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Periodisation

To facilitate the making of comparisons and the drawing of parallels, both the history of Dutch family law and that of Dutch nationality and immigration law will be divided into the same three periods. The first period coincides with the consolidation of the Dutch national Welfare State during the years of post-war reconstruction and decolonisation: 1945 to 1975; the second, with debates concerning the Dutch Welfare State's normative foundations, which coincided with the world-wide recession of the 1970's and early 1980's; the third with the restructuring of the Dutch Welfare State at the close of the twentieth century.

In terms of changing family norms, the first period was one of moral reconstruction, in which the traditional, religiously inspired foundations of family relations in the Netherlands were confirmed and modernised at the same time; the second represents a transitional period in which family norms were heavily contested; the last a period of renewed consensus in which Dutch family law was re-codified.

In the field of immigration law and integration policies the first period witnessed large and complex demographic shifts following the disruptions of war and decolonisation and the subsequent reconstruction effort; the second coincides with a period of normative pluralism and confusion in which the former Dutch empire was adjusting to a new world order abroad and social ferment at home; the third coincides with both a renewed sense of Dutch identity and a growing commitment to international market forces.

In the final concluding chapter, the history of changing family norms and nationality and immigration law in the Netherlands during the second half of the twentieth century will be analysed in the light of Stoler's theory. An answer will be sought to the question if and to what extent a new technology of exclusion has been produced, suited to a context of globalisation as described by Sassen, and further, if and to what extent the "sedimented knowledge" of the colonial past has informed the production of any such new technology.

CHAPTER ONE

CHANGING FAMILY NORMS AND DUTCH FAMILY LAW 1945-2000

A: 1945-1975: Post-War Reconstruction of the Dutch Welfare State

By the end of the Second World War the Netherlands was in ruins. More than 10% of the country's agricultural land had been rendered useless. There was an estimated shortage of 300,000 homes and 13% of all registered households lacked a home of their own.¹ Public transport facilities had been virtually wiped out and many factories were in shambles. The national income had dropped by 25%. Inflation was rampant and the national debt had risen from 4 billion guilders (before the war) to more than 13 billion guilders.² As an added blow, the Dutch East Indies, an important source of natural resources for Dutch industry as well as a major export market for its products and surplus labour, had announced its secession.

Although some speculated, during the first heady months after liberation, that this might be the moment for radical political changes, it soon became clear that the newly installed Dutch government, which included ministers of both confessional—largely Catholic—and socialist background preferred restoration to revolution. Private enterprise was still to be the mainstay of Dutch economy.³ However, given the desperate state of the Dutch economy at the time, centrally imposed emergency measures could not be avoided. Measures had to be taken to ensure a reasonably fair distribution of the most basic commodities, which were still in short supply. At the same time, inflation had to be tackled while considerable investments had to be made to stimulate production. Meanwhile a soaring birthrate (nearly twice as high as before the war) and the return of

¹ Gastelaars 1985, p. 109;

² Klein 1981, p. 94

³ Bosmans 1981, p.29-54.

hundreds of thousands of war victims both from Germany and from the Dutch East Indies added to the already pressing housing shortage.⁴ The sudden increase in population also helped fuel fears of massive unemployment.

The government devised a central plan, more in a spirit of pragmatism than conviction, and set up new institutions to ensure that both business and labour would be involved in the planning process and its execution.⁵ For the time being, essential commodities still had to be rationed. New, devalued currency replaced the old inflated one. Salaries were frozen, rents were controlled and all candidates for a new home were put on a waiting list. Private capital was heavily taxed. All these efforts however proved insufficient. Even after negotiating foreign loans, the Dutch government could barely ensure its citizens access to the most basic commodities, let alone make the necessary investments needed to get the country's industry back on its feet. Prospects looked bleak, and public opinion polls indicated that twenty to thirty percent of the population seriously considered emigrating.⁶

In the end, the Marshall Aid that was provided by the US government in 1948 finally did ensure the extra capital that was so badly needed. Thanks to this financial injection, a phased plan for reconstruction could at last be set into motion. The first priority was for the steel industry and the accompanying transport and energy sectors. Second in line were the remaining heavy industries and agriculture, followed by the production of lasting consumer articles. Last in line for the short-term reconstruction projects was public housing. For the long term, the government counted on investments in schooling, in the rationalisation of production and in programmes to stimulate emigration.⁷

Once the economy finally started to gain some momentum, it actually accelerated more quickly than the government had anticipated, and soon a

⁴ Berghuis 1999, p. 15; Klein 1981, p. 95. More than a quarter of all families consisting of two or more people had to live in with others, Siraa 1989, p. 67.

⁵ Most important was the Stichting van de Arbeid (Society for Labour), where business and labour could meet on a national level to negotiate economic policy issues. In 1949 this organisation was converted into what was to become one of the Dutch government's most important advisory organs, the Sociaal Economische Raad (Social-Economic Council), Gastelaars 1985, p. 98.

⁶ Blom 1981, p. 141.

⁷ In 1949 a major conference was held to discuss the impending danger of overpopulation. Although birth control was mentioned as a possible solution, this was deemed politically unfeasible, and the preferred solution was to stimulate emigration, Heeren & Van Praag 1974, p. 14.

number of key sectors of the economy faced a labour shortage. By the early 1950's Dutch industry had largely recovered and unemployment had reached an all-time low.⁸ The housing sector, which had been placed low on the list of priorities in the plans for reconstruction, was particularly hard hit by labour shortages. In fact a chronic lack of skilled labour in the construction sector was one of the reasons why the housing crisis was to continue until well after the rest of the Dutch economy had more or less normalised, i.e. returned to the free enterprise system and market distribution. In the mid 1950's housing was officially declared the most pressing issue that still had to be dealt with.⁹

In order to succeed in its plans for reconstruction, the government not only needed the cooperation of business and labour, but that of families and consumers as well. Rationing continued during the first years following the war;¹⁰ salaries remained frozen until the second half of the 1950's¹¹ and, last but not least, people had to exercise great patience in waiting for an improvement in their housing situation. The success of the reconstruction effort therefore depended on a spirit of cooperation, discipline and thrift. Besides a healthy work ethic, regulated family life and controlled sexuality were seen as important prerequisites for successful reconstruction.¹² One of the official slogans of the time was: "Revive the family to revive the nation".¹³

The following quote from an advice column printed in the popular Dutch women's magazine *Margriet* during this period can serve to illustrate the anxiety and concern that prevailed concerning the moral fibre of the post-war youth:

"The rate of moral decay has increased alarmingly, but I'm not sure that is solely because of the way young women dress and behave, as you claim. What about the attitude of young men these days, who expect everything and will go to any lengths to get what they feel is their due? The moral decadence that the world is presently experiencing is the result of the recklessness caused by war and liberation. Wars are always followed by periods of terrible moral decline. We are in the middle of such a period

⁸ Gastelaars 1985, p. 98.

⁹ Siraa 1989, p. 101.

¹⁰ It wasn't until 1952 that the last consumer item to be rationed—coffee—was finally put onto the free market, Gastelaars 1989, p. 105.

¹¹ Gastelaars 1985, p. 99-100.

¹² Bussemaker 1993, p. 99.

¹³ Gastelaars 1985, p. 117.

now, and we hardly can see a way out. Still, it will be found (...my translation-SvW)"¹⁴

Religious Freedom and Controlled Sexuality

One of the most important factors of social organisations in the Netherlands in the post-war period was religion. More than 80% of the population adhered to the Christian faith, divided more or less evenly over the Catholic and (various) Protestant Churches.¹⁵ Next to these two religiously identified groups was a third, relatively small one, identified with more secular humanist principles. These religious distinctions were a legacy of, among other things, the struggle for educational freedom that had accompanied the introduction of compulsory education in 1900.¹⁶ Such struggles had been resolved in the past by granting religious institutions and their affiliated organisations a decisive role in the realisation of various projects of the nascent Dutch Welfare State such as public education, health and housing.

Religion had consequently come to play an important role in organising social life in the Netherlands and in defining the political landscape. Each of the three ideologically defined columns was headed by its own political, intellectual and economic elite. Each was affiliated to specific political parties, supported its own trade unions and housing corporations and sported its own network of shops, charities, (sport) clubs and social services. Throughout most of the twentieth century, confessional parties continued to play a dominant role in Dutch politics. Until the 1990's, at least one of the religiously inspired parties took part in every coalition that was formed, and the members of these parties, whether Protestant or Catholic, were all intent on upholding Christian values on issues like family norms, abortion or euthanasia.

But if post-war Dutch society was still strongly divided along religious lines, the normative cohesion within those different columns also remained high. This vertical model of consensus—quite unique to the Netherlands—may well explain why many middle class values were more widely supported in the Netherlands than in other European countries, like Germany, where religiously inspired political parties also played a prominent role, but where class consciousness was more pronounced. The

¹⁴ Brinkgreve & Korzec 1978, p. 74.

¹⁵ Kooy 1975, p. 23.

¹⁶ De Graaf 2000, p. 1.

ideal of a male breadwinner and stay-at-home wife, for example, was much more widely followed in the Netherlands than in Germany.¹⁷

Although women's participation in paid labour outside of the domestic sphere did become more acceptable in the course of the 1950's, the dominant consensus continued to be that this should only be tolerated to the extent that it did not interfere with female duties in the home.¹⁸ Despite a growing demand for relatively cheap female labour in the administrative sector and the increasingly professional health, care and welfare sectors,¹⁹ the percentage of working women actually dropped between 1947 and 1960 from 26,2 to 22,6%.²⁰ To a large degree, this can be explained by the fact that wages were increasing, making it possible for families to live off the earnings of a single breadwinner. Under these conditions, working women were able—and encouraged—to retreat from the labour force.

Again, a quote from the advice column of the women's magazine *Margriet* can serve as an illustration of the normative climate of the time. A reader from the mid 1960's who confessed she was the one earning the family wage while her husband stayed home was earnestly reprimanded:

"... I urge you, don't overdo it (...) you must make clear to your husband that *he* is the breadwinner, that it is *his* task to support you. That you are happy to help out while he is studying, but *only to a certain point*. Collapse from time to time. Complain from time to time out loud that you can't keep this up. Try bursting out in tears. Then he'll start to straighten out (...) Let him take the lead, pamper his pride, his male ego, even if your hands itch. Believe me, you're far better off sweetening him up in the evenings and bringing him coffee while he studies than going off to work to earn money (...) If you go on like this, ... then in no time you will turn into a regular battleaxe and your husband will have become a miserable wimp, tied to his wife's apron strings and incapable of achieving anything (my translation-SvW)."²¹

Expressing and maintaining distinct confessional identities (including that of secular humanists) was the driving force behind the social structures that provided moral leadership in the Netherlands in the post-war years.

¹⁷ Plantenga 1993, p. 185-189.

¹⁸ Plantenga 1993, p. 28-35. Married women were for example excluded from jobs in the civil service, by a royal decree of 1923, on the grounds that their place was in the family, Kooy 1975, p. 66. This decree continued to be in effect until 1958, Gastelaars 1985, p. 104.

¹⁹ Gastelaars 1985, p. 105.

²⁰ Plantenga 1993, p. 52.

²¹ Brinkgreve & Korzec 1978, p. 64.

While the Dutch government could set out plans for reconstruction, the successful implementation of those plans depended on the support of religious institutions and their affiliated organisations.²² In order to maintain their support, the Dutch state had to allow them a certain degree of moral autonomy. The Catholic political parties used the principle of subsidiarity to denote the limits of state involvement; the Protestant ones described their constituencies as "sovereign among ourselves" (*soevereiniteit in eigen kring*).

Family Law in a Religiously Ordered Society

Together with matters of worship, education and healing, family relations too fell under the domain of the religiously differentiated moral orders that the Dutch state was supposed to respect and support, but not interfere with via her own institutions.²³ Shared tenets of these religiously inspired moral orders, as reflected in Dutch family law of the time, were the husband's position as the head of the household,²⁴ parents' (more specifically, father's) authority over children,²⁵ and a marked resistance to state intervention in the daily dynamics of family relations.

The regulation of family relations within the confines of marriage was left to the moral tutelage of religious institutions who took on this task with vigour and conviction in the period of reconstruction.²⁶ Consequently, the motives behind a marriage and the presence or absence of the sexual act were matters of no relevance for the legality of the marriage, which was solely determined by the civil law procedure and the marital vows that this included.²⁷ Husband and wife were bound to live together, to be true to each other—i.e. not to commit adultery—to provide each other with the necessary moral and financial support, and to cooperate in the care and upbringing of their children. No other rules applied.²⁸ State intervention in marital relations—even in the form of court

²² See: Lijphart 1986 and Bosmans 1981.

²³ Gastelaars 1985, p. 115-118; see also Holtmaat 1992, p. 188-189.

²⁴ Article 169 and 161 BW; Wiarda 1957, p. 159.

²⁵ Article 353 and 355 BW; Wiarda 1957, p. 557-558.

²⁶ Rath 1991, p. 136.

²⁷ Kooy 1975, p. 64; see also Holtrust 1993, p. 43.

²⁸ This in contrast to the Prussian General Code of 1794, for instance, that pronounced on such matters as when marital intercourse might be declined, when the absence of a spouse from home was to be excused, and until what age a baby could be nursed in the conjugal bed, Glendon 1989, p. 33.

adjudication in the event of marital disagreement—was seen as a significant breach of marital—and, by extension, confessional—sovereignty.²⁹

Similarly, parents (until 1947: fathers) enjoyed a wide degree of freedom in relation to the state regarding the upbringing of their children.³⁰ Parental responsibility (at the time legally defined as parental authority—*ouderlijke macht*) brought with it the legal obligation of parents to care for and raise their children.³¹ It implicitly included the right to determine where a child was to be brought up and educated, by whom, and according to what faith.³² However, other than prescribing compulsory education up to the age of 12³³ the law did not stipulate how parents were to go about fulfilling their responsibilities.³⁴

Sparse as the legal framework was, one thing at least was clear. The husband was head of the household. He determined the nationality of his wife and children,³⁵ as well as their place of domicile. Even when residing elsewhere, their official domicile remained with him.³⁶ His was the last word in matters concerning the children's upbringing and only he was able to enter into contracts with third parties.³⁷ The principles of marital power and parental authority placed full financial responsibility and moral leadership upon the male head of the household, charging him with the task of providing support for those unable to take part in paid labour due to their age, their responsibilities as care-givers or their (temporary) unemployment.

The same principle manoeuvred the wife into a subordinate, reproductive and caring role. Dutch family law of this period expresses concern, in a number of instances, that wives should be left free to devote themselves entirely to the care and upbringing of their off-spring. For example the fact that a married woman could not be appointed as an executor for the estate of a deceased person was defended by the argument that "the domestic duties, and the upbringing of her children lay such heavy claims upon the care and devotion of a housewife and mother, that she can not afford to attend to the interests of a third party." For similar reasons, married women could not take on the guardianship for another child without their

²⁹ Wiarda 1957, p. 590.

³⁰ Ibid. p. 568.

³¹ Article 355, section 2 and article 467 Oud BW.

³² Wiarda 1957, p. 592-593.

³³ De Graaf 2000, p. 3.

³⁴ Wiarda 1957, p. 590-593.

³⁵ Article 5 jo 7 section 2 Wet op het Nederlanderschap 1892.

³⁶ Article 15 Wet op het Nederlanderschap 1892.

³⁷ Married women would eventually acquire legal competence in 1956.

husband's approval, and unmarried women who had been appointed as the guardian of another's child, could ask to be relieved of this responsibility once married.³⁸

In his book on the sociology of the family in the Netherlands, Gerard Kooy gives a detailed account of the various subtle ways in which the framework of Dutch family law was filled out within the different religiously inspired moral orders of post-war Dutch society.³⁹ But if state reticence provided scope for normative diversity, it offered little protection to wives and children subjected to patriarchal authority. Marital rape for example was not subject to criminal prosecution, and there rested a strong taboo on topics like incest and domestic violence.⁴⁰ Child protection laws had been introduced in 1905, but the power of child protection agencies to intervene remained limited to those instances in which a child's physical or mental safety was seriously threatened.⁴¹

Protecting Marriage as an Institution

If Dutch law offered little scope for state intervention within the confines of the nuclear family, outside the pale of matrimonial relations intimacy was vigorously controlled and sanctioned. The Dutch state held a strong stake in the institution of marriage. Only civil marriages were legally valid and divorce could only be achieved before a court of law. Illegitimate birth was heavily frowned upon, and the parents of an illegitimate child were reprimanded for behaving not only immorally, but against the law as well.⁴² Since 1909 it was possible for the mother of an illegitimate child to sue the biological father for maintenance costs,⁴³ but the financial position of single mothers none the less remained precarious. The pressure to marry was strong, and most single pregnant women opted for marriage if at all possible.⁴⁴ If a girl was not of marriageable age, she could apply for Royal dispensation allowing her to marry anyway and thus bring her child within the realm of legitimate family life.⁴⁵ Until well into the 1960's, at least one in five marriages was entered into because of premarital pregnancy.⁴⁶

³⁸ Wiarda 1957, p. 143.

³⁹ Kooy 1975.

⁴⁰ Acker & Rawie 1982, p. 19; 27-29.

⁴¹ De Boer 2006, p. 3-4.

⁴² Holtrust 1993, p. 47.

⁴³ De Boer 2006, p. 4.

⁴⁴ Holtrust 1993, p. 55.

⁴⁵ Ibid. p. 44.

⁴⁶ Heeren & Van Praag 1974, p. 95.

Adultery was seen as such a threat to the institution of marriage that the mother of an adulterous child was denied custody and, until 1964 (some would argue: 1970) even the right to acknowledge her child,⁴⁷ while the adulterous father would continued to be denied the right to acknowledge his child until well into the 1990's.⁴⁸ Homosexuality was also heavily frowned upon and homosexual acts with minors (i.e. with a person younger than 21 years) formed a criminal offence, regardless of consent. Other legal restrictions on sexual freedom were prohibitions on the sale of pornography and prophylactics and on the practice of abortion.⁴⁹ The degree of repression can be discerned from crime statistics. A record number of persons was charged and convicted for sexual misdemeanours in 1950: 35 of the 100,000 inhabitants between the ages of 12 and 79. Although the numbers subsequently dropped, they remained above the pre-war level (a maximum of 21 per 100,000 in 1930) until the late 1960's.⁵⁰

This obsession with sexuality is indicative of the Dutch state's commitment to the institution of marriage until well into the 1970's.⁵¹ Marital relations were seen as the surest way to guarantee the reproduction of future generations of citizens. Controlling sexuality was seen as necessary to ensure that children would be born, raised and maintained within the confines of marriage.⁵² Divorce could only be granted on the specific grounds of adultery, deliberate abandonment (for at least five years), a jail sentence of four years or longer or serious violence. Couples could ask for separation of bed and board on the basis of common consent, but only after having been married for two years. A subsequent divorce was only granted after another five years.⁵³

During the first decades following the war, Dutch society remained characterised by a strong work ethic, a high level of sobriety, repressive sexual mores and restrictive and hierarchical family values.⁵⁴ Dutch civil law regulated marriage and enforced it as an institution, while leaving it to

⁴⁷ Holtrust 1993, p. 49-50.

⁴⁸ Holtrust 1993, p. 131-134.

⁴⁹ Kooy 1975, p. 56-59; Heeren & Van Praag 1974, p. 309.

⁵⁰ Kooy 1975, p. 59-60.

⁵¹ Wiarda 1957, p. 147; Kooy 1975, p. 59-63.

⁵² Holtrust 1993, p. 43.

⁵³ Kooy 1975, p. 69.

⁵⁴ Blom 1981, p. 138.; Bussemaker 1993, p. 105; Kooy 1975, p. 254; Gastelaars 1985, p. 113.

religious institutions and congregations to monitor relations within the confines of the marital home.

But although the system could be characterised as closed and rigid,⁵⁵ in practice tactics were devised for achieving more individual freedom. Already in the late nineteenth century, couples started to collude with each other in presenting trumped up charges of adultery in order to circumvent the legal restrictions on divorce. By the late 1960's this "Big Lie" had become accepted practice, and divorce rates were on the rise.⁵⁶

National Solidarity and Individual Emancipation

Besides trying to maintain control over sexuality, the coalition of Catholic and left-wing parties that dominated Dutch politics in the post-war period, from 1945 to 1958, invested in the reproduction of the Dutch citizenry in other ways as well. While leaving the task of moral reconstruction to religious institutions and their affiliated organisations, successive government cabinets would continue to build on State involvement in issues of material welfare. Even during the war, while still in exile in London, Dutch politicians expressed the intention of introducing an all-encompassing system of social security:

"Society, organised via the State, bears the responsibility for its members' social security and for the protection of all of them against want, if, that is, these same members have themselves done all that can reasonably be expected of them to provide for the necessary security and protection (my translation-SvW)."⁵⁷

This quote suggests a direct relationship of interdependency between individual and State, circumventing the religious institutions and affiliated organisations, around which Dutch society was largely organised, and which were to play such an important role in generating and maintaining the moral order needed for the reconstruction effort. It is cast in terms of individual rights, contract and compensation, rather than in those of natural hierarchies and congregational ties.

The tension between these two perspectives on the organising principles of Dutch society was temporarily resolved by making the male breadwinner the relevant actor on the Dutch labour market, and his family

⁵⁵ De Boer 2006, p. 6.

⁵⁶ Kooy 1975, p. 68-73.

⁵⁷ Commissie van Rhijn 1945, deel II, p. 10, quoted in Bussemaker 1993, p. 98.

the site of moral reform.⁵⁸ Right from the start, income policies followed a double agenda. They not only reflected market forces of supply and demand, but the assumed commitments of family life. Minimum incomes were determined not by individual, but by family needs.⁵⁹

It was in this spirit that successive cabinets continued to introduce provisions for income security, even after the Dutch Labour Party had been forced to leave the coalition in 1958. Male breadwinners became entitled to improved unemployment insurance, introduced in 1949; a universal old age pension, introduced in 1957; widows and orphans pension introduced in 1959; and universal child support provisions introduced in 1962. Health care insurance was introduced for employees in 1964, including coverage for wife and children, and in 1966 a system of disability insurance was brought into effect. The already existing unemployment insurance was extended with a supplementary insurance, set, at a lower rate, to extend protection against loss of income to a maximum of two years.⁶⁰ Significantly, working married women were excluded from this last form of insurance.

Closely linked to this expanding system of social insurances for breadwinners, was a parallel regime of social services that targeted housewives and adolescents, rather than breadwinners, and provided moral rather than financial support. In 1952 a Ministry of Social Work was established, largely at the instigation of those members of the then ruling coalition affiliated with a Catholic political party.⁶¹ This ministry took under its wing much of the charity and poor relief work that, until then, had been run by religious institutions, geared towards helping out lower class families in need of care, guidance or counselling. At the same time, the Ministry of Education, Arts and Sciences became involved in other, also religiously inspired, private initiatives to counsel working class youth, many of whom had left the countryside to join the burgeoning population of industrial workers in the cities.⁶²

This parallel network of social work was seen as complementary to the first network of social insurances. A well-functioning family unit was seen as the prerequisite for successful industrial growth, and housewives needed to be encouraged, informed and, if need be, actively instructed in their role of keeping their male breadwinners ready and eager to work and

⁵⁸ Bussemaker 1993, p. 99.

⁵⁹ Ibid. p. 102.

⁶⁰ Gastelaars 1985, p. 108-109; 170-171.

⁶¹ Ibid. p. 116.

⁶² Ibid. p. 117-120.

of bringing up the next generation.⁶³ The working young, for their part, just barely weaned from their families' tutelage and in many cases separated for the first time in their lives from the social control of village life, had to be steeled against the alienation, individualism and feared moral chaos that would form the inevitable accompaniment to industrialisation and modern urban living. Young girls working in the factories, in particular, caused considerable anxiety among the ruling classes, and some pains were taken to ensure that they remained geared towards their true vocation, that of the housewife and mother.⁶⁴

As the ministries of Social Work and of Education, Arts and Sciences became more involved in this sector, which until then had been run by religiously inspired charitable organisations, professional social workers started to enter the field. At the same time that the expanding network of social insurances gave expression to the notion of a nationally organised system of mutual financial support, the expanding network of government subsidised social workers came to represent a secular, scientifically inspired, notion of "national society" with its own normative order. This normative programme was clearly expressed in the explanation accompanying the budget presented in 1963. In this document, the Netherlands' first Minister of Welfare, Marga Klompé, expressed her ideas as follows:

"For the benefit of the whole, it is desirable that no groups or categories be left behind and that no areas remain underdeveloped. Migrants, repatriates, refugees, so-called maladapted families are often insufficiently integrated into the broader society. (...) The mentality of the population inhabiting a specific region, too, may be insufficiently in tune with the economic changes which have taken place (...) Helping groups or categories adapt to society as a whole, as well as helping to improve the social infrastructure, for example, in certain parts of the country form essential aspects of the tasks that the department has set itself (my translation SvW)."⁶⁵

In this vision, expressed remarkably enough by a minister belonging to a Catholic political party and participating in the first post-war cabinet to be formed primarily by confessional parties and without the Dutch Labour Party, it was no longer considered desirable that people be admonished with the word of God in all its variations, but that they be guided on their way towards a single integrated, secular, national morality. Although

⁶³ Ibid. p. 103.

⁶⁴ Ibid. p. 104; 120.

⁶⁵ Welvaart en welzijn 1963, quoted in Gastelaars 1985, p. 178.

religious institutions and affiliated organisations would continue to be involved in the provision of social services in the Netherlands, they felt a growing pressure to orient themselves towards this more secular ideology in order to bring in the desired government funds. As a result, new, psychologically inspired forms of social work started to take hold, helping to undermine the moral authority of the Church, already besieged by a burgeoning consumer culture and the introduction of such startling new inventions as the contraceptive pill.

By the mid-sixties, the powerful hold of religious institutions, congregations and affiliated organisations over the moral lives of the Dutch was starting to wane.⁶⁶

Inherent Normative Tensions

Another impulse towards national rather than congregational solidarity was the introduction in 1965 of a publicly financed system of welfare benefits. This new law on welfare was meant to ensure that all adult citizens would have access to a minimum income, should the need arise, without having to hold their up hand to extended family, church and charity. It was introduced by the same Minister of Welfare, Marga Klompé, who had initiated professional, government subsidised social work, and she presented her scheme as a final step in the emancipation of the individual citizen from the moral tutelage of religious institutions and affiliated organisations:

"I wished to make a law, Mister Chairman, which every citizen could appeal to, with his head held high, without being subjected to a climate that would be hostile to his freedom and human dignity (my translation SvW)."⁶⁷

As a form of social security introduced by the Ministry of Welfare, and destined to replace the support traditionally supplied by religious congregations (or their more secular humanist counterparts), the new welfare regime formed an interface between the two emerging streams of the Dutch Welfare State. Nominally a form of social security, divorced from the moral tutelage of traditional charities, it was never the less based on need, not on a right earned through the payment of premiums. And although it certainly helped to emancipate people from the social control

⁶⁶ Gastelaars 1985, p. 182-184.

⁶⁷ *Handelingen II* 1962/63, p. 3956 quoted in Bussemaker 1993, p. 61.

of religious institutions and affiliated organisations, it left the interdependent relationships of the nuclear family intact.

Consistent with all economic policy of the time, the new Welfare law was in fact premised upon the institution of marriage. The nuclear family formed its basic unit, and exclusive heterosexual relations, the gendered division of labour and mutual support between spouses formed its moral premises. Need was not determined on an individual basis, but related to the nuclear family as a whole, in which the male breadwinner was assumed—and legally obliged—to provide for wife and children. Claims to welfare benefits were reserved for those who were judged to have insufficient access to sources of income, while having behaved as a responsible adult citizen.⁶⁸ It was in fact designed to enable the male breadwinner meet his family responsibilities and hence protect his family against the undermining impact of poverty. As long as the nuclear family remained intact and the breadwinner-citizen could serve as counting unit for the national redistribution of income, the inherent tensions between the two normative orders could be avoided.

From the start however welfare benefits proved to be principally a source of income for single or divorced women, while the various forms of social insurance continued to be paid out principally to male (ex) employees.⁶⁹ As recipients of welfare, women entered a system premised on individual freedom and dignity on the one hand and on specific assumptions regarding sexuality and mutual commitments within family relations on the other.

As sexual mores started to loosen, family bonds became less stable, and a growing number of individual women and children started to lay claim to forms of national solidarity in their own right. The inherent tensions between the foundational premises of the Dutch Welfare State started to become evident. What should be the consequences of divorce? How was one to determine the needs of citizens who, while not living alone, were not bound either by the legal obligations of a marriage contract?⁷⁰ Moreover, how was one to deal with minors who left the parental home while their parents were legally responsible for their welfare? Such complicated moral questions were not foreseen when the Law on Welfare Benefits was first introduced in 1965.⁷¹ They soon emerged on the political agenda, however, when Dutch family norms and practices started to shift.

⁶⁸ Bussemaker 1993, p. 162.

⁶⁹ Ibid. p. 157.

⁷⁰ Ibid. p. 172.

⁷¹ Ibid. p. 169.

“Natural Law” as a Contested Political Programme

The prevailing assumption during the post-war period, namely that the family, as moral and economic cornerstone of the nation, was “naturally” founded on a given moral order, deflected from the fact that family relations had, in fact, formed the subject of political debate and struggle for well over a century. Despite the terminology, there was nothing “natural” about marital power, parental authority or the family’s moral autonomy vis a vis the State. These were all matters of political dispute that had to be regularly defended against, among other things, women’s claims to rights, minor’s claims to autonomy and the State’s claims to more involvement in the upbringing of its future citizens. During the post-war period, various legal reforms were fought for and realised.

One of the most important reforms was introduced on 1 January 1957 which put an end to married women’s legal incompetence. At the time, this was seen as the final phase in a development, originating in the late nineteenth century, towards achieving equality between husband and wife within marriage.⁷² In reality, many remnants of the husband’s dominant position still remained. Thus, although the Dutch Civil Code no longer ruled that the wife must obey her husband, the ruling that the man stood at the head of the household continued to apply, after a motion to that effect had been passed by the Dutch Parliament. And although the marital domicile was now to be determined by husband and wife together, in the event they could not agree, the husband’s will still prevailed.⁷³

Not only the relationship between the sexes, but that between the generations, too, was subject to reform. In the period following the Second World War, the immense task of reconstruction helped legitimate State intervention in children’s upbringing for other reasons than just the protection of the child. The notion that rearing and educating children formed part of the project of rebuilding the nation gained ideological ground. It was acknowledged that not only the child itself, but the public interest too had a stake in the child’s upbringing and education. In a court decision of 1949, the Dutch Supreme Court (Hoge Raad) ruled that child protection measures “are not only imposed in the interest of the individual child, but in the interest of society at large, namely to ensure that children not grow up under such circumstances that could lead to their physical or

⁷² Wiarda 1957, p. 146-147.

⁷³ Article 160, section 2 Oud BW; Wiarda 1957, p. 159.

moral degeneracy..."⁷⁴ After three years of heated debate, adoption too was made possible, in 1956—at least for married couples.⁷⁵

As the Dutch social Welfare State took shape in the course of the 1960's, government involvement in children's upbringing intensified. By 1965, public child protection agencies—originally based on private initiative—were given an official legal status.⁷⁶ As they became more dependent upon public funds, these agencies also became more subject to government norms and directives.⁷⁷ Since the family courts who presided over conflicts between fathers and mothers and between parents and children worked in close association with these agencies, this increase of government influence also affected the adjudication of family conflicts.⁷⁸

Although all of these reforms were significant, they did not fundamentally alter the institution of marriage or the integrity of the nuclear family as such. One reform introduced during this period did, however. On 1 October 1971 a new law was enacted providing for one sole ground for divorce, namely that the marriage have irreparably broken down.⁷⁹ Moreover, couples who were able to agree on a joint proposal regarding all ancillary matters—i.e. alimony, the children and the division of property—no longer had to sue for divorce, but could submit a joint request to the court.⁸⁰ The first step towards the de-institutionalisation of marriage had been set.

In the meantime, as the religious institutions and affiliated organisations continued to lose their grip over family norms in the Netherlands, competing notions concerning sexuality and mutual obligations within family relations started to "come out of the closet", as it were. Initially, revolt against dominant morality was limited to the margins of Dutch society. But in the course of time it became more widespread, posing various challenges to the established order. Women started to question their dependent position within marriage while adolescents tried

⁷⁴ HR 23 September 1949, *NJ* 1949, 634. On the grounds that public education not only served to provide a child with the social and intellectual skills that he or she would need to take part in adult life, but that it also served to mould new citizens, the period of compulsory education was extended from six to eight years, De Graaf 2000, p. 192.

⁷⁵ Holtrust 1993, p. 81-88. Law of 26 January 1956, *Stb* 1956, 42 entered into force 1 November 1956.

⁷⁶ Luijten 1977, p. 257.

⁷⁷ Wegerif 1976, p. 18.

⁷⁸ Peters 1976 p. 22-24; Doek 1976 p. 9-11; Doek et al. 1975 p. 103.

⁷⁹ Law of 6 June 1971, *Stb*. 290.

⁸⁰ Chin-A-Fat 2004, p. 13-15.

to free themselves from their parents' tutelage. The institution of marriage itself was seriously put to question. As more and more people started to experiment with alternative forms of family living, this raised unanticipated questions for politicians and policy makers working on the redistribution of wealth and welfare within the Dutch nation.

Competing Perspectives on Family Norms

On 27 October 1967, the departing chairwoman Dr. Mary Zeldenrust-Noordanus of the Dutch Society for Sexual Reform (NVSH) held a farewell speech in which she called for a new sexual ethos, no longer defined in terms of marriage. Individual freedom should now be the measure of a relationship's worth, not socially condoned morals. Pleasure, moreover, should be accepted as a legitimate aim of sexual behaviour. It was from such a perspective, she claimed, that opinions should be formed over homosexuality, premarital sex, birth control, abortion, extramarital sex, divorce, prostitution and pornography. Her own views on all these issues were, without exception, permissive, and in direct contradiction with the morals which had, until then, been propagated by the religious institutions and affiliated organisations in Dutch society.⁸¹

Although this speech clearly expressed a radical counterculture and was deliberately provocative, it did reflect a growing resistance to the strict, religiously inspired sexual mores of the immediate post-war period. An alternative *Gestalt*—to borrow a term used by Kooy—, already present among a secular minority of the country, also started to take hold among the more religious mainstream during the 1960's. This moral order could be characterised as a moderate version of that championed by the departing chairwoman of the NVSH: a positive attitude towards sex; a commitment to marital fidelity but not necessarily for a lifetime; an acceptance of birth control, at least within marriage; and more egalitarian views on the relationship between the sexes and the generations within the nuclear family.⁸²

⁸¹ Kooy 1975, p. 48-49.

⁸² Ibid. p. 255-259. The number of people in favour of facilitating divorce increased from 13% in 1947 to 50% in 1970, while the number of those for making divorce more difficult decreased from 48% to 11%, Brinkgreve en Korzec 1978, p. 105. The percentage of people opposed to birth control dropped from 41% in 1952 to 3% in 1968, Heeren & Van Praag 1974, p. 310. Surveys also showed an increase in tolerance for homosexual relationships, abortion and single motherhood, Brinkgreven en Korzec 1978, p. 109-110. This more permissive attitude towards sex was also reflected in criminal law reforms. The sale of prophylactics was

The year 1967 also witnessed the publication of Joke Kool-Smit's famous article: "*Het onbehagen bij de vrouw*".⁸³ Women, she claimed, felt trapped in the cosy comfort of their homes, not protected against the outside world, but isolated from it. Women, she said, should become more human and less feminine. They should assert their rights and allow themselves some of the "healthy egoism that men have always taken for granted." In particular she insisted women should claim the right to develop themselves and their talents, that they should participate as men did in the economic, political and creative forces of society.

By 1970 the first feminist organisations—both radical and more moderate—were being formed. Family norms and relations became politicised. The nuclear family was no longer seen as a seamless unit, a harmonious and indivisible whole, but as a site of struggle, where hierarchies between the genders and the generations were challenged, and individual rights fought for. Feminists started to represent women as a distinct social group, sharing specific experiences, interests and a common political agenda. In demanding the right to paid labour, social insurance and welfare benefits for married women, they promoted a new variant on the Welfare State, premised not on the nuclear family as a basic unit, but on the adult individual.⁸⁴ In one of her later publications, Joke Kool Smit described marriage as a last remnant of feudalism in which the wife and mother provided bonded labour in exchange for room, board and a certain level of protection.⁸⁵

Legal debates over the relationship between parents and children came to a head in the mid-1970's when radical social workers started to help run-away youngsters go into hiding, insisting on negotiating with the parents before disclosing the whereabouts of the youngsters to parents or police. Some social workers were charged with abduction, and the cases were fought out right up to the Dutch Supreme Court. In the course of the proceedings, judges advanced the notion that parental responsibility should not be interpreted in terms of the authority that parents had over

decriminalised by the late 1960's. Although it would take decades before it would finally become legalised, by 1965 abortion had reached the political agenda and by 1975 it had become more or less institutionalised within the Dutch medical system, Heeren & Van Praag 1974, p. 309. By then birth control was included in the national health insurance scheme, Heeren & Van Praag 1974, p. 307.

⁸³ Kool-Smit 1984, p. 15-42. Literally translated: "Women's discontent". First published in the literary journal *De Gids* in November 1967.

⁸⁴ Bussemaker 1993, p. 121-122. For a taste of feminist actions and expressions of the time, see: Van Baalen & Ekelschot 2003 and Van de Loo 2005.

⁸⁵ Joke Kool-Smit, 'Feminisme en socialisme', quoted in Bussemaker 1993, p. 125.

their children, but as an element—albeit an important one—within a relationship built on mutual trust between parent and child.⁸⁶ In other words, the concept of parental responsibility was shifting from a formal legal attribution of decision making power to parents over their children, to a more normative conception of how parents and children should relate to each other as rights bearing individuals.⁸⁷

Various legal academics pleaded for a more independent position for children within the family as well, in accordance with the growing emancipation of young people within Dutch society.⁸⁸ Already in 1965 a special committee—the so-called Wiarda Committee—had been installed to present suggestions for reform. The Wiarda Committee presented its findings in 1971. Its recommendations were far-reaching and covered a broad range of issues. Among other things it pleaded for: eliminating all legal distinctions between children born in and out of wedlock; giving mothers the same measure of parental responsibility as fathers, allowing courts to adjudicate in case of conflict; a gradual increase of civil competence for minors from the age of 12 onwards up until majority, with a concomitant reduction in parental decision making power; lowering the age of majority from 21 to 18 years; eliminating the legal requirement that children "honour and obey" their parents; replacing the legal term "parental authority" with the term "parental responsibility". It would take a number of decades before any of these proposals would be put into effect. None the less, even at the level of policy making, the seeds of doubt were being sown.

Reviewing the normative landscape of the Netherlands in the mid 1970's, the Dutch sociologist Kooy concluded that the late 1960's and early 1970's had witnessed a veritable revolution in family norms.⁸⁹ A similar conclusion is reached by the authors of *Margriet Weet Raad* an analysis of the advice columns published in the popular women's journal *Margriet* between 1938 and 1978. This history charts a dramatic height in the period between 1965 and 1970 in the erosion of moral taboos and in the increase of tolerance for various forms of intimacy—developments that were actively being encouraged and supported by the new generation of publicly subsidised social workers and psychologists of the time.

Once again, a quote from this advice column can serve to illustrate the changes that were taking place in the normative climate of the Netherlands in the mid 1970's. Until well into the 1960's, *Margriet* advised women

⁸⁶ Hof Amsterdam 21 November 1975 quoted in Peters 1976, p. 13.

⁸⁷ Peters 1976, p. 18.

⁸⁸ Rood-de-Boer 1970, Peters 1976, Doek et al. 1975.

⁸⁹ Kooy 1975, p. 256-257.

whose husbands cheated on them, ignored them or beat them, to keep a stiff upper lip, do their wifely and motherly duties, and wait patiently until things improved.⁹⁰ As the following quote shows, by the mid 1970's she was encouraging women to examine their own feelings and expectations; to stand up to their husbands and, if need be, leave them:

"(...)What is your marriage worth to you? Do you still love your husband? And: does he still love you? Is your marriage at a dead end and is divorce just a question of time? I don't have the answers. But you can find them. You will have to examine your own feelings and desires and discuss these things honestly with your husband. That will inevitably raise some new questions. Have you ever asked yourself why your husband works so much? Does he harbour a grudge against you? Is he prepared to make any efforts to save your marriage? (...) why have you gotten involved with this other man? Were you in love? Did you wish to 'punish' your husband? Were you bored? ..." etc. etc. (my translation-SvW).⁹¹

Similarly, by 1970, youngsters were being encouraged to make their own decisions concerning choice of partner, vocation or vacation plans, rather than being admonished to comply with their parents' wishes. Parents, for their part, were being advised to show more respect for their children's preferences.⁹²

Normative Challenges for the Dutch Welfare State

The above sketched changes in attitude had social effects. While in the 1950's the number of divorces remained fairly stable at an average number of about 55 per 1000 marriages per year, the numbers started to increase in the mid 1960's, reaching an average of 84 divorces per 1000 marriages by 1970.⁹³ There was also a significant increase in the number of men and women admitting to having had premarital sex between the generation born between 1933 and 1943 and the generation born between 1943 and 1947.⁹⁴ Particularly in the more urban communities, couples started to raise children without getting married first.⁹⁵

⁹⁰ Brinkgreve & Korzec 1978, p. 61-63.

⁹¹ Ibid. p. 84.

⁹² Ibid. p. 51-54.

⁹³ Heeren & Van Praag 1974, p. 102.

⁹⁴ Kooy 1975, p. 140. Even taking into account that the rate of non-response among the younger generation of women was relatively high.

⁹⁵ Holtrust 1993, p. 94-95.

As divergence from traditional family norms became more common, particularly in the rapidly growing urban areas, legal problems started to arise, especially given the central role that the nuclear family played in the many rules that regulated life in the Dutch Welfare State of the time. Not only social insurances and welfare benefits were tailored to meet family needs. Taxes, health benefits, housing permits and old age pensions too, were premised on the marital unit, headed by a male breadwinner. Families that didn't conform to the norm could feel disadvantaged—for example because they didn't share the same claims to public housing as married couples⁹⁶—or they might be perceived of as enjoying unfair benefits—two people living together for example might each receive welfare benefits on an individual basis, while a married couple would be granted benefits as a unit.

Ironically, although premised upon the nuclear family, the various benefits and forms of security that the Dutch Welfare State offered also helped to undermine the nuclear family's position as basic unit of society. Adolescents for example were acknowledged as full participants in society in their own right, and not just as extensions of their breadwinner-fathers. Thus a minimum wage was introduced in 1974 for workers younger than 23 years, as well as welfare benefits for children who quit school at the age of 16, but had not yet landed themselves a job. Reforms in housing laws acknowledged a right to independent housing from 18 years onwards, as well as a right to rent subsidies. Moreover, in its national housing policies, the Dutch government committed itself to building more homes suited to the needs of young singles and newly weds.⁹⁷ Such reforms made it easier for young people to leave their parents' home and start a life of their own, according to their own moral codes.

Similarly, welfare benefits and concomitant health benefits together with the extensive system of heavily subsidised public housing made independent living materially accessible to the unemployed, thus helping to reduce the housewife's dependency vis à vis her breadwinner husband.⁹⁸ Divorce became more common, with the accompanying complications of alimony and visiting arrangements between children and

⁹⁶ Up until the late 1960's, court cases actually bear evidence to the fact that unmarried couples were evicted from public housing on the grounds that they had transgressed public morals, Van de Wiel 1974, p. 45.

⁹⁷ Baanders 1998, p. 18-19.

⁹⁸ Brinkgreve & Korzec 1978, p. 111-116.

separated parents.⁹⁹ Moreover, many divorcees subsequently entered into a new relationship without first having it formalised.¹⁰⁰

All in all the legal regulation of intimate relations in the Netherlands was becoming messier. The assumption that all family life should be sanctioned by the formalities of marriage and lasting unto death no longer held. Legal scholars sought for alternative models more suited to the changing times. Already at its establishment in 1971, the Dutch Advisory Council on Family Affairs (de Nederlandse Gezinsraad) took a critical stance towards the "modern western nuclear family". In its view, this relational model was too isolated, too confined and too narrowly defined. As such it failed to meet the needs of people in their various life phases and with their varying needs and preferences. This council therefore included all forms of co-habitation in its definition of the family, and even approached the COC, the most influential homosexual lobby of the time, to negotiate a definition that would include homosexual couples.

For the time being however, Dutch family law would remain largely untouched by these attacks upon the institution of marriage and traditional family relations in general. Although Dutch divorce laws had been reformed in 1971, it would take nearly three decades before non-marital relationships would become fully regulated in Dutch civil law. In the meantime, practitioners started to apply the existing norms in a more flexible fashion. Although non-marital relationships were still viewed as eccentric, by the early 1970's they were no longer considered to be reprehensible.¹⁰¹ A non-marital union was no longer a reason to remove a child from a parent's custody. In fact, the circumstance that a divorced parent had entered into a new relationship could serve as an argument to have custody returned to that parent, even if the new relationship had not been formalised by marriage.¹⁰² Judges no longer ruled, as they had in the 1950's, that a mutual agreement between cohabitants to provide each other financial support would violate the moral order¹⁰³ and in some instances unmarried women and their children were granted claims to financial support by the ex-partner following separation.¹⁰⁴

⁹⁹ Kooy 1997 p. 126.

¹⁰⁰ Nota 1974, p. 60.

¹⁰¹ Nota 1974, remarks for example that most non-marital relationships were probably formed by persons "who did not identify themselves with existing society".

¹⁰² Nota 1974, p. 61.

¹⁰³ Ibid.

¹⁰⁴ Hof Amsterdam 27 November 1970, *NJ* 1971, 182; HR 19 November 1971, *NJ* 1972, 337 quoted in Nota 1974.

Testing the Limits of Contractual Freedom

While civil lawyers were carrying out their fine tuning upon the existing framework of Dutch family law, political debates concerning the legal implications of divorce and non-marital cohabitation for the institutions of the Welfare State continued unabated. A result of the increasing emancipation of individuals within family relations was that the Dutch state was compelled to address issues that, until then, had remained beyond its sphere of competence.¹⁰⁵ The fact that welfare benefits were allocated on a family basis, while divorced women and sexually active adolescents were claiming individual benefits, was forcing politicians and administrators to re-examine the grounds for entitlement. If consensus had finally been reached concerning the end of a marital relationship, there was considerably less agreement as to what substantively constituted a marriage in the first place. Could the mere fact that couples were formally married justify their being treated differently from couples who were not? If so, why? And if not, when, and under what conditions, should an unmarried couple be treated the same as a married one?

Initially, it was left to the various municipalities, who actually administered the welfare benefits, to resolve these questions as they saw fit. In the course of the 1970's, a certain level of consensus was reached through administrative case law. People who lived together but were legally excluded from marriage—homosexuals, nuns or priests, close blood relatives—continued to be entitled to welfare benefits on an individual basis, but their benefits could be reduced on the grounds that household costs were being shared.¹⁰⁶ By contrast, heterosexual couples could be assumed to form an "economic unit" and to be mutually committed to supporting each other financially. The level of benefits to be granted to them could be calculated accordingly.¹⁰⁷ The mutual obligations of married couples were transposed, as it were, to the situation of unmarried couples assumed to be "living together as man and wife".

This assumption was, however, problematic.¹⁰⁸ Other than in administrative law, the consensus among civil lawyers was that the Dutch Civil Code offered no basis for assuming mutual obligations between unmarried partners. The reasoning was that women who agreed to a non-marital relationship accepted the accompanying risks and that people should be free to engage in a relationship without financial guarantees and

¹⁰⁵ Peters 1976 p. 18-19, Doek 1976 p. 11-12, Doek et al. 1975 p.103-104.

¹⁰⁶ Bussemaker 1993, p. 178-180.

¹⁰⁷ See also Van de Wiel 1974, p. 39.

¹⁰⁸ Holtrust 1993, p. 61.

obligations, if they so wished.¹⁰⁹ Children had also no claim to financial support from their mother's partner, unless he had formally acknowledged them as his own, or their mother had taken legal steps to establish his paternity and force him to meet his obligations.¹¹⁰

Another, related problem was that, in accordance with the reformed divorce laws, alimony was no longer coupled to guilt and innocence, but became related to claimed financial need.¹¹¹ The new rules regulating divorce made it possible for the financially dependent spouse to waive her or his claims to alimony.¹¹² In 1974 the Dutch Supreme Court determined that court rulings on alimony were binding and that the welfare officials would have to take those rulings into account when determining the financial need of a woman applying for benefits.¹¹³

This situation gave rise to considerable debate since most political parties saw divorce as a personal responsibility and not as some form of bad luck like a chronic illness of disability, or the death of a breadwinner or parent. In their view the financial consequences of divorce should be born by the parties involved, and not by the community as a whole. This raised the question as to where (ex) family member's mutual responsibilities ended and those of the Welfare State began. Were cohabiting couples obliged to support each other? Could an economically dependent partner claim alimony after separation? And should an ex-husband be allowed to pay less alimony on the grounds that he had to support his concubine? As Jongeling, a representative of one of the protestant parties (GVP) put it during a parliamentary debate:

"The new divorce laws allow for divorcing partners to agree that no alimony will be requested. This is a legally binding agreement which cannot be reversed by the Court. But should the community then be obliged to support a woman, who has voluntarily ceded her rights to alimony, by granting her Welfare Benefits? And then I haven't even

¹⁰⁹ Nota 1974; Van de Wiel 1974, p. 51. On the other hand, a new rule introduced in 1970 (art. 160 Oud BW) stipulated that all claims to alimony ended once the partner who was receiving alimony remarried or entered into a relationship comparable to that "between man and wife", thus implying that cohabitants could be expected to support each other, to the extent that their relationship resembled a marriage, Van de Wiel 1974, p. 39.

¹¹⁰ Nota 1974, p. 62-64.

¹¹¹ De Boer 2006, p. 483-484.

¹¹² Article 1:158 Nieuw BW, De Boer 2006, p. 514-515.

¹¹³ HR 10 May 1974, *NJ* 1975, 3. See: Bussemaker 1993, p. 172; De Boer 2006, p. 521.

addressed the possibility that (...) the ex-husband might move in with his ex-wife as a boarder. This then would be a bogus divorce."¹¹⁴

By the 1970's the normative structures of the reconstruction years had been disrupted or at least put under pressure. The denominational columns that had organised the moral coherence, on which the post-war Welfare State institutions had been built, were gradually being undermined by a new secular order, instigated by those same welfare state institutions. While historically determined religious differences were giving way to a unitary project of national integration, the erstwhile consensus regarding the "natural order" of family relations was being strongly—and diversely—contested. Consequently, maintaining the newly established national systems of social security and welfare benefit payments, which had been founded on this "natural order", was becoming problematic. In this normative context, the religiously based political parties lost much of their support, while the Dutch Labour Party and other, smaller, parties on the left side of the Dutch political spectrum (PPR, D-66) adopted an increasingly social-democratic profile. This was rewarded in 1973 with an electoral mandate for the most socialist oriented coalition ever in the Netherlands, the Den Uyl cabinet, which would remain in power until 1977.

By this time the Dutch Welfare State not only faced a normative crisis, but an economic one as well. The first signs of economic recession were already apparent in the early 1970's, but became more evident following the oil crisis of 1973. Initially however, faith in the resilience of the Welfare State remained high.¹¹⁵ And the Dutch government, still under leadership of the socialist Labour Party, persisted in a policy of reducing income inequalities and increasing benefits and services.¹¹⁶

One of the options under consideration was to introduce a specific form of collectively financed insurance against the risks of divorce. The liberal VVD party in particular supported this idea, pointing out that

¹¹⁴ *Handelingen II* 1971-1972, p. 4103 (cited in: Bussemaker 1993, p. 172).

¹¹⁵ Kraamwinkel 1995, p. 15.

¹¹⁶ Minimum wages continued to rise, and the system of social security was extended to include disability insurance for non-waged workers. This new social benefit, introduced in 1976, was heralded as the final step towards a complete system of social security. Significantly however, like the extended unemployment insurance and welfare benefits, this provision too excluded married women. Despite all the normative ferment in Dutch society at the time, and even though the third EC directive on the equal treatment of men and women in social security provisions was imminent, Dutch social policies continued to be premised upon the assumed "natural order" of the post-war years.

mothers and wives were still very much encouraged, both by Dutch laws and by the organisation of the Dutch labour market and society in general, to stay at home.¹¹⁷ The low earning capacity of divorced wives and mothers was, in their view, the result of public policy, and hence also a public responsibility.

The alternative option was to improve on the existing parallel systems of alimony and welfare payments. After lengthy deliberation, the government finally expressed its preference, in 1975, for this second option. The emerging consensus was that women's emancipation was well on its way and that divorced women should be encouraged to look after themselves. Their financial position came to be seen as an individual problem, and its solution as their personal responsibility. The focus of discussion therefore shifted from the financial position of divorced women to that of their ex-husbands. Proposals were made to limit the maximum length of alimony payments, and to standardise the calculation of payments such as to avoid bringing divorced men into the position of having to apply for welfare payments themselves.¹¹⁸

In the general shift to the left, feminist ideals of equality between the sexes and women's emancipation had gained support across nearly the entire political spectrum of the Netherlands. None the less, the Dutch Labour Party and the confessional parties—still the major forces in Dutch politics at the time—rejected the feminist critique of the family as a necessarily oppressive institution. These parties continued to propagate the values of solidarity and altruism traditionally associated with family relations, albeit for different reasons. For the confessional parties, the family formed the core of a civil society of various interconnected social groups that generated a normative discourse and modes of belonging that were complementary to and to some degree in apposition to the state. As such, the family—in their view—played an essential role in creating a critical and responsible citizenry. For the Dutch Labour Party, the family formed the training ground for the solidarity and mutual commitment that mature citizens were expected to share on a more abstract level by supporting and complying with the institutions of the Welfare State.¹¹⁹

Since the Dutch Labour Party and the confessional parties continued to dominate the coalitions of the period, the family as an institution—and along with it the gendered division of labour—continued to form the cornerstone of Dutch social welfare policies—despite the fact that a third European directive on the equal treatment of men and women in social

¹¹⁷ Holtmaat 1992, p. 177.

¹¹⁸ Holtmaat 1992, p. 163-181.

¹¹⁹ Bussemaker 1993, p. 134.

security provisions was imminent. Disability insurance for non-waged workers, to be introduced in 1976, still excluded married women—just like the previously introduced extended unemployment insurance and welfare benefits.¹²⁰

B: 1975-1990: The Struggle for a New Consensus

In reaction to the steady losses that they had suffered in the elections, the larger confessional parties joined forces in 1977 to form a Christian Democratic Alliance (CDA) uniting Catholic with Protestant parties—a historical break with the traditional rivalry between these two religious streams, and one that would prove to be fruitful. From 1977 until 1994, the confessional parties, regrouped as the CDA, would once more come to dominate Dutch politics, while the liberal VVD party came to replace the socialist Dutch Labour Party as major coalition partner.

This revitalisation of confessional politics could not however reverse the search for a new moral order. By the mid 1970's there was a growing agreement that the religiously inspired family norms, as codified in Dutch laws, no longer sufficed. A special commission that had been set up to investigate questions relating to sexuality concluded that there was no public consensus any more concerning "public morals". In the interest of individual freedom, the state should tread lightly in this area. "Respect for the citizen's freedom implies accepting diverse forms of behaviour."¹²¹ By 1976, the Dutch Advisory Council on Family Affairs felt compelled to expand its statutory goals, from advocating the interests of the family to advocating the interests of "all those people and any human values that are at risk". Four years later, this same Council actually removed the word "family" from its statutory goals.¹²²

The Family at Issue

Until well into the 1980's, family norms would remain highly contested. The nuclear family was no longer universally conceived of as a seamless unit, a harmonious and indivisible whole. For many it had become a site of struggle, where hierarchies between the genders and the generations were challenged, and individual rights fought for. The heterosexual and monogamous nuclear family was no longer seen as the only acceptable

¹²⁰ Veldman & Westerveld 2003 p. 125-128.

¹²¹ Goldschmidt & Holtmaat 1993, p. 116.

¹²² Grotenhuis et al. 2002, p. 26-29.

model for intimate life. A broad array of living arrangements were brought into play: single parents; couples living together "apart"; divorced or separated parents sharing in the upbringing of their children; communal living arrangements bringing together multiple and various configurations—singles, couples and families—within one household. Altogether, there was little consensus any more as to what the family was and what interests it should serve.

Although divorce laws had been reformed in 1971, and Dutch social security and welfare policies were soon to be adjusted under the pressure of normative changes and growing economic recession, it would take more than a decade before a consensus would be reached concerning comprehensive reforms in the field of family law itself. Before that point could be reached, many unresolved tensions and contradictions in the regulation of family life in the Netherlands would have to be faced and dealt with.

The Dutch Welfare State under Pressure

By the late 1970's, investments were stagnating and unemployment levels, already alarming, were on the rise—particularly among the young.¹²³ There was less faith in the capacity of a technically informed state to orchestrate the lives of its subjects. As a result, political focus started to shift away from national solidarity towards individual responsibility. Under the CDA-led cabinets, and particularly the CDA coalitions with the liberal VVD party, led by Lubbers between 1982 and 1989, various reforms were introduced, expressing changing assumptions concerning the relationship between the Welfare State and its citizens. Inspired by the neo-liberal élan that had brought the Reagan and Thatcher regimes into power in the US and UK, politicians in the Netherlands—including liberals, confessionals and socialists—started to reformulate the social contract of the Dutch Welfare State in terms that let its citizens take on more responsibility for their lives. The risk of unemployment, for example, came to be seen as an individual problem, and not one that should be borne collectively. Thus as of 1987, when calculating the amount of compensation a disabled worker was entitled to, officials no longer took national unemployment levels into account, but based their calculations purely on that worker's remaining physical and mental capabilities.¹²⁴

¹²³ Baanders 1998, p. 24.

¹²⁴ Duivenvoorden et al 1987 p. 72-24.

This shift in thinking became manifest in other fields as well, besides that of social insurances. From 1980 onwards, housing policies were explicitly directed at reducing the publicly subsidised sector in favour of the private rental sector and, in particular, home ownership. Increasingly, public housing, controlled rents and rent subsidies became the reserve of the poor, while a growing number of middle income families took on the financial risks and maintenance costs of home ownership.¹²⁵ Cuts were also made in public education and health care. Those who could afford it looked to market alternatives and supplements. Those who could not had to compensate as best they could, often relying on informal sources of care and support.¹²⁶

The Reinvention of the Family as a Source of Social Security

Although in the course of the 1980's more married women were going out to work, most of them were entering part-time, poorly paid and/or insecure jobs. While the number of women in paid employment had increased in comparison with previous decades, the number of hours worked by women had not.¹²⁷ By then the idea of working women had gained ground, but not that of the working mother. The conviction that children should be raised at home was strongly imbedded in Dutch culture,¹²⁸ and even among feminists, institutionalised child-care was considered a necessary evil.¹²⁹ Following divorce, children were normally entrusted to the custody of their mothers, this in accordance with the dominant notions concerning childcare. Together with the emerging phenomenon of deliberately unmarried mothers, the growing number of (partly) unemployed divorced mothers—many of whom had relinquished their claim to alimony—formed a cause for concern to the public authorities.

In 1984 the Dutch Civil Code was modified, making it possible for the Welfare authorities to claim payment from a Welfare recipient's former spouse, even if claims to alimony had been waived. In the same vein, the rules regulating student loans were tightened in 1986. Where previously children of divorced parents could apply for a student loan on the basis of their mother's income, in the event they no longer had any contact with their father, or that he was unwilling to provide support, they now could

¹²⁵ Ministerie van VROM 1995; Ministerie van VROM 1999, Van der Schaar 1991, p. 382.

¹²⁶ Van Walsum 2000, p. 107.

¹²⁷ Bruyn-Hundt 1988, p. 35.

¹²⁸ Pels 2004, p4.

¹²⁹ Bussemaker 1993, p. 200-203.

only qualify if both of their parents were proven unable to supply support.¹³⁰

In that same year, the minimum wage for young people was lowered, while their claims to unemployment insurance and welfare benefits were reduced. In doing so, the Dutch government implicitly assumed parental obligation to support children up to the age of 21 years.¹³¹ The brief promise that had glimmered in the early 1970's, of economic independence for divorcing housewives and minors from the age of 18 up, was clearly being rescinded.

This new emphasis on family obligations fitted in with a broader shift that had taken place in the political perception of the Welfare State while the economic crisis deepened. In the context of this shift from public to private responsibility, mutual commitments within family relations once more came to enjoy the warm support of the largest political parties, no longer as a normative model for national solidarity, but as a private alternative for the public provision of social security and welfare benefits. As in the early post-war years, the ruling elite once more banked on the mutual commitments between family members. Unfortunately, those commitments were now subject to vehement contestation. While the major political parties continued to champion the family as an institution, or at least the values that it stood for, others were attacking it outright, although not always for the same reasons.

The Family as Threat to Individual Freedom

In 1982 an article written by Wilhelmina Thomassen appeared in the critical legal journal *Recht en Kritiek* with the title: "Familierecht en de onderdrukking van vrouwen".¹³² In this article the growing popularity of non-marital relationships and single parenting was presented as proof of a broadly felt aversion to the unequal relationships that the traditional family model implied:

"Alternative living arrangements have emerged such as communes, single parents, and couples living separately from each other. Such developments, that challenge family norms experienced as oppressive to women, offer an opportunity to engage in a more equal relationship between the sexes.

¹³⁰ Andringa 1990 p. 239-242.

¹³¹ Baanders 1998, p. 25.

¹³² Literally translated: "Family law and the oppression of women"

Family bonds that for centuries have been taken for granted, have lost much of their meaning (my translation: SvW)."¹³³

Among the most virulent critics of the family as an institution, were those involved in campaigns against domestic violence, marital rape and incest. Already in 1972 the first Women's Shelter had opened its doors. Others soon followed suit. Between 1974 and 1981, more than 2,500 women and 3,000 children sought refuge in the Amsterdam Shelter.¹³⁴ In 1981, the Dutch parliament passed a motion demanding that the Dutch government take action against violence against women.¹³⁵ Early in 1982, the same year that Thomassen published her article, the acting Minister for Social Affairs and Employment, Hedy d'Ancona, presented a plan of action "based on the assumption that male abuse of women is a direct result of the general oppression of women in Dutch society."¹³⁶ In order to further determine her policy priorities, she organised a conference to be held in the coastal town of Kijkduin. This conference was to provide an important impulse for academic research, policy changes and public awareness on the topic of gendered violence.

The academics and activists who attended the Kijkduin conference in 1982 all emphasised the correlation between violence against women and sexual discrimination in society as a whole. Addressing the various asymmetrical power relations between men and women in Dutch society was seen to be the surest way to eliminate male violence against women. On the whole, the tenure of the conference was not to press for criminal measures, but for broadly based policies that would ensure women greater economic independence. None the less, two recommendations that emerged from the conference were to make marital rape punishable by law and to provide more support and guidance, within criminal procedures, for victims of domestic violence.¹³⁷

¹³³ Thomassen 1982, p. 128.

¹³⁴ Acker & Rawie 1982, p. 28.

¹³⁵ Ibid, p. 8.

¹³⁶ *Kamerstukken II* 1982/83, 085207 (bijlage) cited in Ancker & Rawie 1982, p. 8.

¹³⁷ In the end, it would take until 1991, after the Dutch Supreme Court had twice ruled that a husband could not be convicted for having raped his wife, before marital rape finally became punishable by law. By then, the image of the family had changed radically from haven in a heartless world to site of hidden violence, incest and childhood trauma's. When the UN proposed in 1989 to declare 1994 the "Year of the Family", the Dutch Advisory Council of Family Affairs voted against. In their eyes, the family was no longer something to be celebrated, Huisman 2002, p. 29.

In 1984 the *Nederlands Juristenblad* (NJB), a leading legal journal, published an article calling for the end of marriage as a legal institution.¹³⁸ Although this article was presented as a reaction to the article Thomassen had published two years before, and although two of the three co-authors were women, this article presented very different arguments for doing away with marriage than those presented in the feminist literature of the time.

Where feminist writers mostly focussed on unequal power relations within the family, and appealed to the state to compensate by offering alternative sources of income to nurturing parents and protection against abuse, the authors of the NJB article were more concerned with freedom of choice and the constrictions that the state, through the institution of marriage, imposed upon an individual's private affairs. They pointed to the vast variety of possible living arrangements: heterosexual, homosexual, bisexual or non-sexual; monogamous, bigamous, polygamous; temporary or permanent or somewhere in between; living together or living apart. But because a broad array of legal arrangements, from tax benefits to housing permits to social security took marriage as their point of reference, people were more or less forced, in their eyes, to choose for this particular form of family life. They drew parallels between normative pluralism in the intimate sphere and religious freedom and cultural pluralism in general, pointing out that the Netherlands had become a multicultural society in which a variety of family norms had found its home. The Dutch government, they claimed, should accept this as a given fact, and develop a more flexible and pluralist approach. Their article concluded with the suggestion that marriage, as an institution, be abolished.

So while there was a consensus that family relations were in need of revision, there were different and even conflicting interests at stake, not only between the state and individuals chafing against the restrictions imposed by marriage, but between the men and women involved as well. Another sphere of conflict that received relatively little attention at the time but which was to become more of an issue in years to come was that of the relationship between men and women as parents: their mutual responsibilities and their respective rights and obligations regarding children.

¹³⁸ Verlegh et al. 1984.

Contested Commitments in the Private Sphere

By 1986, existing case law regarding welfare benefits for co-habiting heterosexuals had been codified. From then on, welfare officials were legally bound to treat co-habiting heterosexual couples on a par with married couples. As a concession to the growing consensus that women needed to become more economically independent of their (marriage) partners, the government allowed for each member of a couple to be paid separately. This however did not detract from the fact that the amount that was to be paid to each, was based on the assumption of mutual support, and hence reduced in accordance with the amount earned by the other partner.

One unmarried couple put this assumption to test before a civil court. One of the partners sued the other for financial support. Completely in line with contemporary civil law jurisprudence concerning financial obligations between cohabiters the civil courts—up to the last instance—determined that no mutual obligation to support could be assumed to exist between unmarried partners, unless they had themselves agreed to such an obligation ahead of time.¹³⁹ Six months later however, the highest adjudicator in administrative cases (de Kroon)¹⁴⁰ determined that the decision of a court of civil law had no relevance for the administrative determination of a welfare applicant's degree of financial need, the basis on which benefits were accorded.¹⁴¹

In 1987, the Dutch government set about also codifying existing case law concerning the payment of welfare benefits to co-habiting adults who were excluded from marriage: homosexuals, siblings etc. This initiative prompted heated debates in Dutch parliament. Those parties most

¹³⁹ HR 9 January 1987, *NJ* 1987/927.

¹⁴⁰ The term de Kroon (literally: the Crown) referred to the Dutch government (i.e. the cabinet together with the King or Queen, as head of state). From 1861 until 1976, the Kroon formed the only last instance in administrative appeal in the Netherlands. Although the government, in deciding on appeals, almost always followed the advice that the Dutch Council of State (Raad van State) brought out after having heard both parties. In 1976 and Administrative Jurisdiction Division was installed at the Dutch Council of State to decide on administrative appeals on its own behalf in specific cases. On 23 October 1985 the European Court of Human Rights ruled in the case of *Bentham v. the Netherlands* that the Kroon did not qualify as an independent form of judicial review in accordance with article 6 of the European Convention of Human Rights. Subsequently the Administrative Jurisdiction Division of the Dutch Council of State became the last instance in administrative appeal in all cases (see further: Van Wijk 2005, p.18-21).

¹⁴¹ 5 June 1987, *JABW* 1987/354; Goldschmidt & Holtmaat 1993, p. 261-262.

sympathetic to feminist views questioned why women in heterosexual relations should continue to be deprived of individual benefits, while a sister living with her brother, for example, was not. The elaborate lists of criteria that had been devised to distinguish between couples who were to be treated on a par with married partners, and couples who were not, was rejected as too intrusive and the distinctions being made between heterosexual and homosexual couples were seen as arbitrary and discriminatory. The Christian Democrats in particular objected to state intervention in private relationships, although implicitly they did continue to link economic interdependency to sexual relationships.¹⁴²

In the end a political majority was found for a system based on the assumption of mutual support between (hetero- or homo) sexual partners. A universal system of individualised claims was rejected by the confessional parties on the grounds that such a system would undermine solidarity within the family, while the Dutch Labour Party rejected it on the grounds that a system providing the "girlfriend of a medical specialist" an independent claim to public funds would prove fatal for maintaining national solidarity.¹⁴³

New Tensions Between Individualism and Dependency

Ironically, in the same period that married and co-habiting women were being denied an individual claim to welfare benefits, their individual claims to other forms of social security *were* being recognised. This was largely thanks to pressure exerted by various European equal treatment directives, and to active litigation by trade unions and women's organisations.¹⁴⁴ Thus claims to government pensions, unemployment and disability insurances became individualised, that is: married women acquired claims to benefits, independent of their husbands.

These reforms amounted to less than many women had hoped for, however. Against the backdrop of economic restructuring, equal treatment was reached by decreasing the level of benefits generally, rather than by entitling women to more.¹⁴⁵ Applicants had to meet stricter requirements to qualify, the duration of some benefits was shortened, and controls to prevent fraud were sharpened.¹⁴⁶ Moreover, since benefits now came to be calculated on the basis of individual, rather than family needs, the amount

¹⁴² Bussemaker 1993, p. 180-182.

¹⁴³ Ibid. p. 176-184.

¹⁴⁴ Bouwens 1997, p.136

¹⁴⁵ Driessen 2000, p. 184-187

¹⁴⁶ Bussemaker 1993, p. 174.

granted to recipients was reduced. The needs of a non-earning partner were no longer taken into account in the calculations. Older couples were granted a supplement to compensate for the fact that the older generation of women had on the whole never been active on the labour market. For younger couples, however, i.e. those including women born after 1972—benefits were simply reduced, increasing the pressure on married women to seek employment.¹⁴⁷

The child-care facilities that mothers needed in order to be able to take part in paid labour remained lacking, however. By the end of the 1980's, national budgets for various types of social services were being cut, and the responsibility for providing such services was being delegated to market actors, municipalities and the social partners (trade unions and employers' organisations). Although the Dutch Labour Party was included in the last coalition under Lubbers' leadership, it was unable to reverse this trend in a context of continuing economic recession. Hence, by the time child-care facilities were finally being propagated as a necessary prerequisite for increasing women's participation in paid labour, this issue too became relegated to the decision-making level of municipal governments, collective labour agreements, informal and commercial arrangements. A briefly vented and highly contested plan to set up a national system of subsidised child-care, launched in 1989 by the Labour Party Minister for Welfare Health and Culture, Hedy d'Ancona, definitively disappeared from view.¹⁴⁸

So by the late 1980's, a new consensus was emerging within Dutch social security law and welfare policies concerning the nature of family relations. While the institution of marriage was losing much of its significance for determining entitlement, the principle of mutual financial obligations between family members was being expanded to affect not only those relationships traditionally included in the notion of the nuclear family, but many others as well. As a result, a broader array of persons could be construed of as dependent of private support and hence not entitled to public funds.

At the same time, paradoxically, the public provision of financial support was increasingly being premised upon the assumption that all adults were capable of supporting themselves through paid labour, and of acquiring the services they needed from an array of decentralised and/or market driven providers. Here the assumption of independence, rather than dependence, was being used to exclude individuals from nationally

¹⁴⁷ Bouwens 1997, p. 156-157; Toeslagenwet, 6 November 1986, *Stb* 562.

¹⁴⁸ Bussemaker 1993, p. 226-230.

financed forms of social security, care or other services. The exclusion of the post-1972 generation from unemployment benefits based on the breadwinner model can serve as an example, as well as the retreat of the national government from providing financial support for childcare.

Both ideas—that of family dependency and that of individual independence—were reminiscent of the post-war approach to family relations through the parallel systems of social security and national welfare policies. But where the post-war model targeted different protagonists within the family—the male breadwinner and his dependent spouse and children—the new model could target one and the same person with both logics at once, thus doubly excluding him or (more often her) from publicly financed support. Thus a woman whose husband was on unemployment or disability insurance was expected to supplement his income with a paid job, while she was also expected to resolve ensuing conflicts with her care responsibilities on her own. Those lacking the financial means to buy care on the market would have to mobilise friends, neighbours and family. Paradoxically, the new rhetoric of individualism actually implied a higher incidence of mutual dependency.

Family Law under Pressure

In contrast to the developments in social security law and welfare policy described above was the Dutch government's continuing reluctance to introduce any family law reforms that might weaken marriage as an institution.¹⁴⁹ In 1977 a group of lawyers specialised in family and child protection law organised themselves in an association. The issues raised at their first meeting were: the emancipation of women and children within family relations; the equal treatment of men and women; regulation of non-marital relations and of social parenting, particularly adoption. Issues relating to the equal treatment of men and women and the emancipation of children within family relations would subsequently be dealt with during the next decade. The reconstitution of the institution of marriage was a more formidable task, and would not be addressed until ten years later.

In 1979 the Dutch Minister of Justice presented a first proposal to eliminate inequality between the sexes in Dutch family law. A special law passed in 1983 dealt with most inequality issues.¹⁵⁰ In particular, the marriageable age was set at 18 years for both sexes and husbands lost their veto concerning the family's place of residence and decisions regarding

¹⁴⁹ Hammerstein-Schoonderwoerd 1984, p. 748.

¹⁵⁰ Law of 30 August 1984, *Stb* 1984, 404.

the children. By 1989 all major differences between *married* men and women had been eliminated—with one exception: the choice of a surname.¹⁵¹ In 1991, the Netherlands ratified the United Nations (UN) Convention to Eliminate all forms of Discrimination Against Women (CEDAW).

In this same period, many of the proposals that Wiarda had made in 1971 concerning the position of minors were finally implemented. A proposal to lower the age of majority from 21 to 18 years was introduced in 1978, and became effective as of 1 January 1988.¹⁵² In 1982 children older than 12 years were granted the right to be heard on issues of parental authority, guardianship and visiting rights.¹⁵³ The position of foster parents was improved. In 1978 they were granted the right to appeal to a judge in the event the biological parents wanted to take the child back, while they, the foster parents, were convinced this would not be in the child's interest.¹⁵⁴ This right only applied in the event that the parents themselves had agreed to have the child brought under in a foster home. Another sign of growing recognition of social parenting was the implementation, in 1979, of the right of step-parents to adopt their spouse's children.¹⁵⁵

Adoption by single or unmarried parents however remained highly controversial. An important reason was probably the continuing reluctance to accept homosexual couples as legal parents.¹⁵⁶ Similarly, no attempts were made to reform the rules regulating the relationship between parents and children *outside* of marriage. Despite all the reforms, the fundamental structure of the heterosexual nuclear family remained intact.

Parental Rights Outside of Marriage

While fathers had lost their formal claim to a dominant position within marriage, divorced and unwed mothers still enjoyed the privileges that had originally been given to them in the interest of protecting them in their nurturing role outside of marriage. Thus an unmarried mother was entitled to veto the claim of a father wishing to officially acknowledge his child. As long as the child had not been acknowledged by its father, it carried the mother's name and shared in her nationality. The father had no rights vis à vis the child, but the mother could sue for maintenance. In the event that

¹⁵¹ Loenen 2003, p. 116.

¹⁵² 1 July 1987, *Stb* 333.

¹⁵³ Article 809 Rv; See Van Duivendijk-Brand & Wortmann 1991,

¹⁵⁴ Law of 7 June 1978, *Stb* 303; Holtrust 1993, p. 215; De Boer 2006, p. 693-696.

¹⁵⁵ Hammerstein-Schoonderwoerd 1984, p. 749.

¹⁵⁶ Holtrust 1993, p. 212.

the father had acknowledged the child, he was legally bound to provide support but there was no Dutch law entitling him to visiting rights. Parental responsibility remained with the unwed mother, regardless of whether or not the parents lived together. The unwed father only had a say over the financial interests of the child. The same situation applied in the case of divorce. Only one parent—usually the mother—was granted parental responsibility. The other only had a say over the child's financial interests. At the time, the parent without parental responsibility had no statutory visiting rights, although he or she could request the court to grant access to the child.¹⁵⁷

As divorce and relations outside marriage became more common, there was growing pressure to introduce statutory visiting rights for parents without parental responsibility.¹⁵⁸ As non-marital co-habitation became more accepted, co-habiting fathers started to demand parental authority over their children, and visiting rights in the event of separation. As single motherhood became a viable and to a certain degree socially accepted alternative to marriage, men faced the prospect of being made superfluous as fathers.

In 1977, an unmarried father went to court after having separated from his child's mother, demanding that he be granted access to visiting rights on the same basis as a divorced father. The Dutch Supreme Court determined that this man's relationship with the mother had been so similar to a regular marriage that he should indeed be allowed to apply for visiting rights as if he had been previously married.¹⁵⁹

Two years later, in 1979, the European Court of Human Rights reached its decision in the *Marckx* case,¹⁶⁰ in which it was determined that no legal distinctions ought to be made between children born in and out of wedlock. Following this decision, Dutch inheritance laws were reformed to put an end to any distinctions that had been made between legitimate and illegitimate children.¹⁶¹ Increasingly, other aspects of the legal status of illegitimate children became a matter of public concern, particularly those that affected the child's relationship with its biological father: visiting rights, parental authority and, last but not least, the establishment of a legal bond between father and child: the prerequisite for any further regulation of their relationship.

¹⁵⁷ Article 1:161 section 5 NBW oud.

¹⁵⁸ De Boer 2006, p. 820-822.

¹⁵⁹ HR 26 May 1977, *NJ* 1978/417; Holtrust 1993, p. 245.

¹⁶⁰ *Marckx vs. Belgium*, ECHR 13 June 1979, application nr. 6833/74.

¹⁶¹ Holtrust 1993, p. 127.

Since 1947, the legal bond between mother and child had been biologically determined: the woman who bore the child was in all cases its legal mother, and could only cease to be so through the process of adoption. A man however only became a child's legal father if he was married to the child's mother or, if he was unmarried, by an act of acknowledgement. In order to be able to acknowledge the child, he needed the written consent of the mother.¹⁶²

In 1981, the Dutch government—under the brief and instable leadership of a coalition of CDA and the Dutch Labour Party—presented a draft proposal to reform the laws on affiliation.¹⁶³ Earlier, a proposal had been introduced to grant statutory visiting rights to divorced parents.¹⁶⁴ Both of these proposals led to heated debate—partly fed by feminist lawyers who feared loss of autonomy for divorced and unwed mothers—and progress was slow. In the meantime, thanks to the European Court of Human Rights' decision in *Marckx*, unmarried and divorced fathers were becoming aware of the right to respect for family life as a fundamental human right that could be claimed before the courts. Increasingly they would claim on this basis before the courts with considerable success. In the course of the 1980's, many aspects of Dutch family law would be declared in conflict with the European Convention of Human Rights by the Dutch Supreme Court. Before the ink had dried on legislative proposals for reform, new court decisions would emerge, resetting the standards once again.¹⁶⁵

In 1981, the Dutch Supreme Court took the first next step toward equalising the position of divorced and separated unmarried fathers. In a decision of 13 February of that year, the Dutch Supreme Court ruled that unmarried fathers should be able to claim exclusive parental responsibility on the same basis as divorced fathers.¹⁶⁶ Two years later the Dutch Supreme Court decided that an unmarried father should be able to apply for visiting rights, even if he had never lived with the child, or the mother.¹⁶⁷ In 1985 the Dutch Supreme Court went a step further,

¹⁶² Article 1:224 lid 1 sub d NBW oud, Holtrust 1993, p. 107. As mentioned above, in the interests of protecting marriage as an institution, children born of an adulterous relationship could not be acknowledged.

¹⁶³ Asser 2006, p. 553.

¹⁶⁴ *Kamerstukken II* 1980/81, 15638.

¹⁶⁵ For a detailed description of Dutch case law of this period, see: Holtrust 1993 and Forder 1995.

¹⁶⁶ HR 13 February 1981, *NJ* 1981/237, Holtrust 1993, p. 248.

¹⁶⁷ HR 1 July 1983, *NJ* 1984/128; Holtrust 1993, p. 246; HR 28 October 1983, *NJ* 1984/764, Holtrust, p. 247.

determining that a father who had hadn't acknowledged his child should never the less be able to apply for visiting rights.¹⁶⁸ This meant that in cases in which the mother had refused permission for acknowledgement, the father could still apply for access to the child, as long as he could prove there was some form of family life, biological and/or social, between him and the child.¹⁶⁹

Some years later the Dutch Supreme Court nuanced its position. After a sperm donor and a man convicted of incest had asked to be granted access to their offspring, the Dutch Supreme Court found that, in order to be able to apply for access to a child, a man would have had to have had a relationship with the mother "similar to marriage" or else some form of close contact with the child.¹⁷⁰ A formal act of acknowledgement was still not named as a prerequisite however, even though by then the courts had already determined that a mother's refusal to consent to the father's formal acknowledgement of his child could form an infringement of article 8 of the European Convention of Human Rights in the event that the mother had clearly abused her privilege. This would most likely be the case when the father had taken on responsibility for the child's care and upbringing, and/or the mother had taken no part in that responsibility.¹⁷¹ Again, the Dutch Supreme Court nuanced its position in a later decision, only assuming abuse of privilege in the instance that the mother had no reasonable interest at all in refusing to allow the father to recognise his child.¹⁷²

In the meantime, the legal position of divorced fathers had been further strengthened and, in their wake, that of unmarried fathers. On 5 April 1984 the Dutch Supreme Court ruled that divorced parents should be able to share parental responsibility over their children¹⁷³ and on 29 March 1986, the same was decided regarding unmarried parents.¹⁷⁴ On this issue the

¹⁶⁸ HR 22 February 1985, *NJ* 1986/3.

¹⁶⁹ Holtrust 1993 p. 250.

¹⁷⁰ HR 10 November 1989, *NJ* 1990, 628. These criteria are similar to those named by the European Court of Human Rights in the *Berrehab* case, ECHR 21 June 1988, application nr. 107030/84.

¹⁷¹ HR 8 April 1984, *NJ* 1989/170, Holtrust 1993, p. 110; p. 115-116.

¹⁷² HR 19 May 1990, *NJ* 1991 374/375. The Dutch Supreme Court's generosity in granting biological fathers access to various rights vis a vis their children was later confirmed in the European Court of Human Rights' decision in the case of *Keegan vs. Ireland*, in which this Court determined that a biological father who had had some form of family life with his child, should be granted the opportunity to give further substance to that family life, ECHR 26 May 1994, nr. 16969/90.

¹⁷³ HR 5 April 1984, *NJ* 1985/510, Holtrust 1993, p. 253.

¹⁷⁴ HR 29 March 1986, *NJ* 1986, 585-588; Holtrust 1993, p. 253

Dutch Supreme Court did determine that formal acknowledgement of the child, by the father, was a necessary prerequisite.

On 10 November 1989, the Dutch Supreme Court ruled in favour of a married man wishing to formally acknowledge the child of his mistress.¹⁷⁵ Feminist authors commenting on this case remarked that, in taking this decision, the Dutch Supreme Court had relinquished the traditional Dutch norm of monogamy.¹⁷⁶ Little of what marriage had once stood for seemed to have been left intact.

Revolution or Restoration?

In the late 1980's and early 1990's, feminist lawyers took stock of the changes that had occurred in Dutch family law.¹⁷⁷ These authors concluded that women's escape routes from married life had been successfully neutralised. Their chief complaint was that the courts, in their endeavours to bring non-marital and post-marital relations onto a par with marital ones, had failed to take into account the substantive differences that still distinguished women's lives from men's and, in particular, the lives of mothers from those of fathers. Despite women's increased involvement in paid labour, they still performed two thirds of all unpaid nurturing tasks.¹⁷⁸ In the vast majority of cases, following divorce or separation, the mother still took on the full responsibility of looking after the children as a single parent.

The position taken by many feminist authors was that the parent who carried the brunt of responsibility for raising the children, should also have the largest say in their upbringing. The privileges that had traditionally been accorded to single mothers—single parental responsibility and the right to veto a man's formal acknowledgement of a child—should, in their opinion, have been maintained and perhaps even extended. However, in giving divorced fathers access to joint parental responsibility, unmarried

¹⁷⁵ HR 10 November 1989, *NJ* 1990/450, Holtrust 1993, p. 133.

¹⁷⁶ Holtrust 1993 p. 133. On 17 September 1993, the Supreme Court determined that children born during marriage should be able to disown their mother's husband as father, in the event that he was not, in fact, their biological father. HR 17 September 1993, *NJ* 1994, 373. A year later the European Court of Human Rights determined in its decision in *Kroon vs. the Netherlands*, ECHR 27 October 1994, application nr. 18535/91, that a woman should be able to deny that her husband was the father of a child born during her marriage.

¹⁷⁷ For a summary of this literature, see Goldschmidt and Holtmaat 1993 p. 106-138.

¹⁷⁸ Goldschmidt & Holtmaat 1993 p. 89.

fathers access to visiting rights and joint parental responsibility, and biological fathers the possibility of acknowledging their children without the mother's consent, the Dutch judges had, instead, extended the privileges enjoyed by married fathers well beyond the realm of marriage. For mothers seeking a greater degree of autonomy, as a parent, than was available to them within marriage, there was no longer a viable alternative. Feminist lawyers emphasised the importance of the practicalities of day to day care. They accused the courts of turning a blind eye to the dangers of domestic violence and incest, and of defining the child's interests exclusively in terms of "having a father".

These same authors also pointed out that women who departed from their nurturing role and delegated the care of their children to another, ran the real risk of being disqualified as parents and subsequently losing parental responsibility.¹⁷⁹ But men claiming visiting rights or shared custody quickly won the courts' sympathy, regardless of the amount of time they actually spent with their children. In fact, once statutory visiting rights had been introduced in 1985, these became the rule rather than the exception. The courts were not required to consult the mother, but only to take the interests of the child into consideration. What those interests entailed, was once again a subject of contention.¹⁸⁰

Another indication, in the eyes of the feminist critics, of the indifference of both courts and legislature to the significance of the caring relationship between parent and child, was their continuing refusal to allow for the partners of homosexual parents to acknowledge the children they were actively involved in raising, to grant them access to visiting rights and joint parental responsibility. Similarly, it remained impossible for singles and unmarried couples to formally adopt a child. Despite the growing acceptance of homosexuality, divorce and non-marital cohabitation, despite growing tolerance for adulterous relationships and

¹⁷⁹ By decision of 25 September 1982, the Supreme Court had determined that a mother could be relieved of her guardianship on the grounds that she was not directly involved in the care and upbringing of her child, HR 25 September 1982, *NJ* 1983/202; Goldschmidt & Holtmaat 1993, p. 129.

¹⁸⁰ In 1990 the grounds for denying visiting rights were limited to the following four: that contact with the parent would result in serious physical or mental harm for the child; that the parent is clearly unsuited for or clearly can not be considered capable of continued contact; the child is older than twelve years and has made clear, during his hearing with the judge, that he has serious objections to further contact, or continued contact goes against pressing interests of the child in other respects, Article 1:377a BW; before 1:161a BW.

sympathy for the children these produced, heterosexual marriage still remained the preferred pedagogical model for raising children.¹⁸¹

But while many feminist authors expressed their disappointment over the changes taking place in Dutch family law, more mainstream authors expressed their approval of the fact that, in their eyes, men and women were finally being treated as equal and mature adults, capable of making their own choices and decisions in their best mutual interests and in the best interests of their children.

"It is undesirable to impose stereotypes upon the parents... Furthermore, a child's needs are not static but dynamic and disparate. In short, a legal response to the concern expressed by [feminist authors-SvW] would necessarily involve an intensified regulation of custody, when what is needed, in the interests of being able to respond to the individual needs of each child, is greater de-regulation."¹⁸²

Once the religious columns lost their grip on family norms in the Netherlands, a Pandora's Box of conflicting interests and desires had opened up. After decades of religious tutelage and sectarianism, there was a strong thirst for personal autonomy and normative freedom. Adolescents sought sexual autonomy and release from parental control; women sought freedom from male dominance and a larger say over the upbringing of their children; men sought more sexual freedom and release from the life-long responsibility of having to provide financial support for dependent family members. At the same time both adolescents and women claimed independent shelter and financial security, while men insisted on maintaining ties with their children, regardless of the state of their relationship with the mother.

The more explicitly the inherent contradictions of family life were being played out in the fields of social policy and family law, the clearer it became that political fantasies of building civic virtue or national solidarity on the foundations of shared family values were doomed to fail. It is not surprising then that, in the face of the new economic crisis that had set in in the 1970's, politicians had turned to the less contested discourse of individualism in order to mobilise support for a restructuring of the Dutch Welfare State.

¹⁸¹ Holtrust 1993, p.325-333; see also: Van Vliet 2000, p.41-50.

¹⁸² Forder 1995, p. 405.

C: 1990-2000: Reaching a New Consensus

By 1990, the project of restructuring the Dutch Welfare State had led to some fundamental changes. As already mentioned, financial risks were being shifted back onto the intimate sphere, while the national government skirted responsibility for childcare and domestic violence. On the whole, social benefits and services were cut and/or decentralised under the successive Lubbers cabinets. The net result of these changes was that, from 1980 onwards, the gap between rich and poor had been increasing in the Netherlands, while before it had been gradually diminishing.¹⁸³ In particular, the income of those bearing the responsibility for children had fallen behind that of those unburdened by such responsibilities, and single income families had fallen behind double income ones. Between 1980 and 1990, poverty among children increased by 30%.¹⁸⁴

In 1994, for the first time since 1918, a coalition came to power in the Netherlands without the participation of confessional parties. The Dutch Labour Party (that had already taken part in the last of the Lubbers' cabinets) returned to power, but now flanked by revitalised liberal parties (VVD and D-66) rather than the CDA. Despite the leading role of the Dutch Labour Party, under leadership of Kok, this cabinet persisted in the neo-liberal course that had been set out under Lubbers. Like New Labour under Blair in the UK, the Dutch Labour Party too had become more "business like", making collaboration with the traditionally right wing liberals less incongruous than it would have been in the strongly polarised 1970's. This coalition between new-left socialists and the liberal VVD was referred to as the "Purple Coalition", referring to the colours traditionally associated with these two political streams: red and blue, and suggesting a mingling of their distinct (and traditionally conflicting) ideologies to produce something new.

Initially, the turn away from the post-war model of the Welfare State may well have been motivated by the economic crisis that had continued until well into the 1980's. But the fact that this trend continued once the economy recovered in the 1990's and the Dutch Labour Party had re-emerged as a major force in Dutch politics, suggests that more fundamental changes were at hand and that, like many other Western states, the Netherlands too was becoming involved in the dynamics of globalisation, in which concern for the needs of international business threatened to overshadow concern for national solidarity. Such a shift

¹⁸³ Wilterdink 1993, p. 6-9.

¹⁸⁴ Knijn & Cuyvers 2002, p. 51.

away from the post-war model of the Welfare State also had implications for the normative assumptions on which it had been founded.

Introducing a New Moral Order

In 1990, still under Lubbers and the CDA-Labour coalition, the Dutch cabinet presented a policy paper entitled "Social Renewal". In it, the government proposed to develop a new relationship between the nation state and its citizens. The costs of supporting the unemployed and the needy had to be reduced so that more could be invested in "the future of our country",¹⁸⁵ among other things in high quality infrastructure needed for improving the position of Dutch cities on the international market.¹⁸⁶ The policy paper acknowledged that, while the economy was picking up, certain segments of the population, and particularly those of foreign origin, remained in a disadvantaged position. To the extent that this affected the safety and the quality of life within the cities, this formed a threat to their regeneration. Hence social welfare was important for the economic advancement of the country.¹⁸⁷

However, the problems were complex and could not be resolved at a central level. Local municipalities had to be granted the freedom to set their own priorities and make adjustments suited to their own local context. The central government was to limit its efforts to stimulating local initiative and responsibility by setting up covenants.¹⁸⁸ A strong appeal was made to the individual responsibility of those directly concerned: to provide for themselves and to look after their own surroundings. Training and subsidised jobs were to bring the unemployed back onto the labour market.¹⁸⁹ At the same time, this "pool" of subsidised labour was to offer a cheap solution for cleaning up city streets, maintaining parks and preventing vandalism. The solution to social problems was in effect being made the private responsibility of individual citizens.

Under the Purple Coalition, this focus on social renewal in the sense of providing support for social networks (still dear to the confessional parties) was to give way to concern for urban renewal through more repressive measures of state control. The issues of slum clearance, crime prevention and racial conflict came to take centre stage.¹⁹⁰ Thus the Dutch

¹⁸⁵ Nota Sociale Vernieuwing, *Kamerstukken II* 1989/90, 21455, nr. 4, p. 3.

¹⁸⁶ Ibid. p. 27.

¹⁸⁷ Ibid. p. 27-28.

¹⁸⁸ Ibid. p. 5.

¹⁸⁹ Ibid. p. 4.

¹⁹⁰ Verwey-Jonker Instituut 2003, p. 39-50.

state did become directly involved in the process of "social renewal" after all, but not in the sense of orchestrating national solidarity and devising national policies to solve social problems (the post-war model) nor by facilitating local forms of solidarity (the rhetoric if not the practical application of the plans launched under Lubbers¹⁹¹). Rather the role of various government and semi-government officials had become that of chastising or otherwise dealing with deviant individuals within the urban areas—individuals who were now being portrayed as the cause of social problems, rather than as a potential source for solutions.

The Family in the New Moral Order

The post-war model of the Welfare State had been founded on assumptions concerning the nuclear family, headed and financially supported by the male breadwinner-citizen, nourished and reproduced by his dependent housewife, the mother of his children and of the nation's future citizens. As notions concerning the relationship between the nation-state and its citizens changed; the role that the family played in mediating that relationship also had to be reconsidered.

In 1994, inspired by the UN's International Year of the Family, the Dutch government launched a new definition of the family, no longer premised on the relationship between (marital) partners, but upon the relationship between parent and child. From then on, the family was to be defined as: "any (primary) social unit in which children are cared for and raised."¹⁹² Two years later, the Purple cabinet published a Policy Paper on the Family.¹⁹³

The view reflected in this Policy Paper on the relationship between state and family was ambiguous. On the one hand it celebrated the individual freedom enjoyed by modern Dutch families. How people organised their family life was a private matter, and should be left to their own discretion.¹⁹⁴ Most parents were assumed to be capable of bringing up their children to become responsible adults, independent of character and willing and able to take initiative.¹⁹⁵ However, this didn't apply to all parents. Some parents weren't up to the challenges of a modern upbringing, and their children were described as being "on the verge of

¹⁹¹ Nota Sociale Vernieuwing, *Kamerstukken II* 1989/90, 21455, nr. 4.

¹⁹² Huisman 2002, p. 32.

¹⁹³ Ministerie van Volksgezondheid 1996.

¹⁹⁴ Ibid. p. 8.

¹⁹⁵ Ibid. p. 10.

social disintegration".¹⁹⁶ Authoritarian parents were named as problematic,¹⁹⁷ but lack of discipline and control were also named as risk factors.¹⁹⁸ Immigrant families were implicitly associated with the first type of dysfunctional parenting, and explicitly with the second. The relatively high percentage of incarcerated youngsters of "non-western immigrant background" (roughly 50%) was named as a major cause for concern, while crime prevention was seen as an integral element of policies regarding families and the upbringing of children.¹⁹⁹

Various sectors of Dutch society were to be mobilised in the interest of supporting less capable parents in their task of bringing up their children, if need be with force. Under the auspices of the National Council for Family Affairs, projects were devised to support supposedly less capable parents—particularly fathers, immigrants and the "socially disadvantaged"—in the pedagogical arts.²⁰⁰ Schools, paediatric services, children's welfare agencies and the police were all assigned their specific roles.

Under the Purple Coalition, that was to remain in power until 2002, many of these proposals would be put into effect. In 1999 for example, rules to combat truancy were sharpened, allowing for the prosecution of the children themselves, as well as their parents. While before measures against truancy had been justified as serving the interests of the child and his or her right to education, now they were being placed in the context of crime prevention.²⁰¹ Similarly, again in the context of crime prevention, suggestions were made to force parents to accept government intervention in the upbringing of their children, even though the children themselves were not at risk.²⁰² Similarly, the scope for intervention by Child Welfare Services was broadened, while the grounds for intervention remained vague, as well as the reasons that could justify applying more rather than less invasive measures.²⁰³ Although parents and children had been given a stronger position in court procedures, the danger of arbitrary intervention in parent-child relations remained very real. Hence the Dutch Council on Family Affairs, for one, advised not to further increase the scope of coercive measures available to Child Welfare Services.²⁰⁴

¹⁹⁶ Ibid. p. 16.

¹⁹⁷ Ibid. p. 10.

¹⁹⁸ Ibid. p. 21.

¹⁹⁹ Ibid. p. 21.

²⁰⁰ Huisman 2002, p. 32.

²⁰¹ De Graaf 2000, p. 198.

²⁰² Bruning 2002, p. 103.

²⁰³ Bruning 2001, p. 240-245.

²⁰⁴ Nederlandse Gezinsraad 2001a, p. 10.

Not only delinquent adolescents, but marital conflicts too came to be seen as incidental aberrations, unrelated to structural inequalities within Dutch society and the tensions these might cause within the private sphere. To the extent that domestic violence still figured as an issue at all, it was referred to in gender-neutral terms.²⁰⁵ Once again domestic violence was being perceived of as a private issue, as a problem of dysfunctional families, of a specific category of men still caught up in the patriarchal past.²⁰⁶ Ambitious national programs that had been set up in the 1980's to prevent domestic violence were brought to an end.²⁰⁷ The provision of medical and psychological care to victims was left to the private sector.²⁰⁸

As with problems associated with rebellious youth, marital strife too eventually came to be seen as characteristic of exotic cultures, far removed from the free and individualist lifestyle that was coming to be seen as typical of Dutch society. Following the Fourth World Conference on Women held in Beijing in 1995, domestic violence made its way back onto the political agenda, but now as a Third World development issue rather than as a national one. In this context, domestic violence came to be associated with practices such as female genital mutilation, wife immolation and forced abortions—as the violation of the universal human rights of women in the Third World, not of women living in the Netherlands.²⁰⁹ Defined as archaic and/or exotic, domestic violence as a political issue had become disassociated from the relations between men and women in mainstream Dutch society.

The emerging assumptions concerning family life in the new moral order was one of free and responsible adults organising their private lives at will, freely negotiating issues of care and income with a partner or other parties, and fulfilling their duties towards their children according to their own preferences and well informed insights. Whether parents raised their children alone or in the company of others; whether they cared for their children themselves or contracted care out to others; how they chose to raise and educate their children—these were all choices that were left to those concerned. The consequences of those choices, however, were also for their account.

²⁰⁵ Boerefijn et al. 2000, p. 89-91.

²⁰⁶ Boerefijn et al. 2000, p. 82; Römkens 2002, p. 43; Goldschmidt & Holtmaat 1993, p. 193.

²⁰⁷ Boerefijn et al. 2000, p. 125.

²⁰⁸ Ibid. p. 84.

²⁰⁹ Ibid. p. 91-92.

While on the whole families were to be left to their own devices, state intervention was called for in those instances in which the individuals involved proved incapable of bearing the responsibility that modern family life implied. Families that failed for whatever reason were seen as exceptions that proved the rule of individual responsibility. Their failure was attributed to shortcomings of the individuals involved, who were dismissed as being somehow deviant from the national norm and consequently in need of correction.

Individual Responsibility in the New Moral Order

Consistent with this new perception of the family as a locus of individual freedom and responsibility, the gendered division of labour came to be seen as the result of freely contracted agreement between negotiating individuals. Consequently, men and women were also expected to bear the financial costs of the "choices" they had made. All parents, and not just breadwinners, were expected to seek paid employment once they or their partner became dependent of welfare benefits.²¹⁰

However, while by the late 1990's most women did join the labour force upon leaving school, once they started to have children, their involvement in paid labour dropped quite dramatically. In fact, more than half of the mothers with partners stopped working altogether while their children were young—even more than single mothers.²¹¹ Those who did continue to work, worked part time—helping to make the Netherlands the country with the most part-time jobs in Europe. The norm of the stay-at-home mother remained strong in the Netherlands. Although the number of mothers who took on a paying job outside of the home did increase, the average number of hours that they spent on that work did not: 23 hours a week for college and university educated women; 19 hours a week for less well educated women.²¹² In other words, a quarter of a century after the second feminist wave had started to roll, most families with children still relied heavily on a male breadwinner.

While the Dutch government did concede that some arrangements would have to be made to help parents combine their parenting responsibilities with paid labour, the actual measures that were taken remained piecemeal and inadequate. In stark contrast to the expanding constellation of institutions that was being mobilised to support the state in correcting the wayward offspring of dysfunctional parents, there was very

²¹⁰ Driessen 1997 p. 50-56; Knijn & Cuyvers 2002 p. 42; Driessen 2000 p. 187-188

²¹¹ Nederlandse gezinsraad 2001, p. 55.

²¹² Den Dulk et al. 2003, p. 69-81.

little support for those parents who were left "free" in the upbringing of their children. Both employers and schools, for example, remained extremely reluctant to adapt to the needs of working parents. The logistical problems of combining work and care had to be resolved by the parents themselves.²¹³ While the availability of childcare facilities did increase, so did the costs, often running up to one third or even half of what a woman with an average income would earn.²¹⁴ And although measures were taken to help parents combine their responsibilities at home with paid work, many of these—parental leave for example (generally unpaid) or the right to work part-time—did not form a realistic option for lower and middle income families.²¹⁵

Moreover, the support offered to parents was premised upon the assumption that children were being looked after and supported by two adults, even though the government was clearly aware that 13% of the children in the Netherlands were growing up in single parent families.²¹⁶ Although most single fathers (68%) were able to support themselves and their children with paid work, nearly half of all single mothers were to a greater or lesser degree dependent of welfare benefits. This was particularly true for divorced mothers.²¹⁷ The only concession to single parents (i.e. mothers) was the temporary provision of subsidised child care while they made the switch from welfare to work or study.²¹⁸ As a result, single mothers became dependent of family members who could take over the care of their children, while they went out to work.²¹⁹

The discourse of individual freedom and privacy served to increase mutual dependency in other ways as well. In the course of the 1990's, under the Purple Coalition, welfare policies were modified once again. In 1996 the range of persons assumed to be prepared to bear the financial responsibility for each other was further expanded to include all adults sharing the same household, regardless of the nature of their mutual

²¹³ Nederlandse Gezinsraad 2001, p. 118-119.

²¹⁴ On the average, women still earned considerably less than men, partly because they held lower functions, but also because the Dutch labour market was still segregated, and "typically female" work generally paid less than "typically male work". Nederlandse Gezinsraad 2001, p. 55. Keuzenkamp & Oudhof 2000, p. 102.

²¹⁵ Nederlandse Gezinsraad 2001, p. 143.

²¹⁶ Ministerie van VWS 1996, p. 7.

²¹⁷ Niphuis-Nell et al. 1997, p. 89, (based on figures for 1994).

²¹⁸ Ministerie van VWS 1996, p. 5. See also Knijn & Cuyvers 2002; Driessen 2000.

²¹⁹ Knijn & Cuyvers 2002, p. 44.

relationship.²²⁰ By 1998, welfare agencies were enabled (and obliged) to reclaim any benefits that they might have paid out to separated or divorced persons from the former registered partner, as well as from the former spouse.²²¹ In the interests of privacy, not only marital and non-marital, but also sexual and non-sexual relationships were to be treated equally.

No longer empowered to carry out invasive investigations into the nature of intimate relationships, social welfare agencies were now expected to work on the assumption that *everyone* who shared a household with another had committed him/herself to supporting that other adult. All claims to welfare (and other) benefits were reduced accordingly. Not only people on welfare, but people receiving old age, widowers' or widow's pensions risked losing (part of) their benefits as soon as they moved in with another adult or took another adult into their homes.²²² While the nature of controls had changed, the number of categories subject to control was increased. So was the range of people who risked having their benefits cut, or losing them altogether.

In the field of social security and welfare benefits, claims had become disassociated from gender and sexuality, but with the reverse effect from what feminists had originally hoped for.²²³ Social divisions deepened as a result. Although the percentage of low income households started to decrease towards the end of the 1990's, the divide between rich and poor actually became more marked.²²⁴ In particular, the gap in income between families with children and those without continued to increase throughout the 1990's.²²⁵

Towards a New Code of Family Law

Once the CDA had been removed from power in 1994, a new political consensus could finally be reached concerning the civil law regulation of family relations. In many ways, the new legal system that emerged under the new Purple Coalition was the complete reverse of that which had

²²⁰ Bouwens 1997, p. 161.

²²¹ Driessen & Wentholt 1999, p. 84.

²²² Driessen 2000, p.187-188.

²²³ Case law has made evident what this has meant for people, for example for a widow who offered to help out one of her adult son's friends when he was temporarily in need of a home. See CRvB 3 October 2000, *Nemesis* 2001 nr. 1381, with comment by Mies Westerveld.

²²⁴ Sociaal en Cultureel Planbureau 2000 p. 156-158.

²²⁵ Nederlandse Gezinsraad 2001, p. 65. In fact, in this respect, the Netherlands is the most polarised nation of the EU, Knijn & Cuyvers 2002, p. 51.

regulated family relations in the years immediately following the Second World War, when religion was still such a prominent force in Dutch society and politics. Marriage became de-institutionalised and the nuclear family became disaggregated. Even the most fundamental underlying assumption of the religiously determined order of the post-war years, heterosexuality, was in the end abandoned, or close to it.

De-institutionalising Marriage

In September 1995 Winnie Sorgdrager, the new Minister of Justice for D-66—a small liberal party that strongly supported individual freedom in the private sphere—presented a white paper on living arrangements.²²⁶ One of the chief aims of this white paper was to regulate non-marital relationships by introducing the figure of registered partnership as an alternative to marriage. This legal figure was aimed exclusively at regulating the mutual relationship between the partners involved, and changed nothing in their relationship with their respective children. In this way the Dutch cabinet hoped to provide an adequate arrangement for homosexual couples, without actually having to open up the institution of marriage or, more to the point, affiliation to them. As one legal scholar, Jessurun d'Oliveira, quipped, the figure of registered partnership could best be described as a castrated marriage.²²⁷

While the distinctions between marriage and other types of relationships were thus reduced, the significance of the marriage contract itself was changing as well. Already in 1993 the rules regulating divorce had been simplified, making the joint procedure (as opposed to litigation) the rule rather than the exception.²²⁸ In 1996 the De Ruiter Commission reported at the request of the Dutch cabinet on mediation as a possible alternative to court procedures for divorce. This implied, among other things, that there would be no judicial control over agreements regarding the children.²²⁹ In 1999 the then presiding Minister of Justice Korthals (VVD) initiated experiments with mediation.²³⁰

In the meantime, the mutual obligations between spouses had also been made subject to revision. In 1994 laws became effective limiting alimony

²²⁶ *Kamerstukken II* 1994/95, 22 700 nr. 5; see: Forder 1996, p. 1345.

²²⁷ Henstra 1997, p. 192.

²²⁸ Hammerstein-Schoonderwoerd 1993, p. 136.

²²⁹ Wortmann 1998, p. 1487.

²³⁰ Nieuwenhuis et al 2002, p. 197.

to a maximum of twelve years,²³¹ and in many cases a good deal less.²³² In 1996, the social security benefits enjoyed by widows and widowers were made accessible to non-marital partners, but at the same time the extent of these benefits and the range of possible beneficiaries (determined by age and whether or not they had children to look after) were also reduced.²³³ In 1999 a legislative proposal was introduced that was to put an end to the duty of cohabitation for married spouses (and registered partners). These same reforms would also grant married couples more scope to make their own arrangements regarding shared household costs.²³⁴

Disaggregating the Nuclear Family

Complementing a model of marriage that was becoming increasingly divorced from parentage and the forms of dependency that care implied, a new system for regulating parent-child relations also emerged, separated from the institution of marriage. In 1995, the same year that Minister of Justice Sorgdrager initiated debate on registered partnership, a new law was implemented codifying the case law that had developed over the past decennium, allowing for joint parental responsibility following divorce.²³⁵ Three years later, the legislator went a step further, and stipulated that joint parental responsibility would henceforth follow automatically following divorce. Only in the event that shared authority threatened to harm the interests of the children involved, would the courts have to intervene.²³⁶ In a judgement of 10 September 1999, the Dutch Supreme Court confirmed that adherence to article 8 of the European Convention of Human Rights required that the state refrain from adjudicating in matters concerning the relationship between parents and children. In doing so, it refuted its earlier stance that, given the conflict-ridden nature of most divorce proceedings, it would generally be in the best interests of the child to involve the court in the assignment of parental responsibility.²³⁷

²³¹ Law of 28 April 1994, *Stb* 1994 nr. 324 & 325; Law of 7 July 1994, *Stb*. 1994, nr. 570. In exceptional cases, a request to extend alimony beyond the period of 12 years can be granted, 1:157, lid 5 BW.

²³² In the event the marriage had lasted less than five years and no minor children were involved, alimony was to be limited to a period not exceeding the length of the marriage itself (1:157, lid 6 BW).

²³³ Veldman & Westerveld 2003, p. 128-129.

²³⁴ Law of 31 May 2001, *Stb*. 2001, nr. 275. See: Henstra 2000.

²³⁵ Law of 6 April 1995, *Stb* 1995 nr. 240. See: Wortmann 1995, p. 1184.

²³⁶ Law of 3 October 1997, *Stb* 1997, nr. 506. See: Wortmann 1998.

²³⁷ HR 10 September 1999, *NJ* 2000, 20. See also: De Boer 2006 p. 675.

This same legislative exercise also provided for shared parental authority for unmarried couples. In the meantime, rights accruing from the mere fact of being a parent had also been extended. Parents lacking parental authority were granted statutory visiting rights, regardless of whether or not they had ever been married or lived together. Parents who were legally related to a child but who lacked both parental authority and visiting rights were granted the right to information concerning the child, and the right to be consulted on important decisions. On the other hand, adults who had maintained a close bond with a child without being legally related to that child as a parent (step-parents, for example, friends or relatives closely involved in bringing up the child), could now also apply for visiting rights.²³⁸

As of 1 April 1998, new rules of affiliation came into effect, putting an end to all distinctions between legitimate and illegitimate children. To a large extent this, too, amounted to the codification of reforms that had already been initiated by the courts. Following the case law of the European Court of Human Rights and of the Dutch Supreme Court, the new rules allowed for married men—under certain conditions—to acknowledge children born out of wedlock; mothers and children were enabled to refute the parentage of a husband and to ask a court to determine that the man who had in fact begotten the child was the father; unmarried fathers were enabled to apply to the courts for permission to acknowledge a child in the event the mother had refused permission.²³⁹ What this new codification made clear was that a child's legal affiliation to his or her parents was no longer linked to the legal relationship between the parents themselves. The nuclear family as a unit was being disaggregated.

At the same time, the possibilities for establishing legal affiliation through adoption were being extended. Married stepparents acquired the right to adopt their stepchildren after having lived with them for at least three years. Heterosexual couples could adopt a child without having to get married first, provided they had lived together for at least two years.²⁴⁰ For the time being, homosexual couples were to remain excluded from both marriage and adoption procedures. However, parents could apply for joint parental responsibility with someone lacking legal affiliation with their child, if that person had been closely involved in looking after the

²³⁸ Law of 6 April 1995, *Stb.* 1995 nr. 240. See: Henstra 1997; Henstra 1998; Wortmann 1995.

²³⁹ Law of 24 December 1977, *Stb.* 1977, nr. 773. See: Henstra 1998; Wortmann 1998; Loenen 2003.

²⁴⁰ Law of 24 December 1997, *Stb.* 1997 nr. 772.

child for at least one year. Homosexual partners could make use of this possibility.²⁴¹ What's more, the rights accruing to parental responsibility were extended. Social parents who shared in parental responsibility could pass on their name to the child, as well as their nationality and inheritance rights. As was the case with parents who were legally affiliated to a child, these adults too continued to share in parental responsibility after they stopped cohabitating with the child, and they were entitled to apply for single parental responsibility, should the need arise. In the event the biological parent should be granted single parental responsibility, the social parent who had previously shared in the parental responsibility would still have visiting rights.²⁴²

In many respects, this new regime privileged the rights and obligations of both biological and social parents over the interests that had previously stood at the heart of Dutch family law, namely: the protection of marriage as an institution and the integrity of the family unit.²⁴³ Not only was the legal bond between parent and child being disassociated from the (marital) relationship between the adults involved; the legal bond between parent and child was being reconstituted according to two distinct and partly competing models: that of the biological parent and that of the social parent.

Biological parents with legal affiliation but no parental responsibility were being granted access to rights regarding the upbringing of their children (information, consultation, visiting rights) while social parents who had been granted parental responsibility but lacked the status of biological or legal parent were being entitled—under certain conditions—to pass on rights normally associated with legal affiliation: name, nationality and inheritance.²⁴⁴ The fact that the rights of biological parents were being extended, while those granted to social parents were conditional, indicates that there was still a hierarchy between these two forms of affiliation. One of the reasons for the complex and rather convoluted system of rights and obligations that was emerging in Dutch family law was the continued reluctance, on the part of the Dutch cabinet, to relinquish the norm of heterosexuality.²⁴⁵

The Dutch parliament however was equally adamant in its insistence that heterosexual and homosexual couples be treated equally. In July of

²⁴¹ Law of 30 October 1997, *Stb.* nr. 506.

²⁴² Boek 1 BW :253t-y. See: Henstra 1997.

²⁴³ Doek 2000, p.217; 224-225.

²⁴⁴ In case of competing claims, primacy was to be given to the legal parent's claims, Doek 2000 p. 224-225.

²⁴⁵ Loenen 2003, p. 119-120.

1998, the same year in which many of the above described proposals became effective, the Dutch cabinet finally conceded and announced its intention to introduce legislation that would open up both marriage and adoption to homosexuals. A year later, the announced proposals were indeed presented to the legislature.²⁴⁶ Furthermore, the cabinet also put forward a proposal to automatically grant registered partners joint parental responsibility over a child born during their partnership, even if one of the two partners was not legally affiliated to that child.²⁴⁷ An exception was made for male homosexuals. To ensure that the interests of the biological mother would be protected, male homosexual parents were still be required to apply to the court for joint parental responsibility.²⁴⁸ With the significant exception of affiliation, homosexual relationships were thus largely being placed on a par with heterosexual ones.

By the turn of the century, the civil law regulation of marital relationships no longer guaranteed the degree of mutual commitment, financial security and continuity that the institution of marriage had traditionally stood for. At the same time, most if not all of the parental rights and obligations that Dutch civil law had previously attributed exclusively to spouses, could now extend to a broad array of persons, including third parties who were in no way sexually involved with one of the parents.

On the one hand, the de-institutionalisation of marriage together with the more equal treatment of men and women and of homosexuals and heterosexuals in Dutch civil law had led to greater personal freedom. On the other hand, in the context of social security law, unmarried persons who happened to share a household were assumed to take on mutual obligations they had never anticipated or intended. Because of this broadened definition of the "economic unit", and local social security and welfare authorities' increased mandate in preventing fraud, more categories of persons risked being subjected to invasive controls of their private lives.

Now that men and women were assumed to participate in paid labour on equal terms; now that the financial relationship between adults had become dissociated from their sexual relationships; and now that the relationship between sexual partners had become dissociated from parent-child relationships; marriage had lost most if not all of its relevance for the

²⁴⁶ These were implemented in 2001: Laws of 21 December 2000, *Stb* 2001 nrs. 9&10. See: Wortmann 2001.

²⁴⁷ *Kamerstukken* 1999/00, 27 047, nr. 1-3. See: Wortmann 2000.

²⁴⁸ Wortmann 2000, p. 1592.

regulation of affiliation, financial security and other modes of commitment between family members. Once a determinant of social status—that had ensured men of care, sexual services and progeny, and the respect due to them as full and responsible participants in society; women of respectability and financial security, and the respect due to them as the nurturers of the nation's future citizens; and children, the future citizens, of care, financial support and legitimate descent—the institution of marriage had evolved into one of many options for contracting intimate relations between consenting adults.

However, other than the changes in legal regulation might imply, family relations, as experienced by the men, women and children living in the Netherlands, hadn't really changed all that much since the Second World War. Most children were still being raised in heterosexual two-parent households, in which the man bore prime responsibility for the family income, and the woman performed most of the care. Moreover, most young people still aspired to establishing a similar family of their own.²⁴⁹

In the eyes of some authors, the new legal regime had turned the family into an empty concept, devoid of shared cultural meaning. Not everyone agreed. As one author pointed out, opening up the institutions of marriage and adoption to homosexuals was a cultural statement in itself, as was the continuing adhesion to monogamy as a prerequisite for a valid marriage or registered partnership.²⁵⁰ While the new system of family law might not reflect Dutch culture in the sense of prevalent day-to-day interaction, it did reflect the norms that officially defined the new image of the Dutch nation.

Redefining Parental Responsibility

Certainly in the eyes of feminist critics, the new system of family law that emerged at the end of the twentieth century was not normatively neutral. In their opinion, it reflected some deliberate choices that generally worked to the disadvantage of parents directly involved in the upbringing of their children.²⁵¹ As these authors pointed out, the case law of the 1980's and 1990's had provided some scope for taking care into account. Family law courts had only by-passed mothers' objections to their children's acknowledgement by biological fathers in the event that the father had actually been involved in looking after the child and the mother had no

²⁴⁹ Huisman 2002, p. 33.

²⁵⁰ Wortmann 2000, p. 158.

²⁵¹ Loenen 2003; Van Vliet 2000; Henstra 2000.

defendable interest in refusing her consent.²⁵² Similarly, during the 1980's, the courts had only been prepared to grant shared custody following divorce once they had been satisfied that the parents involved were still on speaking terms with each other and that both supported the idea of sharing custody.²⁵³

The new regime, which supposedly codified the case law of the 1980's, actually went further in abstracting parental rights from the day-to-day care involved in bringing up children. An unmarried father could now by-pass a mother's veto in recognising a child regardless of whether or not he had actually participated in looking after that child. Only where the father's recognition might seriously jeopardise the interests of mother or child could the courts refuse the father's request.²⁵⁴ Similarly, in providing for the automatic continuation of shared custody following separation or divorce, the new legislation took no account of the fact that, in the vast majority of cases, divorce meant a significant shift in parental responsibility. In the eyes of feminist legal authors, rules that granted equal parental authority to both parents without taking this shift in responsibilities into account, formed an unjustified interference in the family life of the parent who had come to bear the brunt of responsibility for the children—in the vast majority of the cases: the mother.²⁵⁵

Not only feminists, but mainstream lawyers, too, agreed that the legal position of the parent who was responsible for the day to day care of children following divorce or separation had, on the whole, been weakened.²⁵⁶ None the less, in the experience of many fathers, those mothers who continued to cohabit with the children held the key to control over their visiting rights. Despite all the legal reforms and changing family norms, in the Netherlands as elsewhere visiting rights continued to form a focal point of conflict between separated parents.²⁵⁷ A survey carried out in

²⁵² HR 18 May 1990, *NJ* 1991 374/375. See: Hammerstein-Schoonderwoerd 1993.

²⁵³ HR 21 March 1986, *NJ* 1986 585-589. see: Nicolai 1998.

²⁵⁴ Loenen 2003, p. 119.

²⁵⁵ Henstra 1998. Loenen quotes statistics indicating that in 1993 in 76% of all divorce cases, custody was still being awarded exclusively to the mother, but that in 2001 shared custody was being awarded in 96% of all divorce cases, Loenen 2003, footnote nr. 28.

²⁵⁶ Heida 2000, p. 1-6.

²⁵⁷ As Christine Skinner has argued on the basis of research done in the UK, many men fail to appreciate the logistical implications of separation for the continued contact with their children, and the role that they can and cannot expect their ex-wives or partners to play in managing those logistics. Moreover discourses connecting visiting rights to financial commitments, grounded in a morality of reciprocity, often clash with discourses regarding parental responsibility for young

1998 reveals that roughly 25% of all divorced fathers saw their children less than once per week during the first year following their divorce, and 10% not at all. None the less, there had been some improvement in their situation. Ten years earlier, 25% of all divorced fathers had no contact with their children at all following divorce, while 30% saw their children less than once a week.²⁵⁸

While on the whole parents were being granted a larger measure of freedom under the new regime of Dutch family law in determining how their children were to be brought up and by whom, the increased preoccupation with children's upbringing as expressed through various facets of public law and the inclusion of a broader range of public institutions in the monitoring children's of behaviour threatened to curtail the pedagogical freedom of a growing number of parents.²⁵⁹

Although not identical, the three groups most negatively affected by these developments—families with children, families dependent of social benefits, and families seen as pedagogically weak—did overlap. One group likely to be over-represented in all three spheres was that of immigrant families. Their fertility rate was higher than average; their income rate lower and to the extent that they were associated with exotic culture, their parental capabilities were more suspect.²⁶⁰

In the post-war period Dutch family law had implied a high level of state control of sexuality. By the end of the century, this was no longer the case. But another form of state involvement in family relations had emerged. More selective in its application and less focussed on the family as such, it operated via the various public institutions that served to groom citizens for paid labour, to monitor children and to flank and control parents in their pedagogical tasks. While the recent changes in Dutch family law were being championed by some—and most notably by Dutch middle-class males—as being exemplary of modern liberal values, others

children, grounded in more generalised moral notions. The net result is exasperation on the side of the mothers, frustration on the side of the fathers, misplaced recriminations on both sides, and a total breakdown in communication. Government policies aimed at pressuring "absent fathers" into supporting their children only serve to aggravate such tensions. Skinner 2002, p. 5-12.

²⁵⁸ Fokkema et al. 2002, p. 2. See also: Spruijt et al. 2003.

²⁵⁹ Knijn & Cuyvers 2002, p.44; Thomassen 1993; Van Walsum 2005, p. 221-223. These developments were not unique to the Netherlands, although they might arguably be more marked there than elsewhere in Europe and the US. See further: Glendon 1989, p. 1-2; Schulze & Tyrell 2002.

²⁶⁰ For recent empirical data on immigrant families in the Netherlands, see: Distelbrink & Hooghiemstra 2005.

were quick to point out that behind this liberal and egalitarian front, legally defined Dutch family norms were still playing their role in shaping and maintaining asymmetrical power relationships along the lines of gender, ethnicity and class.²⁶¹

D: The Specific Dynamics of Changing Family Norms in The Netherlands

When we review the changes that have occurred in Dutch family law in the course of the second half of the twentieth century, it is clear that a normative revolution had taken place. In this, the Netherlands was certainly not unique. In her book on transformations in family law in four Western European countries as well as in the United States, Mary Ann Glendon paints a very similar picture across the board.²⁶² At the same time, she does point out that there was a degree of variation within the general pattern.

In the Netherlands, the existence of the different religious columns made for a specific situation in the period immediately following the war. While these columns divided Dutch society, they also served to tie individuals into tightly knit social groups. The religious norms regulating family life served to signify differences between the columns while the family as an institution formed an important focal point for social discipline within the columns. They also provided people with an identity separate from and, to some degree in apposition to the Dutch nation itself. While tightly knit into the social fabric of the nation, the family was more strongly linked to the identities of the religious columns than to that of the nation. Consequently the Dutch state, while strongly involved in policing the legitimacy of intimate relations, kept its distance when it came to freedoms associated with the reproduction of culture and identity—the freedom of education being the most salient example. The lack of public awareness of incest and domestic violence also indicated a large degree of reticence, on the part of the Dutch state, towards interference in family affairs.

The transitional period between 1975 and 1990 was also marked by the specific Dutch heritage. The rejection of the institution of marriage, of enforced heterosexuality and of other limits to sexual freedom seems to have been particularly vehement in the Netherlands, and may well have been a reaction against the high degree of social control that had once

²⁶¹ C.f. Tigchelaar 2000.

²⁶² Glendon 1989, p. 291.

characterised Dutch society. On the other hand, the religiously inspired ideal of the family as moral training ground of the nation, and the related ideal of the stay-at-home mother as provider of care and moral guidance for the next generation of citizens, continued to influence public policies throughout the 1980's. This was particularly evident in welfare policies that continued to accommodate stay-at-home single and divorced mothers, and in the reluctance to provide public child care facilities.

In the end however individualism prevailed. Increasingly, financial independence became the basic assumption of Dutch family and social security law while an "ethics of care" was explicitly rejected as guiding principle in disputes concerning children. Comparative studies conducted in ten Western European nations indicate that by 1990, the Netherlands was among those countries that have been least successful in resolving tensions between moral family obligations and paid labour. As a result, Dutch society had become one of the most polarised in terms of family welfare.²⁶³

Writing at the end of the 1980's, Glendon observed a growing tendency, on the part of Western European states, to take over the family's task of providing financial security—on an increasingly individualist basis. At the same time she also saw these states taking on a larger role in settling family disputes about money and children and in responding to problems of abuse and neglect.²⁶⁴ In the Netherlands at least, these trends were reversed in the course of the 1990's. Although work-related forms of social security had come to be based on individual rather than family needs, state financed benefits such as welfare or state funded pensions came to assume more rather than less interdependency between adults. At the same time, given the assumption of increased gender equality, asymmetrical power relations within families came to be seen as something atypical, an expression of individual deviance to be dealt with incidentally, not as a social issue related to widespread forms of interdependency. Similarly, the changes that took place in Dutch family law in the 1990's generally implied less state involvement in conflicts between divorced or separated parents rather than more, allowing fathers a broader margin of uncontrolled influence than they had had before.

On the other hand, a growing concern with crime prevention motivated increasing state involvement in the upbringing of children within those categories of families perceived of as being "at risk". On the whole, while Dutch private law (family law and employment-related social security)

²⁶³ See Kaufmann et al. 2002 and particularly Schulze & Tyrell 2002.

²⁶⁴ Glendon 1989, p. 295.

implied deregulation of family relations, Dutch public law (welfare policy, child welfare policies, education policies, crime prevention etc) provided for more state involvement in family relations. Moreover, the type of involvement provided was becoming less conducive towards individual emancipation, and more conducive towards the protection of public order.

Other trends that Glendon identified became manifest in the Netherlands during the 1990's, particularly the tendency to see family norms as a matter of individual choice, disassociated from broader normative fields and local networks.²⁶⁵ In the dominant perception, the family was becoming tenuous, unstable and detached. "Equality, individual liberty and tolerance" had become the new normative touchstones, replacing solidarity and altruism, the slogans of the '70's. Although closely associated with the new markers of national identity, the family was no longer seen to be rooted in the human fabric of the nation.²⁶⁶

As we shall see in Chapter Four, Glendon's observation that "religious beliefs or attachment to tradition are frequently [seen to be] relatively unimportant or even counter-productive..." rings true for the Netherlands of the 1990's, particularly regarding the dominant attitude towards "non-Western" ethnic minorities—and especially those of the Islamic faith. Among the many reversals that occurred within the dominant system of family norms in the Netherlands, this disassociation of the family from broader social structures is perhaps the most remarkable, given the strong tradition of religious columns that characterised Dutch society up until the 1970's.

²⁶⁵ Ibid. p. 298; 308.

²⁶⁶ Ibid. p. 298.

CHAPTER TWO

DUTCH NATIONALITY AND IMMIGRATION LAW IN A PERIOD OF RECONSTITUTION AND RECONSTRUCTION: 1945-1975

The previous chapter traced the changes in family norms that took place in the Netherlands during the latter half of the twentieth century, and the accompanying shifts in family law and social policies. In this and the following chapters, a similar account will be made, but then of the changes that took place in the regulation of family migration in the context of these normative shifts. The starting point, once more, is the end of the Second World War. Particularly relevant for questions of nationality and immigration law, is that besides facing the material and moral challenges of reconstruction, the Dutch State also had to deal with considerable demographic upheaval caused both by the war and the subsequent decolonisation of Indonesia.

The war had claimed 230,000 lives in the Netherlands. A good twenty percent of the surviving population (that totalled 9.2 million at the time) was displaced. More than 400,000 had been forced to leave the country and now wished to return. Meanwhile 25,000 Germans had settled in the Netherlands during the war—including both Jewish refugees and Nazi occupiers, while millions of refugees—many of them fleeing communism—were waiting to be admitted to the West. At the same time, 100,000 Dutch colonials who had been interned by the Japanese in the former Dutch Indies had been brought to the Netherlands to recuperate, while thousands of Moluccan soldiers and officers who had remained loyal to the Dutch were waiting to be relocated, together with their families. As anti-Dutch sentiments increased in the former colony, there was an increasing pressure to bring these loyalists to the former metropole, as well as the remaining 250,000 Dutch nationals left behind in the former colony.

On top of all this, the post-war baby boom threatened to aggravate the demographic pressures that followed the war and decolonisation. Although the most acute shortages in food and consumer goods were over by the