

# LADY JUSTICE IS NOT BLIND

The legal system is not particularly systematic. The zeitgeist has a major influence on how our laws are defined and explained. Sarah van Walsum not only examines the societal process behind migration law, but she is also actively involved in the process. “The best thing about my job is that I can shake up the way people think.”



By Anita Mussche

Refugees sometimes choose to leave their children behind, because the journey is too dangerous or too uncertain. If their parents apply for family reunification once they are in the Netherlands, there is an 80 per cent chance that the children will not be admitted. The reason given is to combat the evils of child trafficking. Until the 1990s, it was unthinkable that the children of refugees would not be reunited with their parents. So why are the odds stacked against reunification now? “The family has acquired a different status,” says Sarah van Walsum, Professor of Migration Law and Family Ties. Parents separate and meet new partners, children have step-parents, the nuclear family is no longer a given. As a result, the protective function of the family has faded into the background.

The law changes with the times. This enables migration law to call the importance of family relationships into question if that’s more convenient in terms of migration policy. In this case, Van Walsum believes, that is very unfortunate: “There may have been a few cases where a couple arranged for children other than their own to come to the Netherlands. But the current system implies that 80 per cent of parents are up to no good. The fact that such decisions tear families apart is largely ignored.”

## LAWS ARE FLEXIBLE

The law is not an absolute, but a societal process. Politicians make laws, but these laws can sometimes be interpreted in different ways. The way in which officials apply the rules may differ from what some politicians had in mind. In addition, society is confronted with changes and unexpected situations that the legislators could not foresee. Last but not least, legislation is so complex and flexible that a judge also has room for choice.

“I think it is important to recognize that policy choices are made, so that people can also take responsibility for these choices,” Van Walsum argues. “This is only possible if you have a vantage point from which to assess the complexities of a situation.” She provides that vantage point, puts forward alternative arguments and in doing so creates greater support for changes within the legal system. That is the essence of her work.

In 2008, Van Walsum published *The Family and the Nation*, a book in which she describes how the relationship between family and

migration law has changed since World War II. Last year she received a prestigious Vici grant of 1.5 million euros from the Netherlands Organization for Scientific Research to chart the relationship between migration, nation and family with her own research group.

## SHAKE-UP

Van Walsum is not on a mission to dictate policy makers what kind of migration laws they should make. She sees that as an impossible goal, since laws are a reflection of interests and these interests can be contradictory. “In law, there are all kinds of interests at play: those of the state, those of the family, those of the individual. There are always choices to be made, with different interests occupying central stage at different times. The law can never satisfy everybody’s interests.”

Migration law provides a clear illustration of this principle. It is now often used as an instrument by which a nation tries to keep foreigners outside its borders. While Van Walsum concedes that this is a legitimate aim, she offers a different view. “The foreigner is not necessarily a stranger, because half of our immigrants come to the Netherlands on the basis of family reunification.” She maintains that networks – such as family networks – do not stop at the border.

## “The law can never satisfy everybody’s interests”

In her publications on such contradictions between the real world and how the law is enforced, she definitely tries to influence the law. She does so by highlighting societal changes and their consequences. Van Walsum mainly achieves this by reading: laws, regulations, government proposals, treaties, but also what other legal experts and important bodies such as the UN refugee agency [UNHCR](#) have to say on such issues. She also reads everything she can lay her hands on about societal change. “I find it fascinating to look at the law from the viewpoint of sociology or political science. The best thing about my job is that, as an academic, I can shake up the way people think about things. Once a year, I go on retreat to a

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castle in the country with a suitcase full of books and documents, everything I’ve collected. Then I really get to grips with it all. I see if a particular narrative emerges. If I can reformulate legal issues from a new perspective, if things get shaken up. Those are the most exciting moments.”

## GENERATING FOCUS

Through her publications on what she learns from all that reading and through her contributions to expert meetings, Van Walsum has succeeded in focusing attention on the consequences of migration law for women. In doing so, she has been critical of the women’s movement, which she felt was putting too much emphasis on the victimhood of women from migrant cultures. There’s a danger that such an image can disqualify female immigrants as suitable Dutch citizens and have an adverse effect on their already disadvantaged position.

Van Walsum has also helped shift the focus of migration law towards the perspective of parent and child. In 2006, Immigration Minister Rita Verdonk reformed the law so that migrants no longer had to prove that they had a ‘de facto relationship’ with their child. However, putting such reforms into practice is quite another matter: “Nowadays you can see the old principle once again being applied to refugee children. Even when you think you have taken a step forward, things can still turn out differently. The law keeps right on moving.”

## ACTIVIST OR ACADEMIC?

For the past ten years or so, Van Walsum has increasingly turned to European law. Human rights, including the rights of the child, sometimes enjoy greater protection at European level than at national level. “The right to family life is enshrined in human rights law. This connection is recognized and protected. That provides a strong legal basis. It’s a powerful ally,” says Van Walsum. Ally? Does Van Walsum feel she is primarily an academic nowadays or is she an activist fighting to steer migration law in a particular direction? “I think I’m a bit of a schizophrenic where that’s concerned,” Van Walsum reflects. “Here at VU University Amsterdam, there is a clear focus on human rights and how they are interpreted in court cases. We tend to think things through from the lawyer’s perspective.”

She worked for two years as a clerk of the court. “This increased my awareness of the other interests involved in migration law: that there are various perspectives involved. As an academic, you are able to see things in a broader context. At the end of the day, that’s the mainstay of what I do.” Having done that, she then expects judges to pick up on such developments: “A judge should have the courage to adopt a position that might differ from the prevailing doctrine. If judges never rule in favour of less dominant interests, things will never move on.” She believes that judges should be prepared to run the risk of being overruled by a higher authority.

## BORING BUSINESSMEN

As a child of Dutch parents, Van Walsum grew up in Canada and went on to study history in the United States and France. Her parents’ roots brought her to the Netherlands, where she studied law at the University of Amsterdam. The Inuit in Quebec were indirectly responsible for her interest in law. “I was an idealistic young girl. I spent a year working as a secretary for lawyers who negotiated on behalf of the Inuit, securing their land rights when

hydroelectric plants and mines became interested in the area. I came to realize that these lawyers were actually doing very interesting things. They weren’t just boring businessmen after all!”

## WALKING

If Van Walsum hits a dead end in her work, she goes for a walk. “I live on the Westerdok in Amsterdam. Nearby, there’s a huge terrace that’s hardly used by anyone. It’s a great place to gaze out across the water. They often say the best ideas come to you in bed, in the bath and on the bike. And that’s true.” She also draws inspiration from her colleagues. It was no accident that she ended up working as part of the migration law research group headed by [Professor Thomas Spijkerboer](#). “I had known Thomas for a long time and we had many conversations. He is a very inspiring and stimulating guy. It has also turned into a very fine department, a very good research team. Our combination of thorough legal research with a broader vision means we attract good people.”

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## ‘THE WORLD’ DOES NOT EXIST

Van Walsum uses two maps of the world to illustrate the duality in which migration law operates. One is the familiar patchwork in which each country has its own colour. The other map, like the ones you see in in-flight magazines, shows all the aviation routes around the world as lines that join the various continents together. These maps illustrate two ways of looking at the world: as a collection of sovereign states, strictly separated by national borders, and as a collection of interpersonal relationships that do not stop at national borders. In the current zeitgeist, migration law mainly operates on the basis of those clearly defined countries. But both pictures are accurate representations of our world, Van Walsum believes. “I try to create a dialogue between these two worldviews.”

*Intimate strangers*: Sarah van Walsum’s inaugural speech as Professor of Migration Law and Family Ties on 7 June 2012.

