1

The Odd Couple

Gender, Securitization, Europeanization, and Marriages of Convenience in Dutch Family Migration Policies (1930–2020)

BETTY DE HART

In recent years, policies on marriages of convenience in relation to family migration have attracted growing academic attention (Bonjour and de Hart 2013; Charsley and Benson 2012; D'Aoust 2013; Eggebø 2013; Friedman 2010; Lavanchy 2014; Messinger 2013; Mühleisen, Røthing, and Svendsen 2012). Marriages of convenience, these authors argue, are considered a threat because they are seen as endangering the moral order in which love and sex are central techniques of inclusion and exclusion in regulating marriage migration and thus determine who gets in and who belongs (Abrams 2007; D'Aoust 2013; Luibhéid 2002). In other words, policies on marriages of convenience can be understood as a form of "moral gatekeeping" (Wray 2006). This multidisciplinary scholarship offers a critical lens on the norms, implicit or otherwise, that inform the policies on marriage migration.

However, this literature has focused mainly on the first two decades of the twenty-first century, suggesting that state policies on marriages of convenience are a fairly recent phenomenon and can be tied to notions of security, modernity, and liberalism (D'Aoust 2013). This chapter, by contrast, traces the roots of these policies back to the interbellum period of the twentieth century, arguing that family migration has always been seen as a threat to the nation and that marriage has never been considered a private matter—especially in the case of women. Marriages of convenience consequently came to be framed as a threat decades before the 1980s, which is when the securitization of migration policies in Europe is claimed to have started (Huysmans 2000). However, although the problematization of marriages of convenience as a threat to the nation has remained constant, its framing has shifted over time. While marriages of convenience were in the past framed as a threat to the moral core and economic well-being of the nation, they have more recently (specifically since 2006) been framed as a danger to national sovereignty in the context of the Europeanization

of migration policies. By linking gender and nation, securitization and Europeanization (Haahr and Walters 2004), this contribution sets out to demonstrate how the state has tried to regain control by centralizing, digitalizing, and systematizing the enforcement practices pertaining to marriages of convenience in a European Union (EU) context, in which it feared losing control over migration to "Brussels."

A constant trope in the construction of marriages of convenience is that of the "odd couple," a couple deviating from the "family of a normal kind." The "odd couple" helps to determine which families "belong": which families love, marry, have sex, and parent "properly" and which do not (Bonjour and Ourabah, this volume; Wray, this volume). This "odd couple" is based on gendered, racialized, and class norms relating to physical appearance and notions of how partners should match (Lavanchy 2014). Using an intersectional approach (Crenshaw 1990) allows exploration of how such norms interact in order to frame shifting categories of "ethnically mixed couples" in particular as "odd." Thus, the framing of marriages of convenience serves not only to keep "outsider" migrants out but also to turn "insider" citizens into outsiders without a legitimate claim to marriage and family.

Empirically, this contribution focuses on debates on marriages of convenience in the Netherlands, which is currently one of the front-runners in developing restrictive policies on family migration (Bonjour and de Hart 2013) and which has also played an active role in setting the agenda for and shaping the Europeanization of family migration policies (Bonjour and Vink 2013). The contribution is based on an constructivist analysis of parliamentary and media debates covering specific time periods: the 1930s, 1980s, and 1990s and the years since 2006. In each of these periods of increased attention, marriages of convenience were linked to larger social issues of moral decline, economic crisis, or weakened national sovereignty. The material was collected through digital searches of government publications and newspapers, using the search terms *schijnhuwelijk* and *schijnhuwelijken* (i.e., marriage[s] of convenience).[1] This contribution limits itself to heterosexual couples because, although same-sex couples in the Netherlands have had family reunification rights since the early 1970s, they have never been the target of suspicion for the reason that such couples are less prone to evoke the traditional patriarchal stereotypes that immigration authorities associate with cultural and national outsiderness (Chauvin et al. 2021).

The contribution is structured as follows. After presenting the theoretical framework linking gender and nation, securitization and Europeanization, I move on to the main discourses pertaining to how marriages of convenience came to be framed as a problem of moral decline, economic crisis, and national sovereignty. The focus in the following section is on characteristics attributed to male and female and to migrant and citizen partners in marriages of

convenience, thus demonstrating the centrality of categories of gender, ethnicity/race, and class in the way such partners are constructed as an "odd couple." This trope of the odd couple explains how material practices have developed over time: the policies introduced to combat marriages of convenience, and the enforcement practices aimed at monitoring and surveillance of partners in marriage migration, are discussed in the last section. The conclusion argues that although the construct of marriages of convenience as a tool for controlling migration is nothing new, the securitization and Europeanization of migration have had legitimizing effects that make this construct difficult to challenge.

All about (Securing) the State: Gender, Securitization, and Migration in a European Context

The literature on the securitization of migration addresses the question of what kind of order is seen as "being under attack" or "threatened" by marriage and partner migration to the point that these issues may be framed as a problem needing to be tackled and addressed by the state. This literature starts from the assumption that it was the frame of marriages of convenience that turned partner and marriage migration into a "state" problem, instead of a private issue, that has to be addressed by mobilizing the security apparatus for monitoring and surveilling couples (D'Aoust 2013).

As Laura Sjoberg (2016) argues, gender hierarchy plays an important and persistent role in defining and distributing security, and this certainly applies to family migration policies. Historically, marriage and partner migration were *never* seen as a "private" decision—especially in the case of women. As sex, marriage, and the family are all central to the nation—without them, there is no nation—who married whom and who bedded whom were not left to chance (Stoler 2001; Yuval-Davis [1997] 2008). The history of migration and citizenship demonstrates that the state has always defined its relationship with citizens through marriage and reproduction. As a result, women, in particular, faced the consequences of making "private" choices, such as marrying and establishing family life with a migrant, and were at risk of losing their citizenship, home, and nation as a result (Bredbenner 1998; Cott 1998; de Hart 2006). Consequently, discourses on the "marriage of convenience" as a way for the state to regulate family and marriage migration have always been highly gendered. Women offering men access to the nation through marriage were seen as a threat in that they would bring the "wrong" migrant men in. As gender equality norms reduced the options for removing women's citizenship as a means of regulating such threats (Knop 2001), the construct of marriages of convenience became an increasingly important way to surveil women's choice of partner.

Hence, it was not the securitization of migration in the 1980s that gave rise to the marriage of convenience: its construction dates back much earlier.

However, the question remains as to how and why the frame of the "marriage of convenience" became relevant in specific historical contexts. Gendered, racialized, and class categories have interacted to construct particular (mixed) marriages and partnerships as being "of convenience" and particular partners in such marriages as either "victims" or "perpetrators."

It is also crucial to understand how the securitization of migration policies has gone hand in hand with the Europeanization of migration policies. The latter has definitely contributed to the securitization of migration, with the conceptualization of migration as a security concern having become dominant in European countries (Huysmans 2000). In this multilevel context of policy development, national enforcement practices were translated into EU directives such as the Union Citizens Directive and the Family Reunification Directive (de Hart 2017a), to which member states could seek reference in order to introduce and legitimize policies on marriages of convenience. At the same time, EU law defined family migration as a fundamental right for both EU citizens and third-country nationals (i.e., migrants from outside the EU). In this way, EU law restricted member states' scope to control marriage migration, and member states started, in turn, to feel threatened not only by migration itself but also by European migration policy. The construct of marriages of convenience has thus served as a strategy for states seeking to maintain room for maneuver. Another aspect of Europeanization has been the Union's expansion to the east, thus transforming Eastern Europeans from external into internal movers (Favell and Nebe 2009) and granting them the same rights to freedom of movement as other Union citizens. Migration by these new EU citizens has subsequently been countered by new forms of securitization and racialization (Fox, Morosanu, and Szilassy 2012), which have also had an impact on enforcement practices for marriages of convenience.

Linking gender and nation, securitization and Europeanization serves as a means to explore continuity and change in discourses on marriages of convenience: continuity in that marriages of convenience continue to be linked to gendered and racialized categories, and change as reflected in the new vigor with which states have started to monitor and surveil marriage partners.

An Evolving Threat: Marriage Migration, Moral Decline, Economic Crisis, and National Sovereignty

Moral Decline: Prostitution and the Sanctity of Marriage

Until the early twentieth century, Dutch migration policies were relatively liberal and rarely enforced. Legislation was mainly intended to send the message that the state had the right to control migration, but generally had little effect (Schrover et al. 2009). This changed with the outbreak of the First World War and, subsequently, the economic crisis of 1929. In this period, Germans formed

the largest group of migrants to the Netherlands, with numerous German women working as maids in Dutch households. The sexual autonomy of these single, "loose" women was heavily surveilled by Dutch authorities, who kept records on their moral behavior (Henkes 1995). After Adolf Hitler came to power in 1933 and Jewish refugees started fleeing Germany, most European countries, including the Netherlands, responded by introducing restrictive migration measures, treating these refugees as undesirable, illegal aliens to be turned away at the border and expelled (Van Eijl 2012, 171).

It was against this background of political tension and economic crisis that the "marriage of convenience" started popping up in political and media debates. Such marriages were framed as an issue of moral decline, demonstrating the decreasing importance of marriage and religion as the major "organic links" in Dutch society. Prostitution, and trafficking of women and girls, served to further demonstrate this "moral decline." Thus, the discursive construct of marriages of convenience brought together the "sanctity of marriage" and the dangers of uncontrolled female migration and prostitution. This was illustrated by the numerous media reports at the time on the suspected marriage of convenience between a Polish woman and a Dutch magician that had automatically transformed this Polish woman into a Dutch citizen. Although this was not explicitly mentioned, both partners were likely to have been of Jewish descent, thus confirming Irene Messinger's (2017) claim that state surveillance of marriages of convenience was, in reality, an effort to control Jewish migration. Although the couple filed for divorce ten days after their marriage, the court refused the divorce because it considered the marriage to be a sham. Commentators expressed some sympathy toward the Polish woman, whom they considered to be a "decent" young woman with a well-paid job, in other words, not a prostitute. However, they feared that other migrant women marrying Dutch men were not so "decent," thus resulting in, as the minister of justice put it, the "profanation of marriage" by quick divorces and by prostitutes and pimps obtaining Dutch citizenship.[2]

The link between marriages of convenience and moral decline remained strong even after the Second World War, when the idea of marriage as an institution holding society together gradually started to wane. From 1964 on, women no longer automatically gained or lost citizenship through marriage. In 1971, no-fault divorce was introduced, and cohabitation without marriage became increasingly common. Nevertheless, numerous media reports continued to frame marriages of convenience as involving female migrant prostitutes, who were now depicted as victims of human trafficking rather than as immoral women.[3] This is illustrated by Adek, an eighteen-year-old Indonesian woman, who made the headlines in 1987. She was forced into a marriage of convenience and into prostitution. After reporting her situation to the police, she was threatened with deportation. Ultimately, however, following media attention and the

support provided by a nongovernmental organization (NGO) working on female trafficking, she was granted a temporary residence permit.[4]

Marriage of convenience continued to be framed as a moral issue up until the 1990s, albeit in a different manner. The Bogus Marriages Prevention Act (*Wet voorkoming schijnhuwelijken*) of 1994 (discussed in more detail below) defined such marriages as a threat to public order. This occurred within the context of a "new moral order" (Van Walsum 2008, 75), in which the state redefined its relationship with its citizens and emphasized individual rather than collective responsibility. The state reduced its responsibility for the welfare state while at the same time expanding control practices into the lives of individual citizens. Against this background, marriages of convenience were discursively constructed as being morally reprehensible and as a form of fraud undermining the Dutch welfare state.

Labor Migration and Economic Crisis

Over time, the above discourse on the "moral" dangers of marriages of convenience was supplemented by a discourse on the economic threat they posed, specifically in the case of labor migrants from the Mediterranean area. The Netherlands had recruited these migrant workers, mainly men, to alleviate Dutch industry's labor shortages in the 1950s and 1960s. This recruitment of foreign laborers, who were referred to as "guest workers," continued until the 1973 economic crisis. It was subsequently feared that marriages of convenience between Dutch women and "guest workers" would serve as a loophole for gaining access to the Dutch labor market. The link to prostitution continued to be made, and now included female Dutch citizens, as illustrated by the words of the deputy minister of justice: "When a very young man meets a nice elderly prostitute whom he marries at the moment he has to leave the country, I have some doubts."[5]

Later, in the "new moral order" of the 1990s, illegal migration was framed as a form of uncontrolled migration, endangering the welfare state. This resulted in extensive legislation designed to exclude illegalized migrants from the labor market, as well as from the health-care and welfare systems (Van der Leun 2006). The previously mentioned Bogus Marriages Prevention Act 1994, which aimed to prevent marriages of convenience, was just one of the measures restricting illegalized migration. The accompanying discourse on preventing abuse of the welfare system not only was of an economic and neoliberal nature (Van Walsum 2008, 52–53) but was also linked to moral arguments relating to the protecting of women. Framing illegalized migrants as predominantly male, members of Parliament (MPs) depicted the 1994 act as being necessary to prevent the abuse of Dutch native and migrant women who "fell for it" as a consequence of "recruitment practices," or in "good faith," naively believing the migrant husband who had only a residence permit in mind (Bonjour and de Hart 2013).[6] Thus,

marriages of convenience were seen as endangering not only society as a whole but also women in particular.

Europe as a Loophole

After 2006, when EU Court of Justice decisions obliged the Netherlands to amend its restrictive family migration policies, the Dutch government realized that it had transferred part of its sovereignty to regulate migration to the European level. In response, politicians criticized these EU Court of Justice decisions as an obstacle to these restrictive national policies (Bonjour and Vink 2013). Against this background, marriages of convenience were framed as a tool in the hands of illegalized migrants who were using the "Europe route" to avoid the Netherlands' more restrictive national family migration policies, and the government stepped up its efforts to monitor such marriages.[7]

This framing of marriages of convenience within an EU law context occurred more or less simultaneously with the geographical expansion of the EU. Thus, the first mention of marriages of convenience involving Union citizens and third-country nationals dates back to 1980, when the European Community was enlarged to include Spain, Greece, and Portugal as member states.[8] This was later followed by the EU's expansion eastward and the Dutch government's announcement, in 2009, that it would take action against abuse of the "Europe route" by couples in what were considered to be marriages of convenience.[9]

Number games are an inherent part of the Europeanization of migration law (Vollmer 2011) and crucial in showing how marriages of convenience are constructed as a threat endangering the nation: numbers are always "on the rise," with alarmingly high estimates going hand in hand with a lack of hard statistics. As early as the interbellum of the twentieth century, newspapers reported the "high numbers of foreign ladies" who obtained Dutch citizenship through marriages of convenience.[10] Later on, in the 1980s and 1990s, politicians and media estimated the percentages of marriages of convenience to vary between 30 percent and 80 percent, even though it was often unclear what these figures were a percentage of (de Hart 2003, 94–95).[11] Meanwhile, during negotiations at an EU level, the Netherlands and certain other member states claimed the numbers of marriages of convenience to be "considerable and rising," but were unable to present any statistics.[12]

Recent studies commissioned by the Dutch government were unable to substantiate these earlier claims, as evidenced in 2009, when the government concluded that research did not confirm the earlier presumptions that most of the Dutch citizens using the "Europe route" were of migrant descent and involved in marriages of convenience.[13] Later, in 2016, a study commissioned by the government found that no more than 2–4 percent (i.e., around one hundred couples each year) of all applications for family reunification were marriages of convenience (Kulu-Glasgow et al. 2016). But although these studies undermined the

image of marriages of convenience constituting a sizable threat, the conclusion was still that enforcement practices needed to be stepped up.[14] Before turning to these material practices of enforcement, however, I discuss below the characteristics attributed to citizen and migrant partners in marriages of convenience.

Discourses on Marriage Partners: Prostitutes, Illegal Aliens, and Gullible Sponsors

Who exactly embodied the threats posed by marriages of convenience? The characteristics attributed to partners in alleged marriages of convenience have traditionally been based on intersecting categories of gender, race, and class. These have shifted over time, ranging from female migrant prostitutes marrying Dutch men in the 1930s to male illegalized workers marrying Dutch women in the 1980s and 1990s and to Eastern European women marrying Muslim men today.

Migrant Women and Migrant Men: Prostitutes and Roaming Aliens

In the 1930s, as mentioned earlier, migrant women in alleged marriages of convenience were mainly framed as prostitutes. In this period's prostitution policy, brothels and pimps were criminalized but not the prostitutes themselves, who were seen as in need of redemption. In contrast, foreign women who acquired Dutch citizenship and intended to perform sex work were considered immoral and a danger to society in need of expulsion. When in the 1980s and under the influence of feminism a distinction started being made between voluntary and forced prostitution, migrant women were framed as victims of forced prostitution and in need of protection (Outshoorn 2012), as illustrated by the earlier mentioned story of Adek. An adverse discourse was that of the migrant woman manipulating her sexuality (Chock 1996) to obtain access to the Dutch nation. Dominican and Ghanaian women, in particular, were mentioned in this respect, as exemplified by a newspaper report on Dominican prostitutes who, by getting married in the Dutch territory of Curaçao, immediately obtained a Dutch passport for themselves and their children and then got on a plane to Amsterdam to work in prostitution.[15]

While the representation of migrant women as passive victims rests on their lack of agency, the representation of migrant men rests on their being perceived as perpetrators: oppressive, deceiving, and motivated by economic gain.[16] As marriage tied women but not men to the nation, migrant men were consistently seen as not belonging. As "illegal aliens," they were footloose, using marriage instrumentally to obtain a foothold in society. In the 1930s, these migrant men were reported as being poor and criminal and as not belonging to the Dutch "tribe" (*Nederlandsche stam*).[17] In the 1980s and 1990s, by contrast, migrant men were largely absent from media reporting, which focused almost exclusively on the trafficking of migrant women. In the political debate, however, migrant

men were portrayed as roaming, illegal aliens obtaining access to the nation and, as we have already seen, as perpetrators lying to and deceiving Dutch women who were genuinely in love.[18] The latter portrayal rests on a discourse of the gullible Dutch sponsors.

Dutch Women and Men: Gullible Sponsors

As demonstrated, while media attention focused on migrant women and Dutch men as partners in marriages of convenience, the political debate rested on the assumption that most marriages were entered into between Dutch women and migrant men. As the deputy minister stated in 1980: "Most often it is Dutch women who marry an alien."[19]

These Dutch women were seen as "gullible sponsors," a discourse that first came up in the 1970s and that has continued to this day. This idea of a gullible sponsor fits a more general discourse in which women who transgress gender roles by entering a mixed marriage or relationship are seen as naive, uninformed, and of a lower-class and immoral background (de Hart 2017c; Ryan 1999; Tabili 1996). They are in love and are abused, while the migrant husband's only interest is in obtaining a residence permit.

Dutch men have been largely absent from the media debates, even to this day. Despite extensive reporting on the trafficking of migrant women, it remains largely unclear who these women are trafficked by and who they are trafficked to. Occasionally, men who married a series of wives whom they then forced into prostitution or mediated marriages of convenience were specifically named, but mostly it was unspecified "gangs" that were held responsible.[20] However, although the frame of the gullible sponsor applied mainly to Dutch women, Dutch men, too, were incidentally portrayed in this manner. In such stories, also known as *mariage gris* or *bezness* (Odasso 2021), the citizen sponsor falls madly in love and a quick marriage follows, which provides the migrant partner with access not only to the nation but also to the partner's fortune. Some of these men established NGOs with the aim of protecting themselves and other victims of marriages of convenience.[21] In political debates, however, Dutch native men were explicitly excluded from the discourse of marriages of convenience by their "mixed" relationships being portrayed as a logical consequence of globalization, in which "love knows no borders." These debates show the reluctance to interfere with white male citizens' privilege to choose marriage partners as they please, including migrant women. As one MP asked rhetorically, "Of course we have to prevent marriages of convenience, but we are not going to make it difficult for these people, are we?"[22] Hence, their male right to have a home and a family in the Netherlands needed to be protected.

In these situations, the Dutch partners were—implicitly—understood to be native, white citizens. This all changed, however, after 2006, when marriages of convenience involving the Europe route become associated with "Moroccans"

and "Turks" (i.e., Dutch nationals of Moroccan or Turkish descent) as sponsors, on the one hand, and with Eastern European women with Turkish and other third-country national partners, on the other hand. This testifies to the othering and racialization of these Dutch and Union citizens: although legally equal to other citizens, discursively they are constructed as non-deserving, without a right to a home and a family.

The Odd Couple: Challenging Stereotypes

The media and political debates constructed the trope of the odd couple, that is, one resting on gendered, racialized, and class categories that turned the couple into a "deviant" mismatch. "Odd couples" involving Dutch men and South American or Asian women, or Dutch women with African and Asian men, were portrayed as deviant not only because of differences in age, language, and culture but also on the grounds of physical appearance and racialized notions of how partners should match (Lavanchy 2014). And it was this idea, based on "gut feeling," that made them so easily recognizable, according to immigration officers: "How we know? That is simple: sometimes a man doesn't remember his wife's first name. Or her age. That's strange. Or when a young guy with an older woman sits opposite you. That's mostly not right. You also know that some nationalities do not match. A Turk with a Surinamese, for instance. That doesn't work. That is like a poodle and a pit bull. These cultures don't easily go together."[23] In another news report: "If an older woman with a boy of just over twenty appears at the bureau, it is obvious. But that isn't proof."[24]

However, the stereotypes embodied in the "odd couple" did not remain unchallenged. Indeed, it was clear to everyone involved that enforcement practices were often based on stereotypes and even discrimination, as a 1990 newspaper heading suggested: "Immigration Police Officially Have to Discriminate."[25] From the 1980s onward, therefore, NGOs comprising migrants, mixed couples, and immigration lawyers highlighted the risk of discrimination and arbitrariness.[26] Newspapers also reported the stories of couples who claimed to have been unjustly accused of a marriage of convenience.[27] But even when portraying these individual stories, news reports still reproduced dominant discourses, confirming that marriage should be about love, and love only, and that scrutiny aimed at identifying marriages of convenience was a necessary tool of migration control. In 1980, a newspaper quoted a Dutch woman who was said to be "devastated" that her Pakistani husband had been expelled despite their marriage, and who claimed that it was "ridiculous" that they were under suspicion, but that she also knew that marriages of convenience occurred.[28] In another report, a Dutch man and his Thai girlfriend were said to be "madly in love."[29] Such stories presented these couples as the exception to the rule. As one newspaper put it, "Marriage to a foreigner is not always fake," thus implying that most of these marriages are.[30]

The securitization and Europeanization of migration policies led to the informal stereotypes and "gut feelings" described above becoming challenged less and less frequently. What is more, these informal stereotypes and "gut feelings" were translated and formalized into legislation and policy guidelines, thus legitimizing them and creating the appearance of objectivity and neutrality. The trope of the gullible sponsor, for example, was incorporated into the Bogus Marriages Prevention Act 1994, which defined marriages of convenience as those where "the intent of the spouses *or one of them* was not to fulfil the obligations connected to marriage by law, but to gain access to the Netherlands" (Article 1:71a Civil Code; emphasis mine). Two decades later, the odd couple trope was incorporated into the European Commission guidance on the Union Citizens Directive in the list of "indicative criteria" designed to aid member states in detecting marriages of convenience, while protecting the right to family migration. The guidance suggests member states should take the following into account:

> The couple have never met before the marriage;
>
> Inconsistent statements about personal details, circumstances of their meeting, or other important personal information;
>
> The couple do not speak a language understood by both;
>
> Evidence of a sum of money or gifts handed over, not being a dowry in cultures where this is common practice;
>
> A history of abuse involving one or both spouses;
>
> Development of family life only after the expulsion order was adopted;
>
> Divorce shortly after the third-country national acquires a residence permit.[31]

The ways in which media and political debates constructed marriages of convenience as a threat had significant impact on legislative measures and their enforcement.

Material Practices: Legislating, Monitoring, and Surveilling Marriages of Convenience

Over the period under study, legislation focused on marriages of convenience between citizen women and migrant men because legislators were reluctant to interfere with citizen men's right to a home and a family. Hence, the previously discussed debates in the 1930s did not result in any steps being taken against "professional grooms" marrying "foreign ladies."[32] According to the minister of justice, the "remedy" of taking away the citizenship rights of Dutch men marrying migrant women would be worse than the problem at stake. Instead, therefore, legal measures focused on the reverse combination, with the result that, in

1935, the privileged immigration status of migrant men who had a family and children with a (former) Dutch wife was abolished.[33] This attitude persisted until more recent periods, with the first Aliens Circular, which introduced preventive checks on suspected couples in 1975, only mentioning Dutch women and migrant men and not the reverse combination.[34] Even with the 1985 amendment of the Dutch Nationality Act, which abolished citizenship rights for migrant women marrying Dutch men and which, according to media reports, would put an end to trafficking of migrant women, the legislator had migrant men marrying Dutch women in mind. Although the growing importance of the principle of gender equality demanded that men and women should be treated equally in nationality law, granting migrant men the citizenship rights that migrant women had had for so many years (i.e., naturalization by unilateral declaration, free of charge) would, it was claimed, increase the number of marriages of convenience. Instead, therefore, a choice was made for "leveling down," in other words, for taking away the privileged citizenship rights previously enjoyed by migrant women and replacing them by naturalization after three years of marriage to a Dutch national for men and women alike. Hence, the discourse of protecting migrant women from trafficking resulted in legislation that made them lose citizenship rights, thus making them more dependent on their Dutch husbands.

Furthermore, the effectiveness of these policy measures was always in doubt. Legislation that was intended to put a stop to marriages of convenience proved to be ineffective shortly after its introduction. As the numbers kept rising, the state was seen to be "losing control" of migration.[35] The Dutch Nationality Act 1985, which, it was said, would make marriages of convenience "pointless," did not end trafficking of migrant women. Indeed, less than two years after its introduction, newspapers reported that 40–50 percent of migrant female prostitutes were irregular and had been trafficked through marriages of convenience.[36] Although the Bogus Marriages Prevention Act 1994 extended preventive checks to every couple involving a migrant partner without a permanent residence permit, it proved to be highly ineffective. And while the immigration police could advise against a marriage, and civil registrars could refuse to allow suspected couples to marry, this hardly ever happened in practice (Fonk, Van der Meer, and Oelen 1998; Holmes-Wijnker, Grootscholte, and Bouwmeester 2004). Nevertheless, state authorities persisted in claiming that new and additional measures and stricter enforcement were necessary.

Enforcement practices have changed dramatically over time owing to the institutionalization of migration policy. Until 2000, migration control was largely in the hands of local migration offices that functioned as street-level bureaucracies (Lipsky 2010), taking decisions based on face-to-face contact with couples. Consequently, enforcement varied from one locality to another, depending on local interests and the availability of resources and based on informal "gut feelings." Newspapers reported on such diverse practices as civil servants informing

the police about couples, questioning suspected couples' minor children, and arrests and deportations of expectant brides and grooms.[37] In 1984, one such arrest of a Moroccan woman hours before her wedding to her Dutch partner attracted considerable media attention. In the ensuing court case, the Dutch authorities claimed the couple could marry in Morocco or, if that was not possible (because Muslim women were not allowed to marry non-Muslim men in Morocco), somewhere else. The court, however, ruled that the Dutch state had violated the couple's right to marry (Article 12 of the European Convention on Human Rights).[38]

Nowadays, implementation of Dutch migration law has become centralized in the Immigration and Naturalization Service (IND), which is responsible for processing family migration applications. The IND functions as a system-level bureaucracy (Bovens and Zouridis 2002), based on a digitalized procedure, with face-to-face contact limited to a minimum and detailed work instructions for employees (Dörrenbächer 2018). Arresting brides is no longer common practice. Instead, enforcement practices have become systematized and objectified, involving pilot studies, risk profiles, and long-term digital monitoring of couples.[39] Couples are asked on a standard basis to provide proof of the nature of their relationship through WhatsApp messages, Skype talks, and photographs. Suspicious couples are subjected to separate interviews, lasting several hours, in an effort to identify "inconsistencies" in their statements on, for example, how they met, their wedding day, or even their sex life.[40] The extensive case law demonstrates that most "suspicious couples" consist of Eastern European women and Muslim men, who are considered "odd" because of the "unlikely" combinations of nationalities, religions, and cultures (de Hart 2017b). In contrast to the past, these enforcement practices largely escape political and media attention. And, also contrary to the past, courts, too, seem largely uncritical of these IND practices, while couples are generally unsuccessful at challenging decisions stating their marriage to be a sham (de Hart 2017b). The indicative criteria referred to above provide justification for the IND and the court decisions and protect them from allegations of stereotyping and discrimination.[41]

Concluding Remarks

This historical overview has demonstrated that while the discursive construction of marriages of convenience is hardly a new phenomenon, the securitization and Europeanization of migration law seen in recent years have had specific effects on the construction of such marriages.

First, it has been demonstrated that when certain groups (specifically women and, more recently, Union citizens from Eastern Europe) were included by being granted equal rights, this was accompanied by discursive exclusion through gendered and racialized categories that turned them into non-deserving citizens. As Helena Wray notes elsewhere in this volume, the marriage of

convenience must do a lot of control work where other means of restriction are not available.

As a result, the increasing relevance of the human rights discourse (i.e., the right to privacy, the right to family life, and nondiscrimination) has had only a limited effect on these groups of "undeserving" citizens. Hence, the discursive construction of marriages of convenience continues to rest on patriarchal notions in which citizen men, more so than women, have a right to a home and a family in the nation. Political and media debates, as well as enforcement practices and case law, demonstrate that it is mainly women (Dutch citizens and, later, Union citizens) whose choice of partner is subject to scrutiny.

Second, the securitization and Europeanization of migration law means that the trope of the odd couple—a construction based on gendered, racialized, and class stereotypes developed in informal enforcement practices—has been legitimized by and incorporated into both national and European Union law. This has made it more difficult to question these stereotypical understandings of marriages of convenience. And that, in turn, may at least partly account for the relative silence on the issue in political and media debates after 2006, while courts have also become less critical than in the 1980s and 1990s.

Third, and finally, the framing of marriages of convenience has been shown to be full of contradictions. On the one hand, suspected couples are claimed to be easily recognizable as "odd couples," just by looking at them (Lavanchy 2014). On the other hand, however, it is consistently difficult to prove that such individuals have in fact entered into a marriage of convenience. Meanwhile, claims that marriages of convenience are a sizable phenomenon and always "on the rise" have never been substantiated by hard statistics. Thus, the efforts undertaken by the state regarding suspected marriages of convenience can be seen as reflecting a perceived need to control migration and, at the same time, the inability of the state to actually control migration or even to know, control, monitor, and surveil its citizens. Maybe these contradictions will provide an opportunity to reopen the public, political, and legal debate on the human rights implied in state practices on marriages of convenience. And, as this contribution has demonstrated, there is certainly enough reason to justify doing so.

NOTES

1. The research for this contribution was made possible by funding from the European Research Council (ERC) under the EU's Horizon 2020 research and innovation program under grant agreement No. 725238. My thanks to student assistant Rosa Vaalburg for her research of the media reports.

2. Unless otherwise noted, I have translated from Dutch to English all quotations from Dutch sources in this chapter. "Eisch tot echtscheiding afgewezen, een Schijnhuwelijk is geen huwelijk, *Het Vaderland*, June 7, 1934; "Huwelijk gebruikt als noodhulp: Schijn en wezen," *De Telegraaf*, July 22, 1934; "Schijnhuwelijken," *Algemeen Handelsblad*, September 16, 1934; "Een merkwaardig arrest III," *De Tijd*, April 25, 1935; "Een merkwaardig arrest

IV," *De Tijd*, April 26, 1935; "De begrooting van Justitie," *Het Vaderland*, November 23, 1937; "Court Ruling: Court of The Hague," *Nederlandse Jurisprudentie*, November 29, 1934, 402.

3. "Rotterdam vraagt meer recht voor buitenlandse vrouwen," *De Waarheid*, May 16, 1983; "Schijnhuwelijken dekmantel voor grootscheepse vrouwenhandel," *De Telegraaf*, June 11, 1983; "Politie klaagt over aanvoer vrouwen voor schijnhuwelijk," *NRC Handelsblad*, December 18, 1984; "Enkele duizenden vrouwen verhandeld naar Nederland," *De Volkskrant*, April 23, 1985; "Enkele duizenden buitenlandse vrouwen tot prostitutie geprest," *Trouw*, April 23, 1985.

4. "Indonesische mag voorlopig in Nederland blijven," *De Volkskrant*, January 24, 1987; "Indonesische mag voorlopig blijven," *Trouw*, January 29, 1987; "Indonesisch meisje niet uitwijzen," *Het Parool*, February 5, 1987.

5. Dutch Lower House (Tweede Kamer, hereafter TK) 1979–1980, 15649 OCV, January 28, 1980.

6. TK 1993–1994, 22488, plenary, October 14, 1993: 12–761; TK 2000–2001, December 12, 2000, appendix to TK proceedings, No. 383. "Poort naar de welvaart," *NRC Handelsblad*, October 14, 2000.

7. A Dutch national who moves to another member state can bring a non-EU partner into the country under the more liberal conditions of the EU right to the freedom of movement. These advantageous family reunification rights are retained on return to the Netherlands.

8. "Politiechefs: Dweilen met de kraan open," *Het Vrije Volk*, January 15, 1980.

9. TK 2009–2010, 32175 (6): 4. "Het project consulaire huwelijken onder de loep," *IND-context*, no. 1 (2011): 6.

10. "Nederlandsche worden door schijnhuwelijk—onze regering gaat tegenmaatregelen treffen," *De Banier*, October 25, 1938.

11. "Schijnhuwelijken aan lopende band," *Het Vrije Volk*, March 9, 1987; "Aantal schijnhuwelijken loopt de spuigaten uit," *De Telegraaf*, October 25, 1991; "Het huwelijk als hulpmiddel," *Trouw*, March 10, 1992.

12. Green paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC), COM(2011) 735 final, p. 7.

13. TK 2009–2010, 32175 (6): 4.

14. TK 2015–2016, 32175 (62).

15. "Politie klaagt over aanvoer vrouwen voor schijnhuwelijk."

16. "Vreemdelingenrecht: Het schijnhuwelijk blijft voorziening vragen," *De Telegraaf*, May 1, 1935.

17. "Vreemdelingenrecht"; "Vreemdelingenplicht vóór vreemdelingenrecht!," *De Telegraaf*, May 4, 1935.

18. TK 1993–1994, 22488, plenary, October 14, 1993: 12–761.

19. TK 1979–1980, 15649, OCV, January 28, 1980.

20. "Politie klaagt over aanvoer vrouwen voor schijnhuwelijk."

21. "Prive-stichting vangt slachtoffers op van bedrog door buitenlandse partners," *De Volkskrant*, July 3, 1997.

22. TK 2009–2010, 32052, plenary, February 10, 2010: 53-4864; TK 2009–2010, 32052, plenary, February 10, 2010: 53-4863.

23. "De vreemdelingendienst moet ambtshalve discrimineren," *Algemeen Handelsblad*, December 29, 1990.

24. "Nog even snel repeteren waar het portretje van vader staat," *De Volkskrant*, January 9, 1992.

25. "De vreemdelingendienst moet ambtshalve discrimineren."

26. "Beneden Amsterdams peil," *De Waarheid*, July 2, 1984; "Staatshuwelijk is zo vaak een fopspeen," *De Volkskrant*, January 10, 1992.

27. "Schijnhuwelijk? Welnee, zeggen Tonko en Sanit," *De Telegraaf*, May 8, 1984; "Getrouwd zijn zonder geldig paspoort geeft geen garantie," *Trouw*, July 4, 1984.

28. "Ze zeggen dat het 'n schijnhuwelijk is," *Het Vrije Volk*, January 4, 1980.

29. "Schijnhuwelijk?"

30. "Huwelijk met een buitenlander is niet altijd een schijnvertoning," *NRC Handelsblad*, March 20, 1982.

31. COM(2009) 313 Final Communication from the Commission to the European Parliament and the Council, p. 16; Council of the European Union, April 23, 2012, 8714/1/12, REV 1, COM (2014) 604 final, September 26, 2014.

32. "Nederlandsche worden door schijnhuwelijk."

33. Rijksbegrooting voor het dienstjaar 1938. 2. IV. 9, p. 24.

34. AJZ 4012/E2979-2A-294 Vc, July 7, 1975.

35. "Kosto gaat schijnhuwelijken onmogelijk maken," *De Volkskrant*, November 4, 1991.

36. "Schijnhuwelijk nu zinloos," *De Telegraaf*, January 5, 1985; "Schijnhuwelijk is nu minder aantrekkelijk," *Trouw*, January 17, 1985; "Vrouwenhandel in Amsterdam," *Het Parool*, March 23, 1987.

37. "Rechercheurs verhoren jongen van negen op school," *NRC Handelsblad*, November 19, 1991; "Aangifte van schijnhuwelijken niet verplicht in Den Haag," *NRC Handelsblad*, August 10, 1983.

38. "Marokkaanse mag trouwen," *Het Parool*, July 3, 1984; "Marokkaanse moet in buitenland maar in het huwelijk treden," *De Volkskrant*, June 30, 1984.

39. Adviescommissie Vreemdelingenzaken (ACVZ), *Profileren en selecteren: Advies over het gebruik van profilering in de uitvoering van het vreemdelingenbeleid* (The Hague: ACVZ, 2016).

40. "Schijnhuwelijk onder de loep: Dumpen na verblijfsvergunning verleden tijd," *De Telegraaf*, October 22, 2008.

41. An exception: "Criteria IND zijn nogal subjectief," *De Volkskrant*, June 15, 2014.

REFERENCES

Abrams, K. 2007. "Immigration Law and the Regulation of Marriage." *Minnesota Law Review* 91 (6): 1625–1709.

Bonjour, S., and B. de Hart. 2013. "A Proper Wife, a Proper Marriage: Constructions of 'Us' and 'Them' in Dutch Family Migration Policy." *European Journal of Women's Studies* 20 (1): 61–76.

Bonjour, S., and M. Vink. 2013. "When Europeanization Backfires: The Normalization of European Migration Politics." *Acta Politica* 48 (4): 389–407.

Bovens, M., and S. Zouridis. 2002. "From Street-Level to System-Level Bureaucracies: How Information and Communication Technology Is Transforming Administrative Discretion and Constitutional Control." *Public Administration Review* 62 (2): 174–184.

Bredbenner, C. L. 1998. *A Nationality of Her Own: Women, Marriage and the Law of Citizenship*. Berkeley: University of California Press.

Charsley, K., and M. Benson. 2012. "Marriages of Convenience, and Inconvenient Marriages: Regulating Spousal Migration to Britain." *Journal of Immigration, Asylum and Nationality Law* 26 (1): 10–26.

Chauvin, S., M. Salcedo Robledo, T. Koren, and J. Illidge. 2021. "Class, Mobility and Inequality in the Lives of Same-Sex Couples with Mixed Legal Statuses." *Journal of Ethnic and Migration Studies* 47 (2): 430–446.

Chock, P. P. 1996. "No New Women, Gender, 'Alien' and 'Citizen' in the Congressional Debate on Immigration." *PoLAR* 19 (1): 1–9.

Cott, N. F. 1998. "Marriage and Women's Citizenship in the United States 1830–1934." *American Historical Review* 103 (5): 1440–1474.

Crenshaw, K. 1990. "A Black Feminist Critique of Anti-Discrimination Law and Politics." In *The Politics of Law: A Progressive Critique*, edited by D. Kairys, 195–218. New York: Pantheon.

D'Aoust, A.-M. 2013. "In the Name of Love: Marriage Migration, Governmentality, and Technologies of Love." *International Political Sociology* 7 (3): 258–274.

de Hart, B. 2003. *Onbezonnen vrouwen. Gemengde relaties in het nationaliteitsrecht en het vreemdelingenrecht.* Amsterdam: Aksant.

———. 2006. "The Morality of Maria Toet: Gender, Citizenship and the Construction of the Nation-State." *Journal of Ethnic and Migration Studies* 31 (1): 49–68.

———. 2017a. "The Europeanization of Love: The Marriage of Convenience in European Migration Law." *European Journal of Migration and Law* 19 (3): 281–306.

———. 2017b. "Wanneer is er sprake van een 'oprecht' huwelijk?" *Asiel-en Migrantenrecht*, no. 9: 398–404.

———. 2017c. Protecting Dutch Girls from the Harem. Premarital Counselling for Mixed Marriages with Muslim Men. *Journal of Migration History* 3 (1): 78–103.

Dörrenbächer, N. 2018. "Frontline Uses of European Union (EU) Law: A Parallel Legal Order? How Structural Discretion Conditions Uses of EU Law in Dutch and German Migration Offices." *Journal of Public Policy* 38 (4): 455–479.

Eggebø, H. 2013. "A Real Marriage? Applying for Marriage Migration to Norway." *Journal of Ethnic and Migration Studies* 39 (5): 773–789.

Favell, A., and T. Nebe. 2009. "Internal and External Movers: East-West Migration and the Impact of EU Enlargement." In *Pioneers of European Integration: Citizenship and Mobility in the EU*, edited by E. Recchi and A. Favell, 205–223. Cheltenham, UK: Edward Elgar.

Fonk, G., W. van der Meer, and U. H. Oelen. 1998. *Evaluatie Wet Voorkoming Schijnhuwelijken: Eindrapport.* Leiden: SWOKA, Instituut voor strategisch consumentenonderzoek.

Fox, J., L. Morosanu, and E. Szilassy. 2012. "The Racialization of the New European Migration to the UK." *Sociology: The Journal of the British Sociological Association* 46 (4): 680–695.

Friedman, S. L. 2010. "Determining 'Truth' at the Border: Immigration Interviews, Chinese Marital Migrants, and Taiwan's Sovereignty Dilemmas." *Citizenship Studies* 14 (2): 167–183.

Haahr, J. H., and W. Walters. 2004. *Governing Europe: Discourse, Governmentality and European Integration.* London: Routledge.

Henkes, B. 1995. *Heimat in Holland: Duitse dienstmeisjes 1920–1950.* Amsterdam: Babylon–De Geus.

Holmes-Wijnker, B., J. Grootscholte, and M. Bouwmeester. 2004. *Uitvoering van de Wet voorkoming schijnhuwelijken: Evaluatie van de effecten van wijzigingen in het Burgerlijk Wetboek in 2001 op de werklast voor gemeenten en vreemdelingendiensten.* Netherlands: Scientific Research and Documentation Centre, Ministry of Justice (WODC: Wetenschappelijk Onderzoek- en Documentatiecentrum).

Huysmans, J. 2000. "The European Union and the Securitization of Migration." *JCMS: Journal of Common Market Studies* 38 (5): 751–777.

Knop, K. 2001. "Relational Nationality." In *Citizenship Today: On Gender and Nationality in International Law*, edited by A. Aleinikoff and D. Klusmeyer, 89–126. Washington, DC: Carnegie Endowment.

Kulu-Glasgow, I., W. Y. J. Liu, R. P. W. Jennissen, M. Smit, E. M. T. Beenakkers, M. Haerden, J. Niehof, and A. M. Stelk. 2016. *Schijn bedriegt*. Den Haag: WODC.

Lavanchy, A. 2014. "The Circulation of People: How Does 'Race' Matter in Switzerland?" Working paper 7. Université de Neuchâtel, Neuchâtel.

Lipsky, M. (1980) 2010. *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.

Luibhéid, E. 2002. *Entry Denied: Controlling Sexuality at the Border*. Minneapolis: University of Minnesota Press.

Messinger, I. 2013. "There Is Something about Marrying . . . The Case of Human Rights vs. Migration Regimes Using the Example of Austria." *Laws* 2 (4): 376–391.

———. 2017. "Marriages of Convenience as a Strategy to Escape to the UK." In *Exile and Gender II: Politics, Education and the Arts*, edited by C. Brinson, J. Barbora Buresova, and A. Hammel, 81–95. Leiden: Brill/Rodopi.

Mühleisen, W., Å. Røthing, and S.H.B. Svendsen. 2012. "Norwegian Sexualities: Assimilation and Exclusion in Norwegian Immigration Policy." *Sexualities* 15 (2): 139–155.

Odasso, L. 2021. "Family Rights-Claiming as Act of Citizenship: An Intersectional Perspective on the Performance of Intimate Citizenship." *Identities: Global Studies in Culture and Power* 28 (1): 74–92.

Outshoorn, J. 2012. "Policy Change in Prostitution in the Netherlands: From Legalization to Strict Control." *Sexuality Research and Social Policy* 9 (3): 233–243.

Ryan, J. 1999. "'She Lives with a Chinaman': Orient-ing 'White' Women in the Courts of Law." *Journal of Australian Studies* 23 (60): 149–159.

Schrover, M. L. J. C, J. P. van der Leun, L. Lucassen, and G. C. Quispel. 2009. "*Illegale Migratie Vanuit Een Genderperspectief*." In *Kritiek: jaarboek voor socialistische discussie en analyse*, edited by L. V. Hoogenhuijze, 11–36. Amsterdam: Aksant.

Sjoberg, L. 2016. "Centering Security Studies around Felt, Gendered Insecurities." *Journal of Global Security Studies* 1 (1): 51–63.

Stoler, A. L. 2001. "Tense and Tender Ties: The Politics of Comparison in North American History and (Post) Colonial Studies." *Journal of American History* 88 (3): 829–865.

Tabili, L. 1996. "Women 'of a Very Low Type': Crossing Racial Boundaries in Imperial Britain." In *Gender and Class in Modern Europe*, edited by L. L. Frader and S. O. Rose, 165–190. Ithaca, NY: Cornell University Press.

Van der Leun, J. 2006. "Excluding Illegal Migrants in the Netherlands: Between National Policies and Local Implementation." *West European Politics* 29 (2): 310–326.

Van Eijl, C. 2012. *Tussenland: Illegaal in Nederland, 1945–2000*. Hilversum: Uitgeverij Verloren.

Van Walsum, S. 2008. *The Family and the Nation: Dutch Family Migration Policies in the Context of Changing Family Norms*. Newcastle upon Tyne, UK: Cambridge Scholars Publishing.

Vollmer, B. A. 2011. "Policy Discourses on Irregular Migration in the EU—'Number Games' and 'Political Games.'" *European Journal of Migration and Law* 13 (3): 317–339.

Wray, H. 2006. "An Ideal Husband? Marriages of Convenience, Moral Gate-Keeping and Immigration to the UK." *European Journal of Migration and Law* 8 (3–4): 303–320.

Yuval-Davis, N. (1997) 2008. *Gender and Nation*. Politics and Culture. London: Sage.