rapid succession.

Since the early 1990s, Dutch family law has been reformed on a number of fronts. Unmarried couples can secure their mutual rights and obligations as extensively as married ones can. Same sex partners enjoy nearly all the same rights as heterosexual ones. The relationship between parents and children has been rephrased in terms that allow for various forms of parenting in various combinations and various degrees of intensity. Young adolescents have become emancipated, to a degree at least, vis a vis their parents. Dutch family law no longer takes as its point of departure a religiously determined and state supported morality, but individual tastes and inclinations – no longer prescribed but a matter of personal choice.<sup>13</sup>

These changes in family law have occurred in tandem with shifts in social policy. The focus has shifted from the family wage to the individual earnings of adult citizens, whether male or female, whether married or single. Paid labour has become the sole measure of civic participation and worth; the unpaid role of wives and mothers in the moral production and reproduction of citizenship, both through family life and through voluntary community service, has become degraded to something for on the side. It is no longer validated as a parallel – if subordinate – facet of citizenship.<sup>14</sup>

In practice, family life in the Netherlands has in fact remained generally more traditional than the laws that regulate it.<sup>15</sup> None the less, the loss of appreciation for the family as a site of care and reproduction – both in the physical and normative sense – that current regulation expresses, helps explain, to my mind, how the Dutch government has been able to legitimate the far-reaching interventions into cross-border family relations that increasingly characterise Dutch migration policy. Heterosexual marriage is no longer being enforced as the only legitimate form of family life, but neither is it being protected as an institution. Homosexuality and non-marital sex have lost their

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<sup>12</sup> Bussemaker *supra* note 9; See also G. Kooy, *Seksualiteit, huwelijk en gezin in Nederland*, Deventer: Van Loghum Slaterus, 1975.

<sup>13</sup> S. Wortmann, 'Kroniek van het personen- en familierecht', *Nederlands Juristenblad* 2000, nr.31, pp. 1584-1593.

<sup>14</sup> C.f. T. Knijn & P. Cuyvers, 'Onduidelijke signalen, duidelijke effecten: gezinsbeleid in Nederland', in: S. Grotenhuis et al. (eds) *Hoeksteen of Zwerfkei. Het moderne gezin tussen individualisering en pedagogisering*, Amsterdam: De Balie, 2002.

<sup>15</sup> M. Huisman, 'Zoeken naar de waarde van het gezin. Een geschiedenis van de Nederlandse gezinsraad', in: S. Grotenhuis et al. (eds), *Hoeksteen of Zwerfkei. Het moderne gezin tussen individualisering en pedagogisering*, Amsterdam: De Balie, 2002.

stigma, but matrimony has lost its sanctity. Man and wife are no longer brought together by God; the state can be justified in separating them in the national interest. While the relationship between parent and child still enjoys a strong degree of protection, particularly in the realm of international law, it too has become more vulnerable to state intervention. The parent-child relationship has become differentiated, based on various grounds, to be enjoyed in varying degrees of intensity and to be shared among varying coalitions of parenting adults. The complexities, choices and negotiations that this implies justify the notion that not everyone is equipped with the necessary skills and maturity to cope. Like citizenship, family life has become a matter of individual responsibility, but one that allows for and even requires monitoring by a tutorial state. Ironically, a development that started with a struggle for sexual freedom, has resulted in the creation of new vectors for state intervention in the intimate sphere, one of these being migration law.

### **Is there cause for concern?**

Mary Ann Glendon has given a detailed account of the developments that have taken place both in family law and in social policies in the United States and in a number of Western European countries since the Second World War. Reviewing these changes, Glendon remarks that ‘not one of [the]... formerly basic assumptions has survived unchanged. Most have been eliminated, and some have been turned on their heads... The past twenty years have witnessed the movement from undercurrent to mainstream in family law of individualistic, egalitarian, and secularizing trends that have been gaining power in Western legal systems since the late eighteenth century’.<sup>16</sup> Not only in the Netherlands, but elsewhere too, family laws that were originally organized around a unitary conception of the family as a heteronormative marriage-centred and patriarchal, have increasingly come to focus on the autonomous individual: sexually emancipated, gender neutral and self-supporting. In Glendon’s eyes, this raises two issues for concern, the first relates to our well-being on the personal level; the second to that of our political communities.

Regarding the first issue, Glendon warns against the material costs of devaluating the family as a social group. Families, as providers of income, care and services have always been and will most likely remain an indispensable mechanism through which people deal with the dependency of the young, the disabled and the frail elderly. But as Joan Tronto has pointed out, the shift in focus from family to individual has not resulted in states completely taking over these functions from the family as an element of public responsibility. On the contrary. If anything, issues of care and interdependency have become less rather than more prominent on political agendas. Only minimal public facilities,

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<sup>16</sup> M.A. Glendon, *The Transformation of Family Law: State, law and family in the United States and Western Europe*, Chicago: The University of Chicago Press, 1989, p. 292.



at best, have replaced the tasks of care, home maintenance and cultural transfer that former housewives used to perform before they entered the paid labour market – tasks they carried out not only in their own homes, but also beyond, as neighbours, members of an extended family or congregation, or simply as involved citizens.<sup>17</sup> In the current financial crisis, the minimal range of public substitutes that has been introduced to compensate for the loss in unpaid services, is moreover subject to cuts. Glendon worries that states have too little eye for the vital role that families still play in national societies; that states will fail to provide families with the material support that they need, and that they will neglect or even destroy social networks, special arrangements and other environmental factors that families need in order to thrive.<sup>18</sup>

Increasingly, relatively wealthy nations like the Netherlands have come to rely on poorly paid migrants to fill the emerging gaps in home-based care and home maintenance. Since the value of this work is not publicly acknowledged, neither is there any acknowledgement of those who now perform it. In the Netherlands, as elsewhere, migrants providing home-based care and household services are frequently denied legal status. This is another example of how Dutch migration law presently draws the power of the state into the intimate sphere.<sup>19</sup>

Regarding her second, more political, reason for concern, Glendon points out that families, as more or less distinct social units, form normative fields that differ from and can stand in apposition to dominant normative discourse transmitted through state institutions.<sup>20</sup> In a similar vein, Janet Finch has theorised the distinction between the private morality of extended families, and the public morality expressed through the legal context in which these operate.<sup>21</sup> As semi-autonomous normative fields, to borrow Sally Falk Moore's terminology,<sup>22</sup> families help to maintain normative pluralism and to educate a critical citizenry.

In a more philosophical vein, Isaiah Berlin has made a similar point in his well-known essay 'Two Concepts of Liberty', in which he defends the need for normative pluralism.<sup>23</sup> In his words, "The world that we encounter in ordinary experience is one in which we are faced with choices between ends equally ultimate, and claims equally absolute, the realisation of some of which must

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<sup>17</sup> J.C. Tronto, *Moral Boundaries: a political argument for an ethic of care*, New York: Routledge, 1993.

<sup>18</sup> Glendon *supra* note 16, p. 306-311.

<sup>19</sup> S. Van Walsum, 'Regulating Migrant Domestic Work in the Netherlands. Opportunities and pitfalls', *Canadian Journal of Women and the Law*, vol.23 nr. 1 (2011), pp.141-165.

<sup>20</sup> Glendon *supra* note 16, p. 298-306.

<sup>21</sup> J. Finch, *Family Obligations and Social Change*, Cambridge: Polity Press, 1989.

<sup>22</sup> S. Falk Moore, 'Law and Social Change: The semi-autonomous social field as an appropriate subject of study', *Law & society Review*, vol. 7 no. 4 (1973), pp. 719-746.

<sup>23</sup> I. Berlin, *Liberty*, Oxford: Oxford University Press, 1995, pp.167-217.

inevitably involve the sacrifice of others.”<sup>24</sup> As a result, people must make choices, and there is no single recipe for reaching the “right choice”. People choose as they do “because their life and thought are determined by fundamental moral categories and concepts that are... a part of their being and thought and sense of their own identity; part of what makes them human.”<sup>25</sup> As Berlin points out earlier in his essay, a person’s sense of moral and social identity is intelligible only in terms of the social networks in which he or she takes part.<sup>26</sup> The more these networks differ, the less consensus there will be on moral categories and concepts, but also the more scope for normative choices.

In this light, it is striking to note that, in the same period that the new individualist consensus was reached in Dutch family law, the Dutch honeymoon with normative pluralism in the form of multiculturalism came to an end. Before, in the 1970’s and 1980’s – the same period in which Dutch family norms were being hotly contested – migrants’ cultural and religious rights were barely being questioned. Nor were the cross-border family ties associated with those rights. In a context of accelerated decolonization and anti-racist activism, the dominant aspiration was to develop a multicultural society, in which no cultural tradition was promoted as superior to any other.<sup>27</sup> Migrant families were not expected to adhere to the same moral order as Dutch ones, and given the highly contested nature of Dutch family norms at the time, it is hard to see how they could have been.

Once a new consensus was reached in the field of family law, it became possible to apply family norms as a moral standard. To my mind it is no coincidence that it was in this period that a new interest emerged in defining a single standard of civic virtue as expression of Dutch national identity and guarantee for national cohesion. Having and maintaining a distinct culture as an ethnic minority was no longer seen as a right, but as a hindrance to integration.<sup>28</sup> This implied a policy of assimilation, and such a policy needed a dominant normative framework for migrants to assimilate into. This normative framework came to be expressed in the same terms that informed the new consensus in family law: equality between the sexes, sexual freedom, the individual right to choose and the individual responsibility that all this implied. As in the contemporaneous discourse on social security, in the emerging discourse on integration too, civic participation came to be primarily defined in terms of paid labour.<sup>29</sup> Issues of faith and culture were relegated to the private sphere.<sup>30</sup> Like

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<sup>24</sup> *Ibid.* p. 213-214.

<sup>25</sup> *Ibid.* p. 217.

<sup>26</sup> *Ibid.* p. 199.

<sup>27</sup> W. Tinnemans, *Een gouden armband: Een geschiedenis van mediterrane immigranten in Nederland (1945-1994)*, Utrecht: Nederlands Centrum Buitenlanders, 1994.

<sup>28</sup> *Kamerstukken II* 1993/94, 23684, nr. 2.

<sup>29</sup> Verwey-Jonker Instituut, *Bronnenstudie Integratiebeleid. Deelrapport 1: Het integratiebeleid 1970 tot 2002 op hoofdlijnen*, Utrecht: Verwey-Jonker Instituut, 2003.

<sup>30</sup> L. Mulder, ‘Hollandse nieuwe’, *Migrantenrecht* 1994, nr.8, pp. 157-162.

acts of home-based care and household maintenance, these became disqualified as facets of civic participation.

### *New lines of inclusion and exclusion*

I argue that the new, gender neutral, secular and individualist moral order that informs both current Dutch family law and the new Dutch perspective on civic virtue, has made it possible to set new parameters for inclusion and exclusion, replacing the old patriarchal ones that have become discredited. The old discredited norms are now projected onto that segment of the Dutch population that forms the chief target of restrictive family migration policies: those Dutch citizens and residents labelled as “non-western” and generally assumed to be of the Islamic faith. It is their association with a rejected normative order that justifies state interference in their family lives and the exclusion of their foreign family members.

In October of 2009, our former cabinet published a document introducing proposals to further restrict marriage migration through measures that are repressive in nature.<sup>31</sup> Besides further limiting admissions, these measures aim to tighten control and widen the scope for criminal sanctions. Some of the proposed measures have already been implemented; others will probably be implemented shortly.

In the introduction to the proposals, cross-border families, i.e. families made up of a Dutch citizen or resident and his or her foreign spouse or partner, are depicted as being patriarchal, sexist, religiously bound and gendered. The explicit assumption is that these families are formed by men of non-western origin bringing over non-western wives. *He* is lacking in the individualist spirit and self-sufficiency required by our modern, competitive and market-driven society; *she* is passive, poorly educated and submissive, incapable of raising children to join the new breed of citizens. *He* forms a threat to her emancipation, so *she* should be excluded in her own interests. *She* forms a threat to the Dutch nation’s future, so her exclusion can be justified in the national interest.

That Dutch and legally resident migrant women, too, might bring over family members from abroad to join them in the Netherlands, does not even figure in the imaginary of these proposals. Nor do same sex couples. While mention is made of men of ethnically Dutch origin marrying foreign brides, these men are assumed to do so because they expect a foreign wife to be less emancipated, more compliant, subservient and ‘willing to provide sexual services’ than a woman raised in the Netherlands. These men are in fact discredited as Dutch citizens, accused of displaying an attitude that “does not coincide with the Dutch premise of equality within marriage.”<sup>32</sup>

Because the new consensus on family norms is reflected in the new model of civic virtue, policy documents can discredit members of cross-border families

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<sup>31</sup> *Kamerstukken II* 2009/10, 32 175, nr. 1.

<sup>32</sup> *Ibid.* p. 6.

as citizens, by defining their family norms as divergent. But current Dutch discourse on cross-border families goes a step further. Not only discrediting the members of cross-border families as potential citizens, it also sheds doubt on the sincerity of their cross-border family ties. The 2009 policy document goes so far as to suggest that foreign brides are being brought to the Netherlands not for romantic motives, not even for sex, but to be put to work as unpaid domestic workers in their in-laws' homes.<sup>33</sup> In other words, the implicit claim is that these women are being trafficked as domestic workers under the guise of family reunification. The almost total refusal of applications for family reunification with status holding refugees, that I referred to earlier in my talk, is explicitly being celebrated as proof of the success of measures to prevent – among other things – trafficking in children.<sup>34</sup>

It is important to note that Dutch migration law does not disqualify all cross-border family ties to the same degree. On the grounds of EU law, economically active and/or solvent EU citizens may not be hindered in their freedom of movement within the EU, and their right to family reunification is therefore well protected. The family life of highly skilled migrants workers from outside of the EU is facilitated as well. Family migrants coming from so-called western nations like Canada, the US or Japan, are subject to less restrictions than those coming from so-called “non-western countries”. They don't have to leave the Netherlands and put in an application abroad before being allowed to stay here with their family members. Nor do they have to first pass an integration test in their country of origin. And their affective ties, and those of skilled labour migrants, to children left behind, are not subjected to the same intensive scrutiny as those of refugees.

## **What to do?**

So where does this bring us? Is it so unreasonable of the Dutch state to want to control migration, and not leave this entirely to the personal choices that citizens and legally resident foreigners make in the intimate sphere – leaving aside the very complex issue of marriages of convenience? And shouldn't we value the gains that have been made in the emancipation of women, minors and sexual minorities? What is wrong with letting the new ideals of individual autonomy and economic independence play a role in processes of inclusion and exclusion? And given that trafficking does occur, involving shocking forms of exploitation, shouldn't states take action to prevent the abuse of family migration policies for such criminal purposes?<sup>35</sup> I shall return to these very legitimate questions

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<sup>33</sup> *Ibid.* p. 6.

<sup>34</sup> Letter from Minister Leers of Immigration, Integration and Asylum Affairs of 15 February 2012, nr. 2012Z00940

<sup>35</sup> See also: E. Kleemans, *Georganiseerde misdaad en de zichtbare hand*, Den Haag: Boom Lemma, 2011.

towards the end of my talk. But first I want to make a short detour via the ideas that the artist, psychoanalyst and feminist theorist Bracha Ettinger has developed in her work on what she refers to as the “matrixial borderspace”,<sup>36</sup> to see how these might help us reconceptualise migration law.

In her work, Ettinger rejects the notion, dominant in current Western thought, that subjective consciousness can only exist and develop in radical opposition to an abstract and objectified other. As alternative she theorises subjectivity-as-encounter, the product of shared and intersubjective processes between concrete persons, producing mutual change and becoming; of, in her words, “difference based on webbing of links and not on essence”.<sup>37</sup>

Ettinger proposes that this way of thinking leads to an alternative approach to the figure of the stranger. Where according to the dominant perception we tend to make a radical distinction between the self as subject and the stranger as other, drawing a line as it were between the two, in her view what runs between the self and the stranger, is not a fixed line defining inclusion and exclusion, but a history of greater and lesser degrees of mediated interaction. In her perception the border is not a line that separates, but a shared field that joins; it is an overlapping experience that forms an integral part of the subjective experience of both the self and the stranger. This is not to say that the self and the stranger are not distinct – they are, but in relation to each other. In Ettinger’s vision, foreignness represents and is engaged in a continual negotiation without exhausting recognition, without claiming full understanding, without even expecting love and harmony, and without definite resolution.<sup>38</sup>

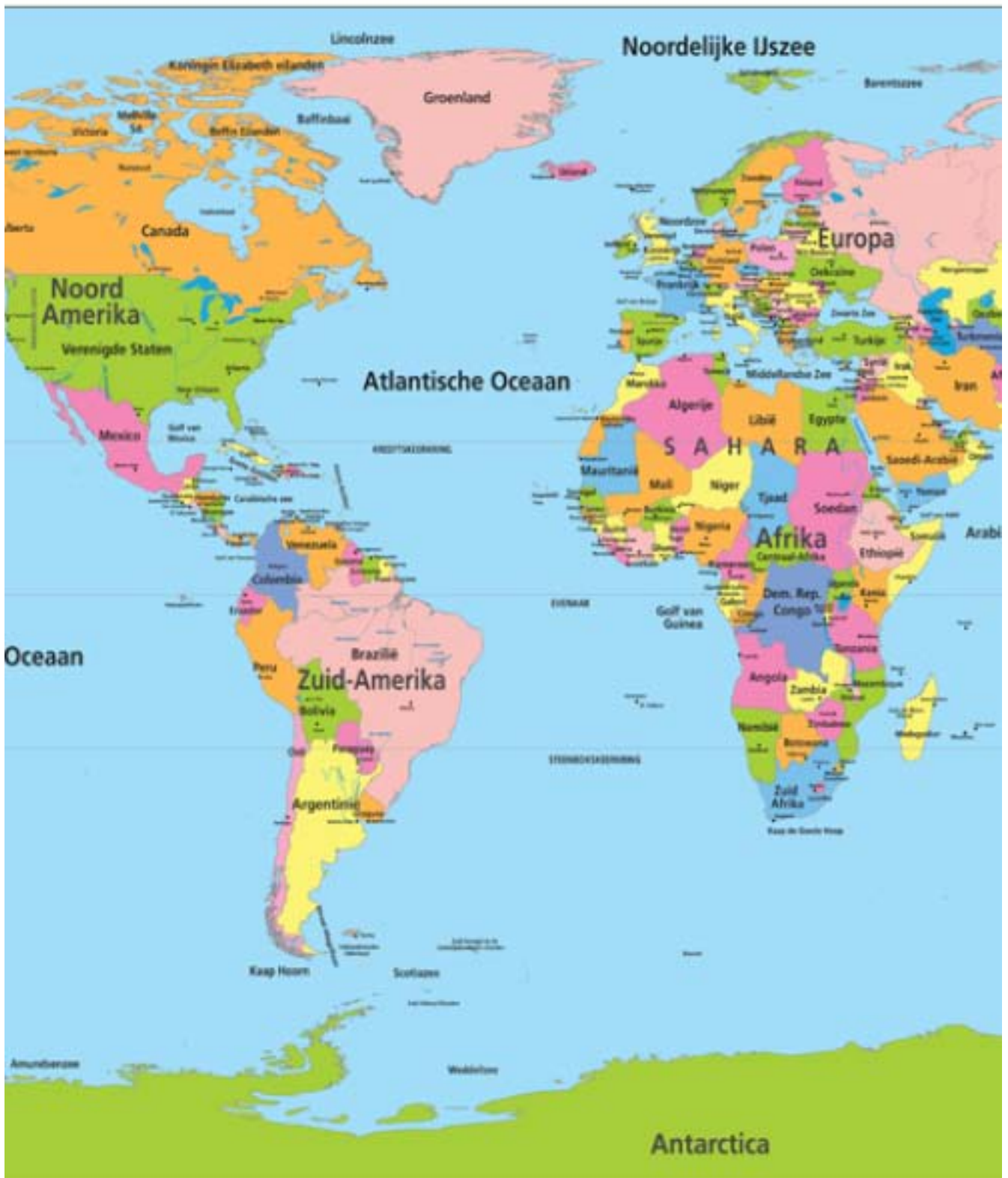
To clarify what Ettinger’s work could mean for our thinking on migration law, I would like to make use of two images, representing two different ways of thinking about the world. The first, which informs our current systems of migration law, is the familiar Westphalian perception of the world as being made up of distinct and separate sovereign nations. Each has its own shape, character and history – its own national identity – and the borders that mark its territory also serve to delineate its population. Anyone leaving one national unit to move to another must first be given official permission to enter and, having gained entry to a new territory, is expected to also merge with the new national unit. From this perspective the world is in fact viewed as a huge crazy quilt, made up of separate patches, all of the same nature but each with its own shape, colouring and specific history. Each marked *vis à vis* the others by its own embroidered border.

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<sup>36</sup> B.L. Ettinger, *The Matrixial Borderspace*, Minneapolis: University of Minnesota Press, 2006.

<sup>37</sup> *Ibid.* p. 109.

<sup>38</sup> *Ibid.* p. 110.



But how adequate is this perception of the world? If we consider our daily lives, what we eat, what we wear, the music we listen to, the programmes we watch on television, the sites we visit via internet – are these all national products of our

own native soil? And what about the people we meet on the market, in the stores, at our work, on the street, in our doctor's waiting room, on our children's school playground, in our own homes, on Facebook. Have we all lived our whole lives within one and the same national patch? Are we all part of one shared national history? Even if we go through our most intimate contacts – our mate, in-laws, friends from way back, aunts, uncles, cousins – are they all tied to the same patch of territory and history that we are? And we ourselves – how many borders have we crossed for work, study, travel – or love?

However attached we may feel to our own national patch, we are also all linked directly or indirectly to a vast number of people located on other spots on this earth, through a densely woven web of connections, movements and interactions. If we try to visualise the world in these terms, we arrive at a very different image than the Westphalian crazy quilt of nations .



This second map shows all the open flight routes of the world. The web that these form together is so dense in places that whole expanses of territory are lost from view, let alone the borders that subdivide them into nations. And it

only charts flight routes. What if we were to super-impose similar maps charting trade routes and all the lines of communication linking people all over the world: e-mail, mobile phones, Skype, social media?

If we visualise the world in this way, as one densely knotted web of border-crossing interactions, it is easier to think of the foreigner as Ettinger does, as someone who is neither cut out from the system nor assimilated to it, and who therefore cannot be articulated as a parasite and cannot be rejected.

### *Can law express an alternative perspective?*

Glendon, writing in the late 1980's, was pessimistic about the possibilities of western liberal legal theory being able to produce the concepts or the vocabulary to deal with social groups like families – let alone cross-border ones. She observed that mainstream jurists are primarily preoccupied with “individual rights, with attacking or aggrandizing the state, or with tending the machinery of bureaucracy.”<sup>39</sup>

On the level of metajudicial discourse, Glendon's observation seems to hold true for migration law. Theorists who analyse the normative dilemma's inherent to the regulation of migration consistently focus on the binary tension between the human rights of individual migrants – typically asylum seekers or labour migrants – and the sovereign right of states to protect the interests of a national citizenry. The shared interests of citizens and foreigners who together form cross-border social groups, like families, are at best mentioned as an afterthought; at worst entirely left out of the equation.

A frequently used metaphor is that of the stranger knocking at the door. Would you let a stranger into your home? is the rhetorical question.<sup>40</sup> In posing such questions, political theorists do not entertain the possibility that the “stranger” at the door might not be a stranger at all, but the parent of someone on the inside, or the spouse, or the child. Yet this is in fact often the case. In 2011, half of the applications for admission to the Netherlands were for purposes of family migration.<sup>41</sup> Moreover, empirical studies indicate that people migrating for other purposes than family reunification – labour migrants or asylum seekers for example – also tend to move to countries where they have relatives living, or close acquaintances.<sup>42</sup>

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<sup>39</sup> Glendon *supra* note 16, p. 309.

<sup>40</sup> C.f. A. Altman & C.H. Wellman, *A Liberal Theory of International Justice*, Oxford: Oxford University Press, 2009; M. Waltzer, *Spheres of Justice: A Defense of Pluralism and Equality*, New York: Basic Books, 1983; J.H.M.M. Tholen, *Vreemdelingenbeleid en rechtvaardigheid? Een wijsgerige studie naar onze beoordelingen van immigratie- en naturalisatiebeleid*. Nijmegen: Catholic University of Nijmegen, 1997.

<sup>41</sup> Annual statistics of the Dutch immigration and naturalization service IND over 2011.

<sup>42</sup> V.F. Bashi, *Survival of the Knitted: Immigrant Social Networks in a Stratified World*, Stanford: Stanford University Press, 2007; H. Crawley, S. Castles & S. Lougha, *States of Conflict: causes and patterns of forced migration to the EU and policy responses*, London: Institute for Public Policy Research, 2003.



Even scholars who are more critical of exclusionary policies, generally take the nation as a given when analysing the normative dilemmas posed by migration law. Linda Bosniak for example is well aware of the fact that many irregular migrants residing within a national territory are linked in various ways with that nation's body of citizens, and to a degree should even be identified with it. She argues that the concept of citizenship is multifaceted, including substantive elements such as civic participation, as well as the more formal ones like the possession of a passport. To the extent that irregular migrants develop the substantive qualities of citizenship, through participation as workers and consumers and through engagement with civil society, justifying their exclusion becomes more problematic, is her claim.<sup>43</sup>

However even Bosniak does not take into consideration that many persons may be tightly knitted into a nation through intense bonds of intimacy, without even having entered that nation's territory. While she concedes that the formal legal notion of nationality does not necessarily contain everyone who could or should be included as part of the national population, she fails to challenge the notion that the physical parameters of a nation's territory form an equally inadequate tool for distinguishing insiders from outsiders. Bosniak's proposed solution, to make nations "hard on the outside", and "soft on the inside", does not offer a normative framework for dealing with the fact that social relations are not contained by, but transgress national borders – not only the legal borders distinguishing regular from irregular residents, but also the physical ones that define the nation's "outside" *vis à vis* its "inside". Karen Knop's notion of relational nationality comes closer to what I have in mind.<sup>44</sup> However, by limiting her analysis to nationality law, Knop avoids addressing the challenges her approach raises in terms of migration control, i.e. for the sovereign right of the state to include and exclude non-nationals from its territory.

If we leave the realm of metajuridical discourse, and move to that of legal practice and jurisprudence, the discourse becomes more complex and more promising. On that level I believe an alternative perspective is being developed, in which legal significance is being attached to processes of cross-border interdependency and intersubjectivity. This development has its roots in family and child protection law, a field in which lawyers have worked hard to attribute a new meaning to the right to respect for family life as protected by article 8 of the European Convention of Human Rights, a meaning that differs from the original one grounded in the patriarch's right to non-intervention in his private affairs. These lawyers have worked to give expression to the normative implications of a pedagogical finding: that the parent-child relationship, as an

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<sup>43</sup> L. Bosniak, *The Citizen and the Alien. Dilemmas of Contemporary Membership*, Princeton: Princeton University Press, 2006.

<sup>44</sup> K. Knop, 'Relational nationality', in: T. Aleinikoff & D. Klusmeyer (eds), *Citizenship Today: Global perspectives and Practices*, Washington: Carnegie Endowment for International peace 2001, pp. 89-126.

interactive and intersubjective process, impacts upon the development of a child's subjectivity. An important insight that has come to inform this jurisprudence, is that family life is not only about financial support, the exercise of parental authority, and the provision of care, but that it is also about the development of personal identity.<sup>45</sup>

From family and child protection law, this insight has spilled over to migration law, as lawyers have given legal meaning to the implications of restrictive migration policies for the family life of geographically separated family members.<sup>46</sup> In the process, this case law, besides highlighting the significance of family life for the rights of the child, is also starting to theorise how the affective bonds and the related commitment to, and responsibility for, the provision of material support and care that family life implies, relate to the human dignity of mature adults. If we bear in mind that article 2 of the first protocol by the European Convention of Human Rights obliges member states, in all matters related to education, to respect the right of parents to ensure the education of their children is in conformity with their own religious and philosophical convictions, it becomes clear that – as Glendon observed – respect for family life and an openness to normative pluralism are closely related – a point also brought home to me by one of my PhD students.

I shall quote a few examples from the case law of the European Court of Human Rights (ECtHR) to elucidate these developments, and show how I believe they contribute towards a concept of the right to respect for family life that is both intersubjective and transnational and, as such, challenges the dominant perspective on migration control that takes as its point of departure the human rights of the individual migrant versus the national interest defended by the sovereign state.

### *Cross-border family life in the case law of the ECtHR*

In December 2001, the ECtHR passed judgement in the case of the family Sen versus the Netherlands.<sup>47</sup> This case concerned the Turkish girl Sinem Sen who, at the age of nine, applied for admission to the Netherlands to join her parents there. The Netherlands had refused admission on the grounds that the child had already spent six years in Turkey, separate from her parents. In the eyes of the Dutch authorities, the relationship between Sinem and her parents was no longer such that it could justify admission on the grounds of family reunification. The unanimous judgement of the ECtHR that the Dutch state had violated the right to respect for family life of Sinem and her parents, came as a surprise in the Netherlands, since all previous procedures in similar cases had ended in favour

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<sup>45</sup> ECtHR 13 July 2006, nr 58757/00, *Jäggi v. Zwitserland*; EHRM 20 December 2007, nr. 23890/02, *Phinikaridou t. Cyprus*.

<sup>46</sup> Pathbreaking case in this respect was that of *Berrehab v. the Netherlands*, ECtHR 21 June 1988, nr. 10730/84.

<sup>47</sup> ECtHR 21 December 2001, nr. 31465/96 *Sen v. The Netherlands*.

of the Dutch state. As I have argued elsewhere, the judgement in the *Sen* case is in fact ambiguous and subject to various interpretations.<sup>48</sup>

The reason I refer to the *Sen* case now, is the explicit reference that the ECtHR makes in this immigration law case to previous judgments in family and child protection law. In reference to that case law, the ECtHR makes the point that a young child has a pressing need to be integrated into her parents' family, and that states have the obligation to facilitate this as long as the parents are willing and able to care for the child. The ECtHR moreover acknowledges that family life is a dynamic process, and that the decision of parents to leave their child in the care of others at one point in time should not jeopardise their right to bring the child back into their own home at a later date. Where in its earlier judgments on migration law the ECtHR had prioritised states' right to regulate migration, in this case the child's interest in sharing family life with her parents trumped state sovereignty.

The next case I wish to refer to, concerns an Afghan woman who was admitted to the Netherlands as a refugee, and her three children who ended up in a refugee camp in Pakistan and subsequently applied for admission to join their mother in the Netherlands. The Dutch government contested the admissibility of the children's complaints, arguing that – since they resided in Pakistan – these children fell beyond the Dutch state's jurisdiction. The ECtHR ruled however that, as regards family life, no distinction can be drawn between those applicants living within the borders of a member state and those residing elsewhere.<sup>49</sup> In other words, what is at stake is not separate individuals' distinct subjective claims to respect for family life, but the intersubjective claim to respect for family life which is shared by all the family members involved, not only those residing within the member state's realm of jurisdiction, but also those who may be residing abroad.

This awareness that family life is intersubjective is particularly explicit in the case law of the ECtHR on protection against inhuman or degrading treatment. In such cases, the ECtHR has ruled that, when one family member is threatened with execution or made subject to any other form of inhuman treatment, his or her family members are violated in their human dignity as well.

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<sup>48</sup>S. van Walsum, 'Comment on the *Sen* Case. How wide is the Margin of Appreciation Regarding the Admission of Children for Purposes of Family Reunification?', in: *European Journal of Migration and Law*, vol. 4, nr. 4, pp. 511-520..

<sup>49</sup> ECtHR 20 October 2005, nr. 8876/04, *Haydarie v. The Netherlands*.

Because of their shared intimacy, each family member shares in the inhuman treatment inflicted upon the others.<sup>50</sup>

In 2006, the ECtHR ruled in the case of a Congolese refugee residing in Canada, and her five year old daughter Tabitha. Together with an uncle who was trying to bring her to her mother in Canada, Tabitha had been arrested at the Brussels airport for travelling under false papers. After having sent the uncle back to the Netherlands, where he had been admitted as a refugee, the Belgian authorities placed Tabitha in alien detention and subsequently deported her back to Kinshasa, without taking proper measures to ensure she would be looked after on arrival. Neither did the Belgian authorities inform the child's mother of the impending deportation, let alone consult her on it. The ECtHR ruled that Tabitha's detention and subsequent deportation not only amounted to inhuman treatment of the child herself, but of the mother as well. By neglecting to consult the mother, the Belgian authorities had failed to take into account her sentiments and the responsibility that she bore for the welfare of her child. They had ignored an essential aspect of her identity as a mature adult; of her humanity. Their treatment of her was inhuman. In reaching this conclusion, the ECtHR explicitly took the proximity of the family tie into consideration, attaching a certain weight to the parent-child bond.<sup>51</sup>

I see in this case-law the start of a vocabulary and concepts that can give legal significance to the intersubjective experience of family life in a cross-border context. Although the Tabitha case remains exceptional, the ECtHR has ruled in at least two other cases that whenever a member state decides on the expulsion or (re)admission of an alien, it must weigh the implications of that decision for the family life of those involved against the national interest.<sup>52</sup> Although member states enjoy a wide margin of appreciation in immigration affairs, they must assess the impact of their decisions on the family life of those involved – including those living abroad. A complete lack of such an assessment will always mean a violation of the right to respect for family life.<sup>53</sup>

### *There is no final solution*

I now wish to return to the questions I raised earlier. What about the need to protect gains made with respect to women's emancipation, children's rights and sexual freedoms? What about the security, distributive justice and democratic rule that a nationalist paradigm, and notions of state sovereignty and national self-determination, support? We need to acknowledge that both of the images that I have projected here are just that: images. They are ways in which we can

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<sup>50</sup> ECtHR 8 November 2005, nr. 13284/04, *Bader v. Sweden*, published with comment by Battjes in *RV* 2005/4; ECtHR 22 June 2006, nr. 13178/03, *D. v. Turkey*.

<sup>51</sup> ECtHR 12 October 2006, nr. 13178/03, *Mayeka & Mitunga v. Belgium*.

<sup>52</sup> ECtHR 12 February 2009, nr. 2512/04, *Nolan v. Russia*; ECtHR 28 June 2011, nr. 55597/09, *Nunez v. Norway*, to be published with comment by Ismaili in *RV* 2011/20.

<sup>53</sup> ECtHR 27 September 2011, nr. 39417/07, *Alim v. Russia*.

perceive the world; we must be careful not to equate them with the reality that they reflect. Nor should we assume one image is more “true” than the other. Ettinger in fact does not claim the form of consciousness that she theorises is any more real or valid than the dominant notion that subjective consciousness depends on radical separation between the subject and objectified others.<sup>54</sup> She does postulate that our understanding of what it means to be human will be more complete if we accept that, next to a subjective consciousness of the self as separate from the other, there is also a shared and intersubjective consciousness of the self as not separate from, but the product of interaction with, others.

The fact that perspectives can supplement each other does not mean they can be easily reconciled with each other. In fact, Ettinger theorises that it is virtually impossible to engage in an intersubjective mode of consciousness while at the same time being conscious of the self as a separate subject, and vice versa.<sup>55</sup> Similarly, while picturing the world as a vast web of cross-border interactions helps us visualise the experience of transnational connections, it distracts our attention for the fact that many people derive important forms of security from picturing the world as a crazy quilt of self-defined and self-contained nations. The idea that all citizens of a given nation are equal before the law; that a national government should guarantee its citizens certain minimal social rights; that as a citizen one is entitled to participation in the democratic mode of national government.

Glendon concedes that, while meaningful freedom cannot be achieved in a society of isolated individuals, social groups like families have their dark side that is difficult to reconcile with individual autonomy – a fact the ECtHR too has readily acknowledged.<sup>56</sup> As Glendon points out, families and tight-knit communities can be hotbeds of inequality and constraints. Moreover, she observes, we must assume that any legislative efforts made by states on behalf of social groups like families would be carried on with close attention to such matters as how the group’s internal functioning comports with widely shared values, or the values to which the political regime is committed.<sup>57</sup> However essential they may be for human reproduction in physical, social and moral terms, social groups like families can also form a threat to individual autonomy, and a challenge to legitimate state sovereignty grounded in national democratic institutions. To once more quote Isaiah Berlin, we do well to acknowledge that human goals are many, not all of them commensurable, and in perpetual rivalry with one another.<sup>58</sup> So the point is not to replace dominant legal discourse in migration law with another, expressing Essinger’s perspective, but to develop an

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<sup>54</sup> Ettinger *supra* note 36, p. 109.

<sup>55</sup> *Ibid.* p. 110.

<sup>56</sup> ECtHR 14 June 2011, nr. 38058/09, *Osman v. Denmark*, to be published with comment by Arbaoui in *RV* 2011/19..

<sup>57</sup> Glendon *supra* note 16, p. 310.

<sup>58</sup> Berlin *supra* note 23, p. 216.

alternative legal discourse inspired by her perspective, that can challenge the dominant one and engage with it in constructive dialogue.

*Legal science as crucible of competing perspectives*

The fact that family ties must always be taken into consideration in migration law does not mean these ties will always trump a state's sovereign right to control migration – far from it, any more than that the fundamental rights of an individual family member must necessarily give way to another family member's claim to family life. The emerging legal vocabulary that gives expression to the intersubjective field of family life does not disqualify the concept of state sovereignty or that of individual autonomy. What it does do, is start to enable us to negotiate the tensions between the two perspectives theorised by Ettinger, between that of the subject separated from, and that of the subject linked to, the other; between a crazy quilt of nations and a world-wide web; between John as the American alien, and John as the son, husband and father of Dutch citizens.

But anyone who has ever taken part in any form of negotiation, knows this involves more than mastering the vocabulary and concepts needed to express one's own point of view and being able to understand and respond to that of one's opponent. The outcome of negotiations also depends on issues of power, possible alliances, strategic insight and contingency. How changes in vocabulary and concepts affect the negotiating process, and to whose advantage, is not predetermined but dependent of many factors. To understand law as a social process, we must go further than to study legislative texts and case law. While the case law of the ECtHR offers a starting point for developing a vocabulary and concepts that can validate cross-border family ties, it also gives expression to competing interests and alternative perspectives that can eclipse this potentially transnational perspective. An emerging discourse on private life grounded in a given locality, for example, may reaffirm the notion that modes of belonging are necessarily linked to national territory.<sup>59</sup> Meanwhile, next to the ECtHR in Strasburg, the European Court of Justice in Luxemburg is starting to play an increasingly prominent role in migration law. Although article 8 of the European Convention is relevant for its line of jurisprudence, it is none the less developing this in a very different direction from that of the Strasburg court, focussing less on family ties as an aspect of human dignity, and more on their role in facilitating the freedom of movement within the EU, and the production and reproduction of EU citizenship.<sup>60</sup>

I started this talk with a short historical sketch of how Dutch family norms, integration policies and migration law together changed within the

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<sup>59</sup> C.f. B. Aarrass, 'Artikel 8 EVRM als middel tegen uitzetting', in: *Asiel & Migratierecht* 2010/4, p. 176-184, 2010.

<sup>60</sup> See for example EU Court of Justice 15 November 2011, C-256/11, *Dereci*, and comment of Groenendijk published in *JV* 2012/6.

shifting contexts of post-war reconstruction, decolonisation and globalisation. Without these insights, it is difficult to understand why John was originally defined as an alien but has now been allowed to transform himself into a born and bred Dutchman. To better understand how the tensions between competing perspectives on cross-border family relations are now being negotiated, and to anticipate how these negotiations might or might not be affected in the future by an enrichment of the vocabulary and concepts in play, we need insight into the shifting context in which those negotiations take place.

As an academic discipline, law is ambivalent in that it implies both an internal and an external perspective.<sup>61</sup> The internal perspective requires an encyclopaedic knowledge of rules and judgements, on different levels of jurisdiction, concerning a specific legal question. It calls for an overview and critical appraisal of all the argued positions at stake, as well as insight into their logical coherence and inconsistencies, and the ability to synthesise the whole and provide a convincingly motivated assessment. The external perspective requires insight into the cultural, social, political, economic and psychological dynamics that, together with law's own vocabulary and concepts, drive the production of legal norms. While different authors have acknowledged the need to study law from both an internal and an external perspective, few if any have succeeded in doing justice to both at once. To do so is in fact difficult, since an internal perspective, that assumes the coherence of law's logic, seems to preclude external explanations for the shifts in that logic, and vice versa.

Like the two modes of consciousness theorized by Ettinger, like the alternating perspectives of a crazy quilt of nations and a world wide web of relations – the internal and external perspectives on the law are equally valid, yet irreconcilable. Again, the solution is not to abandon one in favour of the other, but to foster and maintain the friction between them. In my view, the inconsistencies, tensions and contradictions inherent to legal science are not weaknesses that disqualify it as an academic discipline. On the contrary: they shape the crucibles in which normative hypotheses can be put to the test. To quote a judge cited in Ashley Terlouw's PhD study on the tension between judges' moral autonomy and the principle of legal certainty and coherence: a judge who has never had a judgment overruled in appeal, is simply not a good judge.<sup>62</sup>

## **Plans for the future**

Well over a year ago, on Saint Valentine's Day – a coincidence? – I received the news that I had been granted a VICI grant to run a five year research project:

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<sup>61</sup> H. Willekens, *Vrouwelijkheid, mannelijkheid en recht. Theoretische verkenningen*, Antwerpen: Kluwer, 1991.

<sup>62</sup> A. Terlouw, *Uitspraak en afspraak. Samenwerking tussen vreemdelingenrechters bij ontbreken van hoger beroep*, Den Haag: Boom, 2003, p. 177.

Migration Law as a Family Matter. This grant has made it possible for me to hire three PhD students and a post-doctoral researcher, and to continue working on research of my own. This forms a unique opportunity to work out ideas I have presented to you today:

- to mine the case law in family and child protection law for more vocabulary and concepts that can be used in migration law to give substance to the notion of cross-border family ties;
- to consistently look for and contrast perceptions of the family as an intersubjective normative field that links people across national borders, and perceptions of family norms as a marker of national difference;
- to place the Dutch case in the broader context of the European Union and the affiliated projects of freedom of movement and EU citizenship;
- to connect scholarship on migrant domestic workers with that on cross-border family relations and migration law;
- to continue relating the dynamics of migration law to the ongoing struggles, in other fields of law and policy, between individual, family and state.

Since September of last year, four talented and enthusiastic researchers have joined me here at the Migration Law section of the VU Legal Faculty: two lawyers and two social scientists. Nadia Ismaili is contrasting the human rights position of Dutch citizens with Dutch parents or children with that of Dutch citizens with foreign parents or children: do they have equal claims to social-economic rights, to the right to respect for family life and to protection against inhuman treatment? Younous Arbaoui is exploring how tensions between individual, family and state are being negotiated, by studying this process through the magnifying glass of asylum law – in which family violence figures as a form of persecution on the one hand, and family relations as a major source of security in failed states on the other. Johanne Søndergaard is doing comparative research on the relative significance of the breadwinner norm in national family values, social policies and migration law throughout the EU, questioning how possible differences might impact upon the project of the harmonisation of family migration law; Jill Alpes will do ethnographic research on domestic workers and the global care chain and critically assess current debates on migration and development in the light of her findings. I myself shall revisit the history of Dutch family migration policy since the second world war, and explore how shifts in the distribution of reproductive labour between family, market and welfare state have related to changes in the admission and continued residence rights of migrant spouses, extended family members and domestic workers.

Each of these five projects focuses in one way or the other on tensions between individual, family and state, and on the role of migration law in



mediating these tensions, but they also differ in various ways. First: the differences in methodology: legal, sociological, ethnographic and historical. Second: shifts in the jurisdictional level of analysis: national, EU or international. Finally, variations in perspective. Where Nadia's project will focus on the need to protect family life, that of Younous will draw attention to the shadow-side of family life and to the dilemmas that states must face in trying to do justice, through international law, to both family life and individual autonomy. Where my own historical work will focus on the varying ways in which the Dutch state has negotiated these tensions, Johanne's comparative sociological work will study the relationship between state regulation and experienced norms within differing national contexts. Finally, Jill's ethnographic work, in focussing on the lived experiences of migrants, will place the tensions under study in a global context. She will moreover bring transnational normative fields into the equation, placing national state regulation in yet another light. Through daily conversations and monthly walks, we can confront each other with our respective disciplinary strengths and weaknesses and our varying perspectives. In this way, the project as a whole seeks to reflect the strength of law as a discipline, namely its constant exposure of argument to counter-argument in its never ending search for the most convincing one.<sup>63</sup>

Recently we launched a website to report on our research project. In the course of the coming years, we shall be holding numerous seminars and organising two conferences. As our project becomes more solidly enmeshed in an expanding world wide web of researchers and practitioners, the possibilities for further research will become enriched in ways that, at this point, are impossible to predict. The broader context in which migration law regulates processes of inclusion and exclusion will moreover continue to surprise us with unexpected changes in policy and jurisprudence, raising new issues and solving old ones. But one thing I do know. As long as people choose to engage in family life, as long as people stay on the move, and as long as the nation remains the chief unit of political organisation, intimate strangers will continue to confront us with the tensions and contradictions inherent to the regulation of human mobility.

## **Words of thanks**

Speaking of processes of interdependency and intersubjectivity – research is certainly one of them. Without the help of many others, I could not stand here today. My thanks to the Board of Directors of the VU University and Hogeschool Windesheim, and to that of the law faculty, for my appointment. Particular thanks to the department of constitutional and administrative law, for

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<sup>63</sup> C.f. Sanne Taekema, 'Relative Autonomy. A Characterization of the Discipline of Law', in: Bart van Klink & Sanne Taekema (eds.), *Law and Method*, Tübingen: Mohr Siebeck 2011, p. 33-52; B. Latour, *La fabrique du droit*, Paris: La Découverte, 2002.

offering me a permanent position here so that I could set root as a researcher and develop my line of enquiry. My thanks as well to the Netherlands Organisation for Scientific Research, NWO, that provided grants at crucial moments!

A very special thanks to my colleagues at the Migration Law Section. Together we have managed to generate an environment of enthusiasm, inspiration and professional rigor that in my experience is very unusual and is truly priceless. Without you as an intellectual community, I could never have succeeded in pulling in those grants! And thanks to Maja Grcic and her colleagues at the subsidy desk. I have had experience applying for grants with and without their support, and believe me, their guidance makes a world of difference.

Nadia, Younous, Johanne and Jill – we are already off to a great start. It has been exciting to see how all of you have moulded your research questions to match your own interests and talents – and to see how you yourselves have grown as researchers and academics just these past nine months. If you have learnt half as much as I have, then that in itself is cause for celebration. I very much look forward to continuing our journey together in the years ahead.

Colleagues of the department of administrative and constitutional law: I have always felt very at home in this department and especially appreciate the well-maintained tradition of lunching together and holding spontaneous happy hours at the end of the week – even if I have been a very poor participant during this past year. I promise to better myself on that score! And a big hug for Els. Whatever will become of us when you retire?

Man, Nell and Eric – it's so great to have you here. Speaking of transnational family ties – what more is there to say?

Last but not least, my Boys: Ruud, Cees, Ewout. Here I reach the point of saying what, in the words of the Danish grooks writer Piet Hein, is easier done than said.

Honoured Rector, honoured guests, it's time I wrap up. I thank you all for your attention.

I have spoken. Ik heb gezegd.

## **Intimate Strangers: Intieme vreemden**

Nederlandse samenvatting

In politiek-filosofische discussies over het migratierecht worden doorgaans de individuele rechten van de vreemdeling geplaatst tegenover het algemene belang van de natie. Hiermee wordt echter een belangrijk gegeven over het hoofd gezien, namelijk dat de vreemdeling meestal geen vreemde is voor de nationale samenleving. De helft van de vreemdelingen die om toelating vragen tot Nederland zijn (huwelijks)partners, kinderen of ouders van Nederlanders of in Nederland gewortelde migranten. Ook mensen die migreren voor werk of voor asiel, vertrekken meestal naar een land waar zij al familie hebben wonen.

Ons wereldbeeld bepaalt hoe we over het migratierecht denken. Wij zijn gewend de wereld te verbeelden als een soort lappendeken: ieder land een apart lapje, met zijn eigen karakter en geschiedenis. Maar we kunnen ons de wereld ook anders voorstellen, bijvoorbeeld als de kaart waarmee een vliegmaatschappij zijn vluchten toont – geen lappendeken maar een netwerk van verbindingen. Deze twee wereldbeelden staan haaks op elkaar, en toch zijn ze beiden even valide. Voor een rechtvaardige en doeltreffende regulering van migratie, is het van belang beiden tot hun recht te laten komen.

Jurisprudentie over het recht op respect voor het gezinsleven vertolkt een alternatief perspectief dat grensoverschrijdende familiebanden voorop stelt, in plaats van deze te veronachtzamen. In mijn onderzoek bouw ik voort op deze ontwikkeling, door familieverbanden steeds centraal te stellen, niet alleen bij gezinshereniging, maar ook bij arbeidsmigratie en asiel. Om te waken tegen eenzijdigheid van mijn kant, betrek ik hierbij onderzoekers uit verschillende disciplines, en tracht ik ruimte te scheppen voor de concurrerende perspectieven van individu, familie en staat.





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