The Power and Morals of Policy Makers: Reassessing the Control Gap Debate

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Abstract

For more than fifteen years, there has been a lively debate among migration scholars in Europe and North-America about how to explain "why liberal states accept unwanted migration". This paper assesses existent hypotheses in the "most-likely" case of the making of Dutch family migration policies. This empirical test raises serious doubts as to the validity of the broadly shared assumption that national policy makers have lost the power to regulate migration flows. Accounts that focus on the mechanisms of domestic politics do yield valuable insights, but fail to capture the crucial role of immaterial values in the decision-making process.

INTRODUCTION

Fifteen years after Cornelius, Martin and Hollifield (1994) famously formulated the puzzle of the control "gap", the quest for migration control continues. In the nineties, there was a lively debate among migration scholars from Europe and North-America, striving to explain the paradox that Cornelius et al. (1994: 3), in the introduction to their standard work *Controlling Immigration*, described as follows: "the gap between the *goals* of national immigration policy (laws, regulations, executive actions etc.) and the actual results of policies in this area (policy *outcomes*) is wide and growing wider". The apparent incapacity of states to control immigration flows was discussed as part of a broader debate pertaining to the resilience or redundancy of the nation-state in a globalising world (e.g. Soysal, 1994; Sassen, 1996, 1999; Hollifield, 2000; Joppke, 1998, 1999; Freeman, 1995, 2002). By the end of the nineties, the debate quieted down somewhat. The prospect of the nation-state losing its relevance as a political entity in the foreseeable future had grown increasingly unlikely, and the restrictive reforms implemented in several Western countries – particularly in the field of asylum – had brought many scholars to the conclusion that states' control over migration flows was unabated, if not increasing (e.g. Brochmann, 1999: 298; Joppke, 2002: 262; Geddes, 2003: 20).

The debate has not dried up completely however. At regular intervals, scholars propose new viewpoints and interpretations to account for "why liberal states accept unwanted migration" (Joppke, 1998). In the introduction to the second edition of *Controlling Immigration*, Cornelius and Tsuda

(2004: 4-5) reasserted their "gap" proposition. Other recent contributions include Freeman (2002), Hansen (2002), Boswell (2007) and Messina (2007). And indeed, the debate's central question remains relevant. While the peaking asylum flows of the 1990s have subsided, it remains a core aspiration of Western states perhaps not to stop immigration, but certainly to regulate it according to their societies' interests. The French president Sarkozy's call for an *immigration choisie* rather than an *immigration subie* is a case in point. Whether or not there are limits to states' regulatory capacities in this field, and if so to which extent and of what nature, remains a pertinent question. Furthermore, beyond the undiminished significance of migration control today, it remains imperative to understand the dynamics of the making of the policies that have if not facilitated then at least allowed for the large-scale immigration flows in Europe since the 1950s, flows that have fundamentally altered the face of Western-European societies.

In this paper, I aim to assess the explanatory hypotheses advanced in the control gap debate, based on a study of the making of family migration policies in the Netherlands from the 1950s until today, a case that is an almost prototypical example of the paradox of migration policy in liberal states. This empirical test raises serious doubts as to the validity of the broadly shared assumption that national policy makers have lost the power to regulate migration flows. Accounts that focus on the mechanisms of domestic politics do yield valuable insights, but fail to capture the crucial role of immaterial values and assumptions in the decision-making process.

THE CONTROL GAP DEBATE

For more than fifteen years now, migration scholars have been striving to come to terms with the paradox of immigration policies in Western states. The puzzling paradox is that large-scale settlement migration has taken place over the last fifty years to the extent of fundamentally and irreversibly changing the face of Western societies, even though governments and publics alike considered such immigration unwanted.

Boswell (2007:75) points out that this paradox has two aspects, which have in my view not always been clearly distinguished in the scholarly debate. On the one hand, there is the matter of the

effectiveness of migration policies. The question then is why the policies that governments implement to stop or control immigration do not yield the desired results, i.e. why immigration flows continue in spite of restrictive policies. This is what Cornelius, Martin and Hollifield (1994: 4-5) allude to when they state that social and economic push-factors in the countries of origin and pull-factors in their own societies elude the control of national governments. On the other hand, there is the question why national governments *do not* conduct restrictive policies, that is why they grant entry to migrants whose coming is not considered beneficial for their societies, or as Joppke (1998) put it: "why liberal states accept unwanted immigration". The second explanatory hypothesis proposed by Cornelius et al. (1994: 9-11), i.e. that national governments' capacity to implement restrictive policies is limited by "rights-based liberalism", pertains to this latter aspect of the paradox.

With regard to the alleged lack of effectiveness of migration policies, several authors have argued that there is in fact "no significant control crisis" since on the contrary, Western migration policies show "steadily higher sophistication in terms of flow control and internal surveillance" (Brochmann, 1999: 298; see also Joppke, 2002: 262; Geddes, 2003: 20). In the introduction to the second edition of *Controlling Immigration*, Cornelius and Tsuda (2004: 4-5) maintain the central proposition of the first edition, published ten years earlier: "significant and persistent gaps exist between official immigration policies and actual policy outcomes". They even consider this an "empirical fact", since "few labor-importing countries have immigration control policies that are perfectly implemented or do not result in unintended consequences". Formulated thus, this statement is something of a truism, and thereby loses much of its value as a paradox that proved such fruitful ground for academic reflection and debate. Indeed, one would be hard put to find any policy field where outcomes match policy goals seamlessly. Control policies in the field of migration appear to be no less efficient than those in other policy fields.

The true paradox then is the latter question: why do Western states *accept* unwanted migration, i.e. why have they conducted and do they continue to conduct policies that allow for a large-scale settlement migration that they find undesirable? After all, without dismissing the importance of irregular migration in terms of both numbers and societal impact, the vast majority of the migrants who have settled in Europe since the Second World War – as (post-)colonial migrants,

labour migrants, family migrants or asylum seekers – have done so through legal channels provided by national governments.

The hypothesis most broadly adhered to among migration scholars to explain this paradox posits that national policy makers have lost power over migration policies and have therefore been unable to steer their preferred restrictive course. In particular, policy makers are said to have lost power to the courts. The argument is that by defending the rights of individual migrants, the judiciary has limited the room for manoeuvre of the executive and legislative to refuse entry to foreigners, or expel them. Cornelius, Martin and Hollifield (1994: 9) point to "judicial activism", based on "a new type of liberal republicanism" which "originates in the American civil rights struggle", and which has resulted in "expanded rights for marginal and ethnic groups, including foreigners". In a similar vein, Joppke (2001: 358) speaks of "activist courts aggressively defending the rights of individuals against intrusive states". There has been discussion as to whether or not the rise of these individual rights as a structuring factor in migration policy making should be considered a product of processes of globalisation. While Soysal (1994) and Sassen (1996, 1999) emphasise the development of global and European human rights regimes as a source for national and international jurisprudence, a majority of authors finds that courts have based their defence of migrants' rights first of all on domestic principles of law (Cornelius et al., 1994; Joppke, 1998, 1999; Guiraudon, 2000; Guiraudon and Lahav, 2000; Hollifield, 2000). These authors all agree however, that policy makers have lost a significant part of their power to control immigration to judges.

Sassen (1996, 1999, 2006) has argued that in addition, national policy makers have lost power to a second set of actors, namely supranational institutions such as the European Union and the World Trade Organisation. In particular, she states that the establishment of the free movement of people within the European Union (EU) made the transfer of competences over entry and stay of third country nationals to the EU institutions inevitable. Sassen sees this "relocation of state authority" as part of a "transformation" of the state due to "the growth of a global economic system and other transnational processes" (1999: 177).

Thus, most explanations provided so far for the paradox of migration in liberal states point to a loss of power of national policy makers in the field of migration, which has prevented them from

implementing restrictive policies. Another, smaller body of literature seeks the explanation for the paradox in the mechanisms of national policy making. Gary Freeman (1995, 2002) for instance posits that in spite of public opposition to immigration, liberal states will tend to conduct "expansionist and inclusive" migration policies, as a result of the dynamics of domestic politics. Freeman argues that as a rule, the societal costs of immigration are "diffuse", whereas the benefits are "concentrated". Consequently, the public and collective interest tends to be weakly articulated, whereas small well-organised groups which benefit from liberal migration policies, such as employers, develop close ties with policy makers and succeed in shifting policies their way, outside of public view. According to Freeman (1995: 886), "the typical mode of immigration politics, therefore, is client politics". The crucial factors in his account then are the distribution of interests – costs and benefits of immigration – among societal actors, and the access of these actors to policy makers. Freeman (2002: 94) concludes: "immigration policy is not a morality play: it is interest-driven like most everything else".

Messina (2007: 239-241) shares this view: in his analysis, Western-European migration policies from the Second World War until today have been "interest-driven", i.e. primarily shaped by labour market interests. Messina argues that even after the end of large-scale labour recruitment in the early seventies, there was a demand for cheap and flexible labour on European labour markets, regardless of unemployment levels among the native population. In formal declarations, so Messina states, governments professed their commitment to reducing immigration to a minimum, but in fact they were happy to oblige employers who benefited from continued migration.

An account that is similar to Freemans in its emphasis on domestic policy making, but more focused on institutional structures and less on interest distribution, is offered by Guiraudon (2000). She posits that the rights of migrants will be expanded and strengthened, and the possibilities of governments to control their entry and stay thereby weakened, when the decision-making process takes place in closed venues, shielded from the view of the public which is "systematically biased" (2000: 22) against immigration and expansion of migrants' rights. As main examples of such closed venues, Guiraudon mentions the courts – thereby joining the numbers of those who assign a crucial role to the judiciary – , the administration, and parliamentary debates which are not or barely covered

in the media. The less policy makers are exposed to public scrutiny, the more likely liberal policy reform.

Thus three main hypotheses can be distilled to explain why liberal states have admitted migrants whose arrival was deemed undesirable. First, national policy makers are said to have lost the power to implement the policies of their preference, either to the courts or to supranational actors. Second, it is argued that concentrated group interests have outweighed the diffuse collective interest in decision-making processes. And third, policy making in restricted institutional settings outside of public view is stated to have been conducive to the allocation of rights to migrants.

A "MOST-LIKELY" CASE: THE NETHERLANDS

Most authors who have engaged in the control gap debate base their arguments on policy developments in the United States, France, Germany and the United Kingdom. Guiraudon is the only one to have included the Netherlands in her analysis. Within the Dutch field of migration studies, the only author to have positioned her research in this international debate is Tesseltje de Lange (2007). She evaluated to which extent the hypotheses of Sassen are applicable to the development of Dutch labour migration policies between 1945 and 2006. De Lange concludes that the authority of Dutch policy makers over labour migration has indeed been transferred in part to the European Union, but that they have not lost power to other supranational institutions, courts or private actors to the extent that Sassen suggests.

If Dutch migration policies have so far received little attention in the international academic debate, it is probably in large part because studies of policy making in the field of admission and stay in the Netherlands are scarce (Penninx e.a. 2005: 10).[2] However, the paradox of migration policies is unmistakeably present in the Dutch case. The Netherlands has never wanted to be an immigration country. In the first decades after the Second World War, the government even stimulated Dutch citizens to emigrate, because the country's population density and growth were deemed alarmingly high. (Van Faassen 2001) Until the late 1980s, Dutch politicians insisted that the Netherlands had not, would not, and could not become an immigration country.[3] Up until today, large-scale and permanent

settlement migration is not deemed beneficial either for the population structure, for social cohesion, for social security, or for business and employment. Nonetheless, since the 1950s, hundreds of thousands of foreigners have been granted permission by the government to settle in the Netherlands.

Moreover, the existent explanatory hypotheses *a priori* seem likely to apply to the Dutch case. The competences of Dutch administrative courts are similar to those of their French and German counterparts (Guiraudon, 2000: 220-221) and since the 1970s, migrants in the Netherlands have had access to an extensive network of expert legal aid (Groenendijk, 1980, 1996). The Dutch context was therefore highly conducive to the courts playing an important role in defending migrants' rights. In addition, throughout the post-war period, the Netherlands has been eager to engage in international and supranational cooperation, as a strategy for a smaller country with an open economy to defend its interests in global politics. (Vink 2005: 18-19) Thus, it appears very probable that the hypothesis of national policy makers losing power to judicial and international actors would apply to the Dutch case. Furthermore, the Dutch political system has been characterised as a "consensus democracy" (Andeweg and Irwin, 2005), where policy makers tend to be favourably disposed to incorporating the claims of interest groups in their decision-making process. Freeman's hypothesis of migration policy making being characterised by client politics may therefore be expected to apply. Finally, classic accounts of Dutch political culture by both Lijphart (1979: 124-127) and Daalder (1995: 19-20) have ascribed a central role to "secrecy", that is to the tendency to shield political decision-making from public view. The type of policy making in closed venues that Guiraudon considers a crucial factor in explaining expansive migration policies is therefore highly likely to have occurred.

Generalisation on the basis of a single case is often seen as problematic in the social sciences. Lijphart (1971: 691) is among those who hold that "a single case can constitute neither the basis for a valid generalization nor the ground for disproving an established generalization". However, he acknowledges that single cases may be used to confirm or infirm theory if they are "crucial", i.e. "extreme on one of the variables" (1971: 692). Eckstein (1975: 118) also points to the value of "most-likely" or "least-likely" cases: "cases that ought (…) to invalidate or confirm theories if any cases can be expected to do so". A study of migration policy making in the Netherlands may be used as such a "most-likely" case to assess the theoretical hypotheses generated so far in the control gap debate.

However, since I do not share Lijphart and Eckstein's 'hard' conception of theory – which involves general validity and prediction – my aim must be more modest than theirs. I aim at "limited historical generalisation"(Ragin 1989: 167), i.e. at "context-dependent knowledge" rather than at "predictive theories and universals" (Flyvbjerg 2006: 223-224). The "most-likely" case of migration policy making in the Netherlands shall therefore be used not to prove or disprove theoretical statements, but to evaluate whether existing hypotheses require refinement or modification. (Ragin 1989: 167; Stake 1995: 8)

Following the pertinent criticism of De Lange (2007: 4) at contributors to the control gap debate failing to take into account differences between policy fields, I will focus on a particular sub-field within Dutch migration policies, namely family migration policies. Since family migration, in the vast majority of cases, leads to permanent settlement and is therefore utterly undesirable in a country that refuses to become an immigration country, and since it has in quantitative terms been among the most important immigration flows in the Netherlands over the last five decades, Dutch policy making in this field is an example *par excellence* of the paradox of migration policies in Western countries.

Starting from a constructivist approach to the study of policy making (Fischer 2003; Schön and Rein 1993; Hall 1993; Hajer 1989) I have investigated which actors were involved, how they framed family migration as a policy problem and which policy options they favoured, and to which extent they were able to influence the decision-making process. Based on extensive research in the archives of the Dutch Parliament, ministry of Justice and Council of Ministers, I have reconstructed the making of Dutch family migration processes between 1955 and 2005, not only in Parliament but also in and between the ministries. Elsewhere, I provide a detailed account of this empirical case study (XXX, 2009). Here, I will briefly summarise the history of family migration policies in the Netherlands, and then proceed to investigate in which ways this case speaks to the international control gap debate.

AN OVERVIEW OF THE MAKING OF DUTCH FAMILY MIGRATION POLICIES, 1955-2005[4]

In the development of Dutch family migration policies between 1955 and 2005, three periods can be distinguished. In the first period, between 1955 and 1975, entry and stay of foreign family members were subjected to relatively strict conditions. In the second half of the seventies, these conditions were significantly relaxed: between 1975 and 1989, the Netherlands conducted the most liberal family migration policies of the post-war period. Finally, the years between 1989 and 2005 were characterised by a series of restrictive reforms, which have resulted in Dutch family migration policies being among the most stringent in Europe today.

It is important to note that these shifts in policies – from strict to relaxed and back to strict – cannot be directly related either to economic or to party-political developments. Stringent family migration policies were conducted in times of economic growth – the 1960s and 1990s – while the most liberal policies were conducted during the severe economic depression of the 1980s. Similarly, the generous policies of the 1980s were conducted by Centre-Right cabinets composed of Christian-Democrats and Liberals[5], whereas the restrictive turn of the 1990s was embarked upon and carried on while the Social-Democrats were in power, first with the Christian-Democrats, later with the Liberals.[6]

Between 1955 and 1975, Dutch government and businesses recruited foreign workers on a large scale, first mostly from Italy and Spain, later mainly from Turkey and Morocco. Policy debates centred on the question whether and under which conditions these labour migrants should be allowed to bring their wives and children over. Three conflicting policy perspectives determined the course of the debates. The economic point of view, represented in policy circles by the ministry of Social Affairs, focused on the urgent need of Dutch companies for foreign labour. To ensure the attractiveness of the Netherlands as a country of destination, foreign workers should be offered the possibility to bring their families over. This plea found support in Parliament, where the confessional parties in particular deemed it morally inadmissible to keep fathers and husbands separated from their families. Both Social Affairs and Parliamentarians assumed that labour migrants would return to their home countries as soon as they had saved enough money, or employment opportunities ran out. The long term societal consequences of labour- and family migration were therefore no cause for concern. This assumption of temporary stay was crucial in the justification of large-scale labour recruitment, at a time when population growth and housing shortage were bringing the government to financially

support emigration by Dutch citizens. In contrast, the ministry of Justice was convinced that once their families had come over to the Netherlands, foreign workers would not return to their home countries. Since Justice feared that the large-scale and permanent settlement of foreigners – especially if their cultural background was "different" – would have a detrimental effect on the cohesion of Dutch society, it would have preferred to deny entry to labour migrants' families.

Between 1955 and 1960, family reunification was indeed forbidden. In the course of the 1960s however, the economic and moral perspectives put forward by Social Affairs and Parliament came to outweigh the ministry of Justice's concerns, and policies were gradually relaxed. By 1970, labour migrants from recruitment countries were allowed to bring their family members over after one year of residence, provided they disposed of sufficient housing and a labour contract for another year.

In the second half of the seventies and the early eighties, the conditions for family migration were significantly relaxed. The cultural revolution that shook the world in the late 1960s had a profound impact on the dominant norms regarding family and gender relations in the Netherlands. As a result, non-marital relationships, both heterosexual and homosexual, were admitted as ground for entry and stay, and women were allowed to bring foreign family members over under the same conditions as men. In addition, by the late 1970s Dutch politicians – after years of denying the increasingly obvious – came to acknowledge that the large majority of the migrants who had found their way to the Netherlands from recruitment countries and (former) colonies would not be returning to their home countries. From this, politicians concluded that – in accordance with the norm of equal treatment, a prominent norm in Dutch political discourse since the late 1960s – wherever possible, settled migrants should be treated on a par with Dutch nationals. With regard to family migration, this led to the exemption of resident migrants from the income requirement in case of involuntary unemployment. The significance of this reform can hardly be overrated, in view of the number of migrants who lost their job in the economic recession of the 1980s: unemployment reached 40 per cent among Turkish and Moroccan migrants in 1987. In addition, the residence rights of settled migrants' partners and children were substantially strengthened. The new family norms, combined with the acceptance of migrants as full and equal members of Dutch society, thus resulted in a series of liberalizations, which were all very broadly supported in Parliament. Throughout the post-war period,

Dutch family migration policies have not been more liberal than in the 1980s. Optimism reigned where the social consequences of these policy choices were concerned: thanks to the recently introduced migrant incorporation policy – the "minorities policy" – migrants would soon find their place in Dutch society. This optimism was reinforced by the assumption that the large-scale immigration flows the Netherlands had known since the Second World War had been an accident of history, which would not repeat itself. Once the migrants already present in the Netherlands had brought over the families they left behind in the home country, immigration flows were expected to dwindle.

In the early 1990s optimism gave way to increasing concern about the effects of migration on Dutch society, not only among policy makers but also in public opinion. Immigration flows increased instead of decreasing, due to a sharp rise in asylum flows but also because – as Dutch politicians observed with surprise and alarm – many among the children of the former labour migrants married a partner from their country of origin, resulting in a steady and significant flow from Turkey and Morocco to the Netherlands. In addition, the integration process proved more problematic than expected, particularly with regard to participation in education and on the labour market. To ease migrant incorporation problems, it was deemed necessary to reduce immigration flows, including family migration. At the same time, a new ideological vision gained currency, prescribing that the state should stimulate its citizens to be active and autonomous, rather than rendering people dependent and passive by too much state care. Family migration was therefore gradually subjected to more stringent conditions, not only to reduce inflow, but also to appeal to the "personal responsibility" of applicants to build a future for themselves and their families in the Netherlands. In 1993, the exemption for involuntarily unemployed was replaced by an income requirement of 70 per cent of the social minimum, both for Dutch citizens and resident migrants. This was raised to 100 per cent of the minimum wage in 2000. In addition, in the course of the nineties, structural control on marriages of convenience introduced, and the visa requirement was tightened.

Partly as a result of the profound shock caused by the electoral success of the Pim Fortuyn, whose newly-founded populist and anti-immigrant LPF won a landslide victory in the elections of 2002, the restrictive trend of the 1990s took a more radical turn in the early 2000s. Where the

migration and integration issue had been defined primarily as a socio-economic problem in the nineties, the political debate after the turn of the century centred on the problematic aspects of cultural diversity. Across the political spectrum, it was assumed that a certain measure of homogeneity in values and customs was a necessary precondition for social cohesion. Family migration was seen to have severe detrimental effects on the collective process of migrant integration in the Netherlands, not only because of the size of the inflow, but also because a significant number of family migrants were thought unlikely to 'fit' in Dutch society, in view of both their socio-economic and cultural characteristics. Marriage migration from Turkey and Morocco in particular was cause for concern, since it was seen to set in motion a vicious circle where failing integration and marginalisation were reproduced from generation to generation. The quantitative policy goals of the nineties were therefore reinforced and supplemented with qualitative goals: the reforms most recently implemented in the Netherlands were designed to make a selection at entry between desirable and undesirable migrants. The income and age requirements for family formation were sharpened in 2004. In addition, the Law on Integration Abroad of 2005 stipulates that entry will only be granted to family migrants who have proved to possess sufficient knowledge of Dutch language and society. Currently, Dutch family migration policies are highly restrictive, not only in contrast to earlier periods, but also in comparison to other European countries.

THE POWER OF POLICY MAKERS

The most widely supported explanation for why liberal states have allowed for large-scale settlement of foreigners that they found unwanted points to a loss of power of national politicians and civil servants to supranational institutions or to courts, which has hindered them from conducting the policies of their choice. This is not what happened in the case of Dutch family migration policies however.

Over the last fifty years, Dutch policy makers' authority over family migration policies has not been significantly reduced to the benefit of supranational institutions such as the European Union (EU). Since the EU has only very recently been given competence over entry and stay of family

members from third countries, the large-scale family migration which has taken place in the Netherlands in the past decades cannot be considered a consequence of the European integration process.

For a long time, it was out of the question that a matter as sensitively close to the heart of national sovereignty as entry and stay of third country nationals would be brought into the realm of the European supranational institutions. Only in the 1990s, with the abolishment of internal border control as part of the completion of the internal market, were the first careful steps towards European harmonisation in this field taken. Initially, this was a strictly intergovernmental process. It is only after the Treaty of Amsterdam (1997) that asylum and migration policies were gradually supranationalised, i.e. that the European supranational institutions – Commission, Parliament and Court – were granted a say. Family migration policies were first subjected to Community Law with the adoption of the EU Directive on Family Reunification of 2003. This Directive is directly binding upon the Member States, and the Commission and Court see to it that national policies respect the boundaries it sets. The supranationalisation of family migration policies has thus been embarked upon: much now depends on the jurisprudence that the European Court of Justice will develop, and on the Commission proposals for further harmonisation in this field, announced for 2010. In a recent judgement, the European Court of Justice has ruled that current Dutch marriage migration policies must be modified, most notably because the income requirement of 120% of the minimum wage is higher than the Directive allows.[7] This illustrates that with the EU Directive, authority over Dutch family migration policies has indeed been transferred to a very significant degree from The Hague to Brussels and Luxembourg. In this respect, Sassen's (1996, 1999) hypothesis may prove valuable to understand present and future policy developments: it does not yield insight however in policy making processes of the past fifty years.

I have found just as little support for the broadly shared proposition that national policy makers have been forced to admit immigration flows, due to courts' defence of migrants' rights. The attitude adopted by Dutch courts as well as the European Court of Human Rights in Strasbourg, far from being "activist" or "aggressive" as Joppke (2001: 358) put it, is marked by great reticence to encroach upon the sovereign right of the democratically legitimised government to grant or deny entry and stay to foreigners (cf. Van Walsum 2004a, 2004b; Guiraudon 1998: 661-665).

In the 1950s and 1960s, judicial rulings did not affect the making of Dutch family migration policies, for the simple reason that there were no rulings. The possibility for foreigners to appeal governmental decisions in family migration cases was only introduced in the late 1960s: until that time, labour migrants did not have access to the Dutch judicial system, also because legal aid was to not available to them (Groenendijk, 1980, 1996: 120-121, 124-125). The step-by-step relaxation of the conditions for family reunification in the course of the 1960s then, had nothing to do with judicial pressure, and everything with the weight of employment and business considerations brought forward by the ministry of Social Affairs on the one hand, and moral concerns expressed by Members of Parliament on the other hand. For instance, in 1963 Social Affairs convinced the Council of Ministers to allow Spanish workers to bring their families over after one year of residence instead of two, by arguing that the recruitment of foreign labour was facing "significant difficulties". The competition with other labour recruiting countries was fierce, and labour migrants regrettably tended to prefer other West-European countries over the Netherlands, because of the strict Dutch family reunification policies. Moreover, "valuable workers, who have finished the difficult period of acclimatisation and settling in to the job" often refused to prolong their contract after a year because they did not want to remain separated from their families for another year. Social Affairs assured the Council that there was no reason to fear that labour migrants would not return to their home countries: "Let it be stated with emphasis – the very large majority of migrant employees has no intention of settling permanently".[8] This proposal found support in the Council, partly because MPs belonging to the Catholic party – the largest party in Parliament – had criticised the separation of labour migrants from their families as "extremely painful", pleading forcefully for finding a "human and not strictly economic solution", i.e. for "softening the current harsh regulations".[9] This example is representative for the other liberal reforms implemented between 1955 and 1975, which were all initiated by the ministry of Social Affairs. Supported by the Parliament, Social Affairs usually had its way (XXX 2009: 64-100).

In the course of the 1970s, the possibilities for appeal were significantly strengthened, and an extensive network of expert legal aid became available to migrants. As a result, the number of judicial rulings increased exponentially. However, the impact of the judiciary on the content of family migration policies remained limited.[10] Court rulings played a role mainly in the abolishment of

preventive control on sham marriages in 1986 and in the failure of attempts to introduce a strict visa requirement for family migrants in 1972 and 1980 (Groenendijk & Swart 1980: 26-27, 169-171). However, the bulk of liberalisations carried through in the late 1970s and early 1980s were adopted for political reasons, without the courts exercising any pressure to this effect. For instance, the admission of homo- and heterosexual non-marital relations as grounds for entry and stay was decided in 1973 by deputy minister of Justice Jan Glastra van Loon, a left-wing Liberal philosopher in the cabinet Den Uyl – the most progressive cabinet in Dutch political history. Glastra van Loon took this decision almost immediately after entering office, to the shock and dismay of his not quite so progressive officials.[11] It was also Glastra van Loon who introduced the possibility for foreign women to bring their families over in 1973, since he saw "no ground whatsoever" to justify unequal treatment of men and women.[12] Full equal treatment of men and women in foreigner law was accomplished in 1979, due to strong pressure from left-wing parties in Parliament.[13] Furthermore, from the late 1970s onwards, all political parties came to consider equal treatment of settled foreigners and Dutch citizens as a condition for migrants' integration in Dutch society.[14] In anticipation of a parliamentary discussion of family migration policies, Justice officials decided in 1978 that since Dutch women with foreign families were exempted from the income requirement in case of involuntary unemployment, foreigners with a permanent residence permit should be too. They reasoned that "since permanent settlement of this category of foreigners must be reckoned with, a treatment, equal to that which is given in the same circumstances to Dutch citizens, appears justified".[15] It was the norm of equal treatment which brought Dutch policy makers to adopt all these liberal reforms, in the absence of any judicial constraint.

As of the second half of the 1980s, the European Convention on Human Rights (ECHR), in particular its article 8 which guarantees the right to family life, began to play a role in Dutch family migration policies. In the 1990s, the jurisprudence of the Court in Strasbourg limited the possibilities for restrictive reform especially where family reunification for refugees and continued stay of foreign family members was concerned. From the late 1980s onwards, compatibility with article 8 ECHR was checked for each individual family migration decision. The most direct impact of the ECHR on Dutch family migration policies was the abolishment, in 2006, of the condition of a "factual family relationship" – which entailed that foreign children where refused entry if their parents had left them

in the care of others in the country of origin for more than five years – following two condemnations of the Netherlands by the Court in Strasbourg.[16] However, neither the gradual raise of the income and age requirements since the 1990s, nor the introduction of the civic integration exam abroad met with principled objections from the Dutch courts.[17] The judicial objection of the 1980s to preventive control of sham marriages and strict visa requirements was overcome in the 1990s through legislative reform. (Van Walsum 2008: 218-219, 229) The recent ruling by the European Court of Justice discussed above was probably the most significant judiciary intervention into Dutch family migration policies ever: it was made possible by the introduction of Community law in this field in 2003. The control exercised by the courts was certainly not stricter in the 1980s than it is today: the jurisprudence of the European Court in Strasbourg was not very developed yet, and the European Court of Justice was not yet competent. All the restrictive measures adopted from the 1990s until today would have been judicially admissible in the 1980s as well, had Dutch policy makers wished to implement them then.

Thus, while the influence of the courts on Dutch family migration policies has not been negligible, it was certainly not such that it has significantly limited the possibilities for Dutch policy makers to impose strict conditions on family migration. Judges see to it that the Dutch government strikes a fair balance between individuals' interest in (re)uniting with their family on the one hand, and the public interest in regulating migration on the other hand. The room for manoeuvre that courts concede to the government to define and protect this public interest is considerable: income, housing, age and integration requirements have generally been judged perfectly legitimate. Dutch policy makers however have not always made full use of this room for manoeuvre: far from it even, especially in the 1980s.

The paradox of family migration policy in the Netherlands cannot be explained by a loss of power of national policy maker either to the courts or to the European institutions. The authority to regulate the entry and stay of foreign family members, until 2003, lay with Dutch politicians and civil servants: if they set conditions that allowed for large-scale family immigration, it was out of their own choice, independent of external constraints. It is these choices that require explanation.

THE MORALS OF POLICY MAKERS

Since Dutch politicians and civic servants have remained the main policy making actors, analyses that focus on domestic politics appear promising to explain the paradox of Dutch family migration policies. Indeed, Freeman's account of migration policies as "client politics" in which "concentrated" interests outweigh "diffuse" interests proves valuable especially to understand the dynamics of the making of Dutch family migration policies in the 1950s and 1960s. Over these years, the ministry of Justice, which strongly objected to admitting the families of labour migrants, gradually had to give way to the pressure of the ministry of Social Affairs, with a step-by-step liberalisation of entry conditions for result. The objections of the ministry of Justice stemmed from concerns for the long-term societal consequences of family migration. Thus minister Polak of Justice, in a letter to the Council of Ministers of 1969, pointed out that family reunification was on the rise, resulting in "longer if not permanent residence on a large scale", which led him to fear that:

> Foreigners, coming from far and wide, working at the lowest level, will – together with their families – form a new industrial proletariat without sufficient connections to Dutch society. Because of their strong mutual ties and because of the specific place which they occupy within our economy, they will easily form an alien body within our population (...). Thus a social problem may develop, of which later generations might taste the bitter fruits.[18]

The costs that the minister alluded to lay in a possible future and were indeed "diffuse" in the sense that they were difficult to specify, or to ascribe to a particular group. In contrast, Social Affairs' plea for liberalisation was based on the concrete, short-term interests of Dutch businesses. Justice officials' internal memoranda from the fifties and sixties were full of complaints that they found themselves "isolated", facing "a closed front" and "continuously thwarted".[19] Indeed, Justice was all but powerless to counter the dominant economic perspective. Especially in the first decennia after the Second World War, when getting the Dutch economy back on track was a national project with priority over almost anything else (De Rooy 2005: 215-216), the arguments of Social Affairs, forcefully supported by employers organisations[20], outweighed Justice's concerns.

However, Freeman cannot help us account for Dutch policy developments from 1975 onwards. Faced with a surplus rather than a shortage of labour, neither Dutch employers nor the ministry of Social Affairs any longer had an interest in generous family migration policies. Freeman suggests that migrant organisations, representing the other societal group that stands to gain 'concentrated benefits' from liberal migration policies, may play a similar role to employers' organisations: however, migrant organisations influence on Dutch migration policies has been almost negligible (XXX 2009: 182; cf. Scholten 2007: 135-137). Client politics cannot explain the liberal family migration policies the Netherlands conducted in the eighties. Similarly, Messina's claim that Western European migration policies have been driven by labour market interests cuts no ice whatsoever with regard to the development of Dutch family migration policies. As of the second half of the 1970s, employers organisations have not been involved in the policy making process at all. Whenever labour market considerations were brought up in policy debates, be it within the ministries or in Parliament, it was concerns over the inflow of migrants with little chances on the labour market and the negative effects thereof for the social security system that were uttered. Thus, in the late 1970s, there was a great deal of resistance within the ministry of Justice to granting women the same possibilities as men to bring foreign partners to the Netherlands, because this would turn marriage into an "all too attractive way of gaining access to employment".[21] These same civil servants were far from pleased to observe that "Turkish and Moroccan youngsters, (…) eager for a job, jostle one another on the Dutch marriage market looking for the bride that will pave their way to the labour market".[22] Similar views were present at government level, with the deputy minister of Justice writing to Parliament in 1983 that marriage migrants "must be expected with great probability to join the ranks of the structurally unemployed".[23] No-one argued that Dutch businesses might profit from family migration. It was not because of, but in spite of labour market considerations that Dutch policy makers set very liberal conditions for family migration in the 1980s.

Both Freeman and Messina block the view to essential aspects of the policy making process by focusing exclusively on material interests, assuming as Freeman (2002: 94) puts it that "immigration policy is not a morality play: it is interest-driven like most everything else". As we've seen earlier, ethical considerations played a role of importance in the 1950s and 1960s: the

confessional parties in Parliament objected to stringent conditions for family reunification because they found the "forced separation of families"[24] morally reprehensible. Having benefited from their labour, the Netherlands had a moral obligation towards migrants (cf. Joppke 1998: 286-287): if labour migrants chose to bring over their family Catholic MPs felt that "we must accept this as a consequence of our responsibility for their well-being".[25] This parliamentary plea strengthened the position of Social Affairs in its negotiations with the ministry of Justice. In later years, immaterial values came to play an even more important role. The dominance of the ethical norm of equal treatment following the cultural revolution of the 1960s was a crucial factor in the liberalisation of Dutch family migration policies in the 1970s and 1980s, to the extent of outweighing the labour market concerns referred to above. One of the core principles of the minorities policy elaborated in the early eighties was that "the acceptance of the stay of minority group members in the Netherlands as permanent implies that (…) they should as soon as possible be given a legal position as equal as possible to that of Dutch citizens".[26] The Social-Democrats pled for equal rights for Dutch citizens and resident foreigners, because social harmony and cohesion were possible "only if a foreigner knows that he is accepted here and that he forms an integral part of this society.[27] And the Christian-Democrats stated that "in view of the promotion of equal participation of (…) ethnic minorities in our society, the admission of family members of foreign workers must be considered a humanitarian duty".[28] Underlying the multicultural Dutch migrant policies of the eighties was a conception of membership which extended beyond Dutch citizens to include permanently established migrants. Boswell (2007: 90) has pointed out that migration policy making is partially shaped by the state's functional imperative to ensure "fairness", i.e. a "just pattern of distribution", and that definitions of membership "impact on conceptions of the scope of justice". Indeed, in the inclusionary and egalitarian ideology which dominated Dutch migrant policies in the eighties, a fair distribution of rights required that migrants be entitled to bring their families over, just like Dutch citizens were.

The norm of equal treatment remained unchallenged in the 1990s, but conceptions of fairness changed. The neo-liberal ideology with its notion that duties should accompany rights and that the state should activate its citizens, which had inspired significant reforms of Dutch social security since the mid-1980s, also spurred the restrictive turn in family migration policies in the 1990s. It was the

notion of "individual responsibility" which enabled the Christian-Democrats to convince their Social-Democrat coalition partners to accept the reintroduction of the income requirement in 1993, thus implementing the first restrictive reform of family migration policies in well over a decade (XXX 2009: 198-213). The Christian-Democrat minister of Justice Hirsch Ballin had pled for "asking everyone (…) who wishes admission of a family member to take responsibility – with the person admitted – for the consequences of that admission. This involves financial responsibility (hence the strict income requirement …) and responsibility for labour participation and integration".[29] In the late seventies and eighties, restricting family migration had been almost unthinkable: the government referred to the size of the family migration flow as a "factual given".[30] The new neoliberal ideology made it possible to impose conditions: it was not only admissible but even recommendable to appeal to the 'personal responsibility' of the people concerned, so as to incite them to actively take their own and their families' future in the Netherlands in hand. Up until today, every successive restrictive reform of Dutch family migration policies has been justified with reference to the norm of "individual responsibility".[31]

Since the turn of the century, new interpretations of membership have been added to this neoliberal conception of fairness. Progressive moral views on gender relations, sexuality and family are emphatically presented as central elements of Dutch identity: migrant families are seen to deviate from this norm, which weakens their claim to membership and entitlements. For instance, the age requirement was raised in 2004 because 21-year olds were assumed to be better equipped than 18-year olds to "free themselves from the influence of parental authority and other ties of family or tradition".[32] Migrants' marriages are assumed to be arranged marriages, that is to deviate from the 'Dutch' norm of marriage as an individual choice on romantic grounds. This places migrant families outside of the Dutch imagined community and justifies raising obstacles to family migration. Freeman and Messina's exclusive focus on material interests fails to reveal the crucial role that moral norms and immaterial values, related to fair distribution and membership, may play in policy making processes.

Importantly, my findings suggest that policy makers' moral perspectives, and the policy preferences that result from them, more often than not reflect values that are widely adhered to in

Dutch society. For instance, on the rare occasions that family migration policies were subject to broader debate in the 1960s, public attention pushed towards leniency, rather than restriction. Most notably, when the media got wind of the ministry of Justice's intention to evict a number of Spanish wives and their children, public outcry was such that the ministry felt obliged to allow these foreign families to stay. The tone of the media coverage reflected the same moral concern for labour migrants' family unity that shaped the position of confessional parties in Parliament at the time (XXX 2009: 81-85; cf. Schrover, 2008). Similarly, one of the very few restrictive reforms implemented in the in the 1980s – the introduction of an income requirement for second generation migrants who requested entry for a foreign partner – met with such broad protest, ranging from left- and right-wing political parties to migrant organisations, youth organisations, churches, trade unions, local authorities, lawyers and media, that it was retracted after less than two years (XXX 2009: 167-177). The policy measure was rejected as discriminatory: thus it appears that the norm of equal treatment, which brought Dutch politicians to conduct such liberal family migration policies in the 1980s, was a dominant norm not only among policy makers but also more broadly in Dutch society. The same was true for the norm of family unity in the 1960s. The broadly-shared assumption that it is an "Iron Law" (Joppke 2002: 262; cf. Freeman 2002: 78; Guiraudon 2000: 222) for 'the public' to be always, in all historical circumstances, in favour of restrictive immigration policies seems at the very least an oversimplification.

This would explain why Guiraudon's hypothesis that the more policy makers are exposed to public scrutiny, the more likely they are to implement restrictive reform, is only very partially confirmed in the case of Dutch family migration policies. Over the period that Guiraudon (2000) studied, that is from the 1970s until the end of the 1990s, policy making indeed developed along these lines. As migration in general and family migration in particular became an increasingly salient topic in the media and in public debate, the conditions for family migration were gradually tightened. However, if we go back further in time, and consider the period from the 1950s until today, the relation between institutional structure and policy output proves exactly the opposite. In the 1950s and 1960s, family migration was not a priority issue for Dutch politicians. As a result, the conditions for family migration were to a very large extent decided behind closed doors, by a small circle of civil

servants from the Ministries of Justice and Social Affairs (XXX 2009: 52-54). In the 1970s, the decision-making arena opened up considerably: political parties, interest groups, media, lawyers and courts got more and more involved in the policy making process. The policy perspectives that many of these actors brought into the debate were – far more so than the debates within the administration – strongly premised on moral values (ibid. 111-117). In contrast to what Guiraudon would predict, this much more open arena did not result in restrictive reforms: on the contrary, family migration policies were far more lenient in the 1980s than in the 1960s.

Thus, it appears that ideas, ideology and ethical considerations play a much more significant role in the making of migration policies than has hitherto been accounted for in the international "control gap" debate. Importantly, the immaterial values that shape policy makers' decisions are more often than not values that resonate broadly in society as a whole: the tone of the public debate, rather than invariably tending towards restriction, may therefore very well push towards expansive entry policies.

Another crucial aspect of migration policy-making that has not been addressed until now in the control gap debate, are the assumptions that policy makers make in the absence of solid information. For instance, we have seen that the liberal reforms of family migration policies of the 1960s were based on the assumption that labour migrants would be returning to their home country soon. Except for the officials of the ministry of Justice, policy makers were far from expecting that most of them would end up settling permanently with their families. Similarly, the liberal family migration policies of the 1980s were partly based on the supposition that family reunification was a unique and finite flow. The large-scale settlement of labour and (post)colonial migrants of the post-war decennia was considered an accident of history, which would not repeat itself (Snel & Scholten 2005: 166; Molleman 2004: 38). Once the migrants already residing in the Netherlands had brought over their families, family reunification would be "finished". Family migration flows were expected to dwindle by the late 1980s.[33] Politicians did not foresee that flows would persist and even increase as of the 1990s, partly as a result of children of migrants bringing in partners from their own or their parents' country of origin.

Cornelius and Tsuda (2004: 7-8) refer to guest worker programs which resulted in settlement migration as an example of "flawed policies" with "unintended consequences". If these policies were flawed, it was because they were based on assumptions of the development of migration flows that later proved to be false. In part, these false assumptions must be attributed to the lack of reliable data. Only in 1995 did the Dutch Statistical Office start collecting and publishing information about the number of migrants admitted to the Netherlands on family-related grounds.[34] Until that time, policy makers based their decisions on incomplete data and estimates (eg. Naborn 1992).[35] However, even if quality data about existing flows is available to policy makers, future developments of migration flows remain notoriously difficult to predict. Decision-making in "a context of uncertain prognoses and insufficient information" (Brochmann 1999: 4) will always be characteristic of migration policy making. This uncertainty leaves room for decision makers to – intentionally or unintentionally – opt for the assumptions that fit their policy preferences best. This is clearly illustrated by Dutch policy debates in the 1960s: the assumption of temporary stay was crucial in justifying the admission of labour migrants and their families that Social Affairs and employers favoured so strongly. Assumptions are born in the interplay between incomplete information and political preference. Our insight into the making of migration policies stands to gain a great deal from further research into this interplay.

CRITICAL REFLECTIONS ON THE CONTROL GAP DEBATE

The detailed empirical analysis of the making of Dutch family migration policies between 1955 and 2005 reveals the invalidity, in this "most-likely" case, of one central hypothesis formulated in the international debate about the paradox of immigration policies in liberal democracies, and the limited validity of two other hypotheses.

First, the fact that the Netherlands has allowed the large-scale, permanent settlement of foreigners although it had no desire to become an immigration country is not due to a loss of power of national policy makers. Until very recently, the authority over the conditions for entry and stay of foreign family members was entirely in hands of Dutch politicians and civil servants. Neither the

courts nor international institutions have limited their room for manoeuvre to an extent that made it impossible for them to raise obstacles to family migration.

These findings support recent critical reassessments of the crucial role assigned to courts in explaining the 'control gap'. Messina (2007: 235-237) for instance has argued that in Germany – the case that Joppke based his thesis of the judiciary as main source of "self-limited sovereignty" upon – the influence of court decisions on migration policy making has been much less significant than hitherto assumed. Similarly, in their introduction to the second edition of *Controlling Immigration*, Cornelius and Tsuda (2004: 13-14) accord a much smaller role to the judiciary than in the introduction of the first edition, stating that "draconian control measures" may "in some cases" be limited or rejected by the courts. My study of the making of Dutch family migration policy confirms this more careful interpretation.

In objection to this conclusion, one might suggest that the Dutch case is exceptional, in particular with regard to the system of judicial review and hence to the role of the courts. Both Joppke (2001: 341-343) and Guiraudon (1998: 669) have argued that, while the policy impact of international norms such as the European Convention of Human Rights has been modest, domestic – and particularly constitutional – norms have been the main instruments applied by courts to defend or expand migrants' rights. Joppke and Guiraudon base their arguments mainly on developments in Germany and France: in both these countries, the right to family life is protected by the Constitution and the Constitutional Court (Joppke 1998: 285-286; Guiraudon 1998: 665, 668-669). In the Netherlands, courts are not allowed to review the constitutionality of legislation: only the legislator is competent to judge whether a law is contrary to the Constitution. This is why Lijphart (1999: 226), in his comparison of the strength of judicial review in 36 countries, classified the Netherlands as a country with "no judicial review". The absence of constitutional review might be assumed to explain the limited role of the judiciary in the Dutch case. However, Lijphart overlooked that since the constitutional reform of 1956, international law has direct effect in the Netherlands: the Dutch legal order is 'monist', in the sense that international and national law are seen to form a single legal order (Koopmans 2003: 78; Vink 2005: 19). Koopmans (2003: 84) has pointed out that since the 1950s, the Dutch courts have come to scrutinise the compatibility of legislation with international human rights

law, much in the same way as courts verify the constitutionality of legislation in other countries. Thus, the Dutch system of legal review has come to resemble that of European countries with a constitutional model of legal review, such as France or Germany, quite closely. The Dutch system of judicial review allows for the same scrutiny and constraint of migration policies as other judicial systems: Dutch courts have not exercised this constraint however.

The Dutch case may indeed be exceptional, in that Dutch policy makers opted for a more liberal course than policy makers in other countries, thus steering clear of major confrontations with the courts. The reforms rejected by the German and French courts – mainly the condition of three years of marriage before admission of the partner in Germany in the 1980s (Joppke 1998: 285-286) and the denial of access to the labour market to foreign family members in France in the 1970s (Viet 1998: 361-362, 386) were considerably more far-reaching than any family migration policy measure adopted in the Netherlands. Had Dutch policy makers chosen an equally restrictive course, they would perhaps have met with judicial opposition too. They chose however not to do so: the question is why not.

Further empirical research is required to assess to which extent and in which conditions the judiciary impacts on migration policy making. Such research should be careful to focus not on examples of court decisions which have influenced policies – such examples can be found in the Dutch case as well – but to encompass the policy making process as a whole and the role of the judiciary in it, so as to identify the room for manoeuvre that courts have allowed national governments, and the ways in which policy makers have made use of this room.

In the Dutch field of family migration, it is the choices national policy makers made, free of external constraints, that were decisive and that require explanation. Therefore, analytical accounts that focus on domestic politics prove most insightful. Freeman's emphasis on interest distribution is very helpful in understanding why Social Affairs rather than Justice won the battle over family reunification policies in the sixties. Guiraudon's proposition that the closed or open nature of institutional venues is decisive fits policy developments from the seventies onwards. Neither of these two accounts captures the whole picture however, because they fail to take into account that besides interests, agency and institutions, migration policy making is also very much about ideas.

My findings suggest that insight in the dynamics of migration policy making is possible only if we acknowledge, unlike Freeman and Messina, that policy making in this field is indeed, to a significant extent, a morality play. Material interests, related to the labour market, housing policies, social security, public order and social cohesion, of course play a crucial role; but so do ideas, ideology and moral considerations. The impact of such values may extend beyond the circles of politicians and civil servants to broader society, which – in contradiction to the assumption of a law-like negative public bias postulated by Guiraudon and others – may result in public support for liberal reform. The development of Dutch family migration policies cannot be understood without taking into account the continuously shifting weight of immaterial norms such as family unity, equal treatment and individual responsibility, which are in turn closely related to overarching conceptions of membership and fair distribution.

In this respect, it is important to note that Cornelius, Martin and Hollifield (1994: 9-10), while overestimating the influence of the courts, do touch upon an essential element when they emphasise the role of "rights-based politics" in the shaping of migration policies over the last decennia. Indeed, as of the 1970s, Dutch politicians increasingly spoke about family migration in terms of "rights". However, in speaking about "the right to family reunification" and "the right to equal treatment", they referred less to judicial norms than to ethical or ideological norms. There is no such thing, either in Dutch or in international law and jurisprudence, as an unconditional right to family reunification. The equal treatment of men and women and – almost – of resident migrants and citizens in family migration policies was achieved in the 1980s not due to judicial pressure, but to political choice. When Dutch politicians speak and spoke about "rights", they seldom display insight in the complex ways in which the norms they refer to are interpreted and applied by the courts. Their use of the word "right" does however express the political and moral weight they attach to norms like equal treatment and family unity. In this sense, "rights-based politics" have indeed played an important role in the making of Dutch family migration policies.

One might be tempted to conceptualise the impact of ideas on policy making as part of the "liberal constraint" that Western democracies face. Thus Boswell (2007: 79) posits that "the state is frequently constrained in the pursuit of its objectives" by, among others, "its own administrative

departments". In a similar vein, Cornelius and Tsuda (2004: 13) argue that "national political culture" may "constrain the state's ability to pursue harsh immigration control measures". In my view however, thinking of state actors – be they civil servants, members of Parliament or members of cabinet – as constraining the state hampers rather than furthers our understanding of the making of migration policies. The tenacious tendency in the control gap debate to look for "constraints" that might explain liberal immigration policies is based on the equally tenacious assumption that what "the state" *really* wants is to restrict immigration. However, at the risk of stating the obvious, there is no such thing as "the state": states are composed of a great many different actors who, at different times and for different reasons, may adopt positions either against or in favour of the admission of migrants. Assuming that if governments implement liberal policies, there must be a 'constraint' that forces them to do so, prevents us from asking the right questions: when, why, and how does the interaction between national policy makers, free from external constraints, result in the admission of immigrants?

Thus, my findings lead me to conclude that thorough analysis of the dynamics of domestic politics should be, more so than it has been in the past, a core endeavour for scholars who strive to gain insight in the making of immigration policies in Western states. Boswell (2007: 79) as well as Cornelius and Tsuda (2004: 14, cf. Guiraudon 2001: 57) themselves have pointed out that more attention should be paid to the internal plurality or fragmentation of states. The positions adopted by politicians from different political parties and civil servants from different ministries are shaped by specific ideological or institutional perspectives on what the problem of family migration is about, which material and immaterial interests are at stake, and in which direction the solution should be found. Insight in the dynamics of policy making requires mapping out the actors involved, the positions they have adopted, and their relative influence on the policy outcomes.

CONCLUSION

This study of the making of Dutch family migration policies from the 1950s until today enables us to critically evaluate the hypotheses formulated so far in the control gap debate. The fact that in this "most-likely" case, the hypothesis that national policy makers have lost power to courts or to

supranational institutions does not apply warrants serious doubts as to the general validity of this hypothesis. Rather than seeking to identify constraints that weigh upon policy making, I conclude that our analysis should be geared towards understanding the dynamics of domestic policy making itself. Existing accounts that do so, such as Freeman's or Guiraudon's, are valuable but fail to take into account the substantive role of ideas, ideology and moral considerations in the policy making process.

This study shows how our insight in the making of migration policies in Western countries may benefit both empirically and theoretically from detailed historical accounts of the actors involved in policy making, the positions they have adopted, and the power relations between them. Answering the question 'why liberal states accept unwanted migration' requires reconstructing decision making processes so as to account for their outcome. Only single case studies allow for this type of thick description over a longer period of time. The field of migration studies, in its quest for theory-building, has tended to discard such case studies in favour of international comparison. Comparative research of course remains called for to improve theoretical hypotheses. However, in order to ascertain that our knowledge of policy making processes is meticulous and complete, and that we avoid biases related to a particular time and place, historical single case studies must have their place among our methodological tools.

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XXX

2009 *XXX*

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[2] As Penninx et al. (2005: 2) point out, the field of migration studies is well-established and flourishing in the Netherlands, but "a substantial part of that literature relates to policy making, in the sense that it 'advises' policy makers or evaluates the policy implementation and its effects at the national or local level. (…) There is only a relatively modest part of that literature that analyses *the making of policies* itself : that is analyses, not of the content of policies per se, but of the process that has led to these policies, the actors involved and the levels at which they are made." (emphasis in the original). This scarcity is especially pronounced in the policy domain of immigration but also present in the field of migrant integration (2005: 10, 13).

[3] Dutch Lower House (further: TK) 1989-1990 21132 (8H): 42.

[4] This section is a summary of chapters 2, 3 and 4 of XXX, 2009.

[5] The cabinets Van Agt I, II and III (1977-1982) and the cabinets Lubbers I and II (1982-1989).

[6] Respectively the cabinet Lubbers III (1989-1994) and the cabinets Kok I and II (1994-2002).

[7] The Court also condemned the distinction made in Dutch policies between family formation and family reunification, depending on whether the family relationship arose before or after the sponsor entered the Netherlands. *Chakroun v. Raad van State*, preliminary ruling 4 March 2010, ECJ Case C578-08.

[8] Memorandum minister of Social Affairs to Council of Ministers, 12 November 1963. Dutch National Archive (further: NA), 5.023.5027 (1). All translations from Dutch to English are by the author.
[9] TK 1960-1961 B6100 H16 plenary: 3655; 1961-1962 B6500 H15 plenary: 3309; 1962-1963 B6900 H15 plenary: 3392.
[10] Rather than on the *content*, court rulings had a significant impact on the *form* of policies. Until today, the conditions for family migration in the Netherlands are for the most part not laid down in law, but in secondary regulation. The Courts forced the government to turn this "Foreigner Circular" from a secret internal instruction into a formal and publicly available government regulation, which citizens could derive rights from (Groenendijk, 1980, 1996; Koens, 1983a: 17, 1983b). Boswell (2007: 93) has argued that governments may admit immigration through "low profile regulations" so as to avoid the "liberal constraint". In the Netherlands however, regulations do not offer a way out of this constraint. Regulations are publicly available and generally subjected to close scrutiny by Parliament and interest organisations. Moreover, judicial control of regulations is at least as strict as that of laws: Dutch courts may verify the constitutionality of regulations but not of legislation.
[11] Meeting deputy minister Glastra van Loon with COC board, 24 October 1973, NA 5.023.5027 (931). Cf. Glastra van Loon, 1976: 42-45.
[12] Internal memorandum ministry of Justice, 3 October 1973. NA 5.023.5037 (1658); cf. Glastra van Loon 1976: 42-45.
[13] Eg. TK 1977-1978 Written Question 46; TK 1978-1979 Written Question 968.
[14] Eg. TK 1978-1980 OCV 15649; TK 1981-1982, UCV13; TK 1981-1982 UCV20; TK 1986-1987 UCV20.
[15] Internal memorandum ministry of Justice, 9 March 1978, NA 5.023.5027 (2635); *Aanwijzing Vreemdelingenvoorschriften* Nr. 14, 26 October 1978, NA 5.023.5027 (2608).
[16] *Sen vs. the Netherlands*, 21 December 2001, No 31465/96; *Tuquabo-Tekle et al. vs. the Netherlands*, 1 December 2005, No 60665/00.
[17] The civic integration exam abroad was found unlawful by a Dutch court, because of a formal flaw in the legislation (judgment of 15 July 2008, AWB 07/18932). This judgment was overturned by the Council of State (judgment of 2 December 2008, 200806120/1).
[18] Letter minister of Justice to Council of Ministers, 29 September 1969, NA 5.023.5027 (1463).
[19] Internal memoranda ministry of Justice, 22 June 1970, 14 January 1964 and 14 March 1963. NA 5.023.5027 (612, 952 and 844).
[20] Eg. Letter of Council of Dutch Employers Unions to Prime Minister, 15 November 1962, NA 5.023.5027 (1).
[21] Internal memorandum ministry of Justice, 23 April 1979, NA 5.023.5027 (2862).
[22] Internal memorandum ministry of Justice, 9 July 1981. NA 5.023.5027 (2629).
[23] TK 1982-1983 17984 (2): 12-13.
[24] TK 1962-1963 B6900 H15 plenary: 3392.
[25] TK 1974-1975 10504 plenary 16 October 1974 : 536-537.
[26] TK 1982-1983 16102 (21): 92.
[27] TK 1986-1987 UCV20: 8-10.
[28] TK 1981-1982 UCV13.
[29] Letter minister Hirsch Ballin to his civil servants, 17 July 1992. Policy archive ministry of Justice (further: MJ), A92/3470.
[30] TK 1976-1977 plenary 21 October 1976: 618.
[31] Eg. TK 2003-2004 29700 (3); TK 2004-2005 19637 (852 Bijlage).
[32] TK 2004-2005 19637 (852 Bijlage).
[33] TK 1981-1982 UCV 8 February 1982: 38; TK 1982-1983 17984 (2): 9-10; Internal meeting ministry of Justice, 16 April 1982, NA 5.023.5027 (2775); Internal memorandum ministry of Justice, 25 April 1984, NA 5.023.5027 (2522).
[34] Statistics Netherlands, *Immigratie van niet-Nederlanders; migratiemotief, geboorteland, leeftijd*, retrieved 21 July 2010 from http://statline.cbs.nl/StatWeb/publication/?VW=T&DM=SLNL&PA=70693ned&LA=NL.
[35] Eg. Internal memorandum ministry of Justice, 5 November 1992, MJ A92/3470-I.