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How we do things here : moral communities, Integration, and toleration in the Netherlands:competing interpretations of liberalism in parliamentary practice, 2000-2013

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How we do things here

Moral Communities, Integration, and Toleration
in the Netherlands:
Competing Interpretations of Liberalism in
Parliamentary Practice, 2000-2013

Floris Mansvelt Beck



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How we do things here

Moral Communities, Integration, and Toleration
in the Netherlands:
Competing Interpretations of Liberalism in
Parliamentary Practice, 2000-2013

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Introduction

In 2005 a panel at the third ECPR conference – a gathering of international social scientists hosted every other year by the European Consortium for Political Research – was convened to discuss recent events in the Netherlands. The panel's title, *'What the hell happened to the Netherlands? Public culture and minority integration in the country of (in)tolerance'*, nicely captures the general bewilderment of the time. Academic and other commentators, and not a few members of the general public also, all had difficulty recognizing the country long-heralded for its tolerance and liberality. Over the course of only a few years, it seemed, the Netherlands had performed a near-complete *volte face*, the erstwhile pioneer of multiculturalism turned into an advocate of laws and policies aimed at reinforcing Dutch values and identity. What is more, two murders, one of the politician Pim Fortuyn, the other of the bad boy of Dutch cinema, Theo van Gogh, seemed to have unearthed divisions in society that did not fit well with the Dutch self-image of pragmatism and blunt candor.¹ These alleged divisions, between apologists for leftwing policies and hard-talking right-wingers, and between the Muslim and secular population respectively, were not only cause for concern but also for wonder, for until shortly before the Netherlands seemed to have been doing so well, both economically and socio-politically.²

This thesis attempts to answer the questions implicit in the abovementioned panel title's latter half: is the contemporary Netherlands a tolerant country, or is it intolerant of minority groups and their members? What, generally speaking, is the shape that toleration is in in the Netherlands? This thesis treats this question as bearing upon the country's interpretation of and

¹ Buruma (2006) provides a background and analysis of both murders; see also Korteweg 2006.

² In the 1990s the Netherlands enjoyed a period of economic growth (sometimes called the Dutch miracle). This growth was linked both to the Dutch 'poldermodel' and to the mingling of welfare-statism and certain tenets of neo-liberalism pursued by the 'purple' coalitions of the nineties, in which the 'red', social-democrats PvdA, mixed with the 'blue', conservative liberals VVD and progressive liberals D66, in a Dutch variant of the third way. For a detailed discussion of such third way politics in the context of Great-Britain, see Giddens 2003, chapter 2 especially.

commitment to liberal values concerning, especially, individual freedom, religious liberty, and cultural diversity. It does so in the understanding that the institutional shape of toleration in the Netherlands, as in other modern, liberal democratic societies, can broadly yet accurately be characterized as liberal, in the sense that it ‘rests on a commitment to the sanctity of the individual personality and the inviolability of the individual conscience’.³ This commitment, in any case, is implicit in the legal and political institutions of the Dutch state.⁴

For reasons to be stated in detail below, this thesis treats Dutch Parliament as a proxy for Dutch society, and the opinions voiced therein as representative of, or in any case highly relevant for, that society. It seeks an answer to the general question of the state of toleration in the Netherlands through the analysis of parliamentary debates that are of particular relevance to the treatment of moral communities, i.e. groups constituted on the basis of shared conscientious beliefs. The debates analyzed all took place between 2000 and 2013. Because the purpose of this thesis is to determine the standing of moral communities in the Netherlands understood as a liberal polity in the general terms stated above, the analysis of these parliamentary debates is conducted in the terms of a number of liberal political theories that have addressed that specific question in the abstract.

Consequently, the current investigation is guided by the following research question:

‘What is the standing, understood in the terms of contemporary liberal political philosophy, that Dutch Parliament accords to moral communities, as evidenced in parliamentary debates

³ Ryan, Alan. 2012. *The making of modern liberalism*. Princeton/Oxford: Princeton University Press, 8.

⁴ A second reason for substituting commitment to religious liberty and related liberal values for toleration at the outset is to avoid the difficulties and debates surrounding both the concept of toleration itself and its relationship to religious liberty and freedom of conscience (not to mention the differences between toleration and tolerance). To point to but one of these difficulties, under the interpretation favored by some historians of toleration, toleration *stricto sensu* no longer obtains in states and societies endorsing religious liberty, or in any case cannot be identified with it. For if toleration is understood as involving the permission, granted by the state or ruling class, to deviate from an established religion, liberal religious liberty is not an extension of toleration, but something quite different, involving as it does the freedom from any such requirement for practicing or endorsing a religion. See, e.g., Kamen 1967: 7; King 1976: 13-15 & chapter 4 especially, Guggisberg 1983: 36; Beneke 2006: 203-204, Kaplan 2007: 8-9. The preface to Murphy (2001) provides a concise discussion of a number of the other conceptual and historical difficulties eluded to above (x-xvii).

between 2000 and 2013?’

This introduction will discuss the different elements of this research question in turn.

Moral communities

This thesis attempts to determine the standing of moral communities in the Dutch liberal polity. The reason to introduce the term ‘moral community’ is to avoid the ambiguity surrounding terms such as ‘minority’, ‘minority group’, ‘cultural minority’, etc. Moral communities are communities that can be distinguished from other communities on the basis of a shared set of moral beliefs, or a shared conception of the good.

The term ‘moral community’ is taken from Durkheim. Durkheim used the concept of a *communauté morale* in his analysis of religion, described by him as ‘a unified system of beliefs and practices [...] which unite into one single moral community called a Church, all those who adhere to them.’⁵ A moral community, then, for Durkheim is a community united on the basis of a unified system of beliefs and practices. It is in that sense that the term will be used in this thesis. In the terminology of modern political thought, a moral community is a community that is identifiable by the shared comprehensive doctrine of its members.⁶

The standing of moral communities

By the standing of moral communities, I mean not merely their constitutional status, but their standing in the broader system of law and legal practice which makes up the liberal polity of the Netherlands. The Dutch polity is taken to be liberal in the sense that individual liberty is safeguarded in the Netherlands by way of recognizably liberal constitutional

⁵ Durkheim 2001 [1912]: 46. See, for a good introduction and discussion of Durkheim’s development and use of the concept, Durkheim 2001 [1912]: vii-xvi.

⁶ Rawls writes that a comprehensive doctrine (which he here calls a moral conception) ‘is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole. A conception is fully comprehensive if it covers all recognized values and virtues within one rather precisely articulated system; whereas a conception is only partially comprehensive when it comprises a number of, but by no means all, nonpolitical values and virtues and is rather loosely articulated.’ (Rawls 2005 [1993]: 13). See also Gaus 2003: 180-181.

rights and liberties, which rights and liberties are respected in the execution and adjudication of laws.⁷

As evidenced in parliamentary debates since 2000

As will be discussed extensively in chapter 1, there are different yet equally liberal ways of relating to moral communities in a liberal regime. As a liberal polity, the Netherlands has been engaged in a process of (re-) defining its relationship to moral communities for a number of years now. As will be described in more detail in chapter 2, the Netherlands is often presented in the literature as having traversed the very extremes of the liberal spectrum, from liberal multiculturalism in the 1980s, to liberal mono-culturalism at the present day. Even if some such accounts are prone to exaggeration, the trajectory followed by the Netherlands has given rise to a wide number of disparate policy decisions and debates, building on competing answers to the question to what degree newcomers to Dutch society should integrate in that society, and therefore reflecting competing understandings also of what an integrated society should consist in, as well as of the standing of moral communities in that society.

In the literature, the years 2000-2002 are generally treated as a watershed in Dutch attitudes toward the standing and treatment of moral communities in the Netherlands. First, the year 2000 saw the publication of a highly debated opinion piece in a Dutch newspaper, with the evocative title *The Multicultural Drama*.⁸ One of the points made by its author was that for lack of a strong Dutch cultural identity, newcomers to Dutch society, especially from predominantly Islamic countries, were given every opportunity to dissociate from that society, paving the way for its disintegration. While the argument in itself was not novel, its reception was. As one commentator put it, publication of *The Multicultural Drama* and its subsequent debate helped bring about 'a respectable non-racist assimilationist view that can be opposed to the long existing multiculturalist option.'⁹ While discussion of Scheffer's article was mostly confined to intellectual circles and a minor debate in Parliament,

⁷ 'Liberal', of course, is used in various other senses. Dutch readers must be cautioned not to confuse 'liberal' in the sense of this thesis with the 'liberal' of the Dutch liberal party VVD, which, other things being equal, is at least as indicative of its embrace of free-market ideology as of an appreciation of the value of individual liberty.

⁸ Scheffer 2000.

⁹ Entzinger 2003: 80.

events over the course of the next two years would ensure that the (de-) merits of both multiculturalism and Islam were to become hotly debated topics among the populace more generally. First came the attacks on the Pentagon and the World Trade Center in New York on September 11, 2001. The following year, the 'long year 2002', saw the tumultuous success of the populist politician Pim Fortuyn in the Netherlands, whose rise to prominence was cut short by his murder in May 2002. The subsequent popular success of his party, LPF ('List Pim Fortuyn'), though short-lived, marked the introduction of rightwing populism in Dutch politics on an unprecedented scale.

It is because the years 2000-2002 are regarded as marking a definite shift in attitudes concerning the standing of moral communities in the Netherlands that the selection of parliamentary debates to be analyzed in this thesis starts from the year 2000. Doing so, it should be clear that the purpose of this thesis is not to determine whether there has been a shift in parliamentary attitudes. There will be no comparison of pre- and post-2000 parliamentary debate. The shift signaled in the literature is treated as a given. This thesis attempts to determine the standing of moral communities in Dutch liberal democracy as evidenced in parliamentary debates after the shift.

Why parliamentary debates?

The reasons for analyzing parliamentary debates, instead of, for instance, the attitudes of the general public, are fourfold. Firstly, it is parliamentarians who debate the passing of bills into law. Their expressed attitudes and opinions, therefore, are of special consequence to the Dutch polity. Secondly, parliamentarians are the elected representatives of their constituencies. Besides thus formally representing Dutch society, the positions adopted by parliamentarians in debates can be expected to represent those of their constituencies, or at least to be endorsed by their constituencies.¹⁰ This is all the more so in a proportional electoral system such as that of the Netherlands. At minimum, the reasons offered by parliamentarians

¹⁰ This, the matter of 'issue congruence' between parliamentary representatives and their electors, is the object of both academic debate and empirical research. Debates focus on the concept of representation and on how representatives should act (see, e.g. Pitkin 1967, Manin 1997). Empirical research investigates the effects of electoral models and institutions on issue congruence (see, e.g., Blais & Bodet 2006 and Golder & Stramski 2010) or issue congruence on specific issues (see, e.g., Den Ridder 2014).

in support of their positions or expressed opinions can reasonably be expected to have the purpose of meeting the favor of their constituencies or at least certain members of the electorate. Recent research confirms this expectation with regard to the Netherlands, especially with regard to the issues that matter most to electors.¹¹ Thirdly, this thesis does not simply aim to determine current attitudes concerning moral communities, but more specifically wishes to investigate the standing of moral communities in the Netherlands understood as a liberal polity. For this it is necessary to focus on current interpretations of and commitment to liberal values. This is not merely or even predominantly a matter of attitudes, but also of reasons. Precisely because parliamentary debates are of such special consequence to the Dutch polity, parliamentarians must develop, express, and justify their attitudes regarding those issues explicitly and in detail, i.e., they must provide reasons for their adopted positions. Moreover, parliamentarians not only defend their own views during debate, but attack or embrace the views of others also. The debates therefore form a comprehensive whole, in which the arguments of parliamentarians can both be parceled and placed in an integrated context. The fourth and final reason to analyze parliamentary debates is their accessibility. All debates of Dutch Parliament, in both of its chambers, are transcribed and made publicly accessible. For the researcher, this means that a wealth of information is directly available. For the reader, it means that the sources of any factual or interpretational claims made about the debates are readily traceable.

Having settled on the investigation of parliamentary debates, a disclaimer is in order. As parliamentary debates are conducted by representatives of political parties, the primary object of study in this thesis is parties' contributions to debates. As a consequence, it may seem as though this thesis aims to track party positions with regard to the standing of moral communities in the liberal polity of the Netherlands. However, this is not the case. The purpose of this thesis, again, is to determine that standing at the level of Dutch Parliament as a whole, i.e. which interpretations of the liberal freedoms that are relevant to that standing resonate in Parliament and which do not, which arguments find purchase and which do not. As such this thesis is an investigation of arguments and ideas, not of party

¹¹ Den Ridder (2014) investigates the congruence between voters and representatives directly and on specific issues. On the issue of minority integration, for example, in the years 2006-2008, she finds congruence levels between 55% and 65% for the parties PvdA (68%), D66 (55%), CDA (63%), and VVD (65%) (Den Ridder 2014: 242-246).

positions. Though the particular party positions in every examined debate are rendered explicit and therefore accessible to anyone interested, the primary interest of this investigation is not these positions *in se*, but their consequences for the liberal polity that is the Netherlands.

That being said, the selection of debates is guided by the following criteria: first their subject matter; the debates must concern a topic of undisputed relevance to the research question and that topic should be the main topic of the debate. Incidental remarks bearing on minorities in other debates, for example, are not taken into consideration. Second, the kind of debate (e.g. interpellation, budget, legislative); legislative deliberations are preferred, both on the premise that convictions that parties are prepared to give the force of law are those that matter most and because such deliberations proceed in both chambers of Parliament (the Second and First Chamber, respectively).¹² Third, the dimensions of the debate, both in terms of parties participating and in terms of their respective contributions to the debate. The more parties shed light on a subject, the easier to determine the views of parliament as a whole, and the more parties have to say, the smaller the chances of misinterpreting their position. Fourth, their date; the aim is to analyze parliamentary debates covering as many years as possible since 2000, so that possible temporary distortions caused by current events, such as the respective murders of Fortuyn and Van Gogh, are offset by other debates. Relatedly, finally, in the case of concurrent debates one debate will be singled out for analysis. This is both to avoid redundancy and on the assumption that a given party's position in two simultaneous debates will be much the same, or else other parties will mince no words pointing out discrepancies. An example of a debate left to the side after applying the above criteria is the debate, requested by the PvdA in the year 2000, on the abovementioned article by Scheffer, *The Multicultural Drama*. Though promising in terms of subject matter, the debate's timing concurred with another, more substantial debate on a similar topic. Moreover, this second debate was a legislative debate. Therefore, the so-called 'Scheffer-debate' was passed over in favor of the other debate.

¹² Dutch Parliament consists of a lower and an upper house, referred to in Dutch as the Second and First Chamber respectively ('*Tweede*' and '*Eerste Kamer*'). The Dutch terminology will be followed in this thesis.

On the basis of these five criteria five parliamentary debates have been selected for analysis. These five debates constitute the most relevant, comprehensive debates with regard to the standing of moral communities in the Netherlands conducted in the period under investigation. In chronological order, they are:

- The debate on the Framework Convention for the Protection of National Minorities; 2000-2004 (chapter 3);
- The debate with the Government about 'Building bridges'; 2004 (*Bruggen bouwen*); the final report of the Temporary Investigative Committee Integration Policy) (chapter 4);
- The debate on the Civic integration abroad bill; 2005 (chapter 5);
- The debate on the Civic integration bill; 2006 (chapter 5);
- The debate on the Ritual Slaughter bill; 2011-2012 (chapter 6).

The debate on the Framework Convention for the Protection of National Minorities discusses the desirability of extra constitutional measures for the protection of national minorities in the Netherlands. The debate with the Government about '*Bruggen bouwen*', i.e. the final report of the Temporary Investigative Committee Integration Policy, is the only debate analyzed that does not concern proposed legislation. The report '*Bruggen bouwen*', i.e. Building bridges, discusses three decades of integration policy as well as the Second Chamber of Parliament's expectations and desires for the integration of moral communities in Dutch society in the future. The debates on the Civic integration abroad bill and the Civic integration bill, treated together in chapter 5, both discuss the demands that can and should be made of newcomers to Dutch society, as well as of those moral communities that have established themselves in the Netherlands over the past decades. The debate on the Ritual Slaughter bill, finally, discusses the degree to which established moral communities in the Netherlands should be accommodated in their desire to pursue practices which the majority finds unconscionable, thereby addressing the question of shape of toleration in the Netherlands directly.

One final remark is in order with regard to the selection of debates: three of the five debates to be analyzed concern not moral communities in general, but those moral communities currently referred to in the Netherlands as 'ethnic minorities'. As a consequence, it may seem as though the selection

of debates betrays a shift of focus from moral communities in general to ethnic minorities in particular. This is not the case. The debates in which ethnic minorities figure most prominently concern their integration in Dutch society. The degree to which particular communities are or must be integrated in society cannot be discussed without general reflection on the nature of that society and the standing of moral communities therein. That is why these debates are of interest for this research.

Liberal political theory as an analytical tool

This is not the first thesis in which liberal theory is employed as a means to interpreting policy debates in the Netherlands.¹³ The application of normative theory to descriptive ends entails a risk: that liberal theory is not merely applied as a research tool, but as a weapon, brandished by an author less concerned with interpretation and analysis than with passing judgment. This thesis, acknowledging the risk, purports to employ liberal political theory principally as an analytical tool, reserving any normative judgments for after the analysis. This approach is borne out in chapter 1, in which two liberal, yet distinctly different approaches to the question of the standing of moral communities in a liberal regime will be presented and developed specifically for the purpose of analyzing the aforementioned debates. Neither of these approaches can be traced to a single liberal author, theory, or regime currently existing. Rather, both approaches magnify one of two liberal values that are both widely regarded to be central to liberal thought and practice, autonomy and freedom of conscience respectively, to the point of eclipsing the other.

The first approach maintains that moral communities merit special concern in liberal theory and practice because it is only through the maintenance of such communities that the cultural preconditions for the exercise of individual autonomy can be secured. An example of such a theory is Kymlicka's liberal multiculturalism, which is especially

¹³ See, e.g., Tholen, J.H.M.M. 1997. *Vreemdelingenbeleid en rechtvaardigheid? Een wijsgerige studie naar onze beoordelingen van immigratie- en naturalisatiebeleid*. Proefschrift, Katholieke Universiteit Nijmegen; Struijs, Alies. 1998. *Minderhedenbeleid en moraal: Erkenning van de culturele identiteit in het perspectief van de liberale moraal*. (Proefschrift, Vrije Universiteit.) Assen: Van Gorcum; Verhaar, Odile. 1999. *Recht doen aan pluriformiteit als politieke opgave: Het Nederlandse debat over voorkeursbehandeling in het licht van de filosofische discussie over rechtvaardigheid en burgerschap*. (Proefschrift, Universiteit van Amsterdam.) Amsterdam: THELA THESIS.

concerned to argue for special rights for members of minority cultures.¹⁴ Another example is Miller's liberal nationalism, which argues for the right of nations to preserve the cultural identity of the majority also.¹⁵ Though there are marked differences between these two theories, they are relevantly alike in so far as they both link the importance of maintaining moral communities to an underlying commitment to individual autonomy.

The second theoretical approach to the question of the standing of moral communities in a liberal regime starts directly from respect for the individual conscience. Because the individual conscience deserves respect, this approach maintains, moral communities also deserve respect. If a liberal regime is to respect the diversity of moral communities of which it is made up, it must be premised on a non-comprehensive doctrine of liberalism, i.e. a doctrine of liberalism that excludes, as far as possible, those 'conceptions of what is of value in human life, and ideals of personal character, as well as ideals of familial and associational relationships' that are intrinsic to comprehensive doctrines.¹⁶ Such non-comprehensive doctrines are known as political liberal doctrines. Theorists of political liberalism are Rawls (in his later work), Larmore, and also, or so I will argue in chapter 1, Kukathas.¹⁷

These two approaches to the standing of moral communities in a liberal regime provide the input for two basic and differing interpretations of liberal theory with which to analyze the parliamentary debates. Though combining elements of the diverse theories mentioned in the previous two paragraphs, to my knowledge no theorist endorses or has endorsed either of the two resulting interpretations in the exact form presented here. To avoid confusion with already existing theoretical positions, the two interpretations are termed 'liberal culturalism' and 'framework liberalism' respectively.

Because the purpose of these interpretations is to analyze debates, the interpretations of liberal theory, to be developed in chapter 1, are deliberately stark and uncompromising. They represent what Kukathas

¹⁴ See especially Kymlicka 1995. See also Kymlicka 1989a, Kymlicka 2001, and Kymlicka 2007.

¹⁵ See especially Miller 1995. Patten (1999) provides an interesting review and critique of the autonomy argument in liberal nationalist positions.

¹⁶ See *supra*, fn. 6.

¹⁷ See Rawls 2005 [1993], Larmore 1987, Larmore 1996, and Kukathas 2003. Kukathas has referred to his position as the 'pure theory of liberalism', and also as 'anarcho-multiculturalism' and 'classical liberal multiculturalism' (Kukathas 2008).

calls ‘the terminating’ point of the theoretical approaches that they are based upon, i.e. the most radical application of the central principles guiding each approach.¹⁸ The reason to develop these interpretations in this manner is to mark the differences between the respective approaches to the treatment of moral communities as strongly as possible. This aids the analysis of the debates, because the starker the opposition between the two approaches, the easier it is to determine towards which of them a particular contribution to a parliamentary debate tends. This also means that the question of the standing of moral communities in the liberal regime of the Netherlands will be answered by reference to these two approaches.

One final remark is in order. The purpose of this thesis is diagnostic. Its general goal, as stated above, is to determine the shape that Dutch toleration is in. The liberal approaches introduced above serve the purpose of analysis, not prescription. The primary goal is to assess the standing of moral communities in the Dutch liberal polity, not to criticize that standing or to argue for a different polity. To the extent that normative remarks will be made about that standing and the state of liberalism in the Dutch polity, I have attempted to save them for the final two chapters.

¹⁸ See Kukathas 2008: 42.

Chapter 1

Liberalism and Moral Communities: Two Approaches

Introduction: developing two liberal approaches to culture and moral communities

In this chapter two theoretical approaches to the standing of moral communities in a liberal polity will be introduced and developed. Both approaches are recognizably liberal, yet radically different.

The first of these approaches consists of theories that attribute value to moral communities because of their role in sustaining the cultural preconditions for individual autonomy. Examples of such theories are Kymlicka's liberal multiculturalism and Miller's liberal nationalism.¹ For these theorists, a central argument for sustaining moral communities is that doing so is necessary for the sake of a central liberal value, namely autonomy.

The second of these approaches locates moral communities' value especially in their close relationship to the individual conscience of their members. This approach is generally known as 'political liberalism'. This position has been developed extensively by Rawls (in his later work), and also by Larmore.² In this thesis, Kukathas's theory 'of diversity and freedom' is treated as in relevant aspects a political liberal theory as well.³ For these three theorists, the central argument for respecting the integrity and beliefs of moral communities is that not to do so would amount to a denial of their members' freedom of conscience.

Above, I speak deliberately of approaches. For the purpose of this thesis, any theorist's position in particular is less interesting than the general manner in which a number of liberal theorists treat culture and moral communities in roughly the same fashion. In developing an approach on the basis of observed similarities between authors' positions, differences between them are highlighted when necessary and ignored if irrelevant to the present purpose. Finally, aspects of particular theorists' positions that don't fit well with that aspect of their theory that is relevant to their inclusion in a particular approach are ignored as well.

This last point is especially apparent in the treatment of Kymlicka and Miller's liberal theories. While both theorists acknowledge the role of

¹ See especially Kymlicka 1995 and Miller 1995. See also Kymlicka 1989a, Kymlicka 2001, and Kymlicka 2007.

² See Rawls 2005 [1993], Larmore 1987, Larmore 1996.

³ See *supra*, Introduction, fn. 17.

culture and a cultural environment in stimulating individual autonomy, they do so in the context of very different theories. Kymlicka's concern is for the wellbeing of members of minority communities in liberal society; Miller argues that liberal states need not be neutral with respect to their own cultural heritage. Nor does either theory rely exclusively on the argument that culture effects individual autonomy. For Miller, culture is also indispensable for reasons of identity and cohesion, for example, while Kymlicka not only claims that autonomy is an essential asset in leading a good life, but also that such a life should be lead 'from the inside'.⁴ This can be interpreted as an argument for freedom of conscience, but dwelling on this would detract from his – for the purposes of this thesis – more significant point concerning autonomy.

The reason for rearranging authors' positions in the above fashion ties to the use, described in the introduction, of liberal theory in this thesis. This purpose, again, is to assist the analysis of parliamentary debates for the purpose of determining the standing of moral communities in the Dutch liberal polity. Because the purpose of this thesis is diagnostic, it is helpful to rearrange the theoretical positions in such a way that emphasizes the differences between them. In effect, this means isolating the central value of each approach (autonomy and conscience respectively), and developing the approach on the basis of that value, cutting away that which is irrelevant with regard to it and leaving only that which reinforces it. In this way it is possible to take each approach to what Kukathas calls its theoretical 'terminating point', i.e. the position that expresses most fully and uncompromisingly what a commitment to the theory's central value entails.⁵ In the sense that the approaches developed here attempt to strip a theoretical position to its essence for the sake of creating a heuristic tool, they call to mind Weber's ideal types. They are not ideal types, however, concerning theoretical positions as they do, instead of observed reality.⁶

⁴ See Miller 1995: 65-73; Kymlicka 1995: 81.

⁵ Kukathas, for example, presents his own 'classical liberal conception of multiculturalism' as the 'terminating point of multiculturalism': 'the idea of multiculturalism, insofar as the term identifies a philosophical stance rather than merely a political policy, and insofar as it bespeaks a commitment to accommodating rather than suppressing cultural diversity, is an idea that pushes away from the various other attitudes toward a conception of an open society. And the classical liberal conception of multiculturalism presented here describes the terminating point of multiculturalism. And while no actual regime may be willing, or able, to reach (let alone sustain) such a form of society, it may be useful to see exactly where the theory of multiculturalism leads.' Kukathas 2008: 42.

⁶ Weber's ideal types concern 'bestimmter Elemente der Wirklichkeit' Weber 1968 [1922]: 190.

Nor do the two approaches developed exclude each other as neatly as should be the case with ideal types; there is some overlap between liberal culturalism and framework liberalism. The similarity with ideal types is that both liberal approaches are firmly based in existing positions, yet rearrange these positions with the purpose of aiding the analysis and hence the understanding of historical phenomena.⁷ It is, however, only a similarity and no more than that.

Below, the two contrasting interpretations of liberalism will be developed in turn. The first, which reflects a commitment to culture and moral communities that is grounded in the value of autonomy, I call 'liberal culturalism'.⁸ The second, which reflects a commitment to culture and moral communities which is connected to the freedom of conscience, I call 'framework liberalism'.⁹ After developing and presenting these two positions separately, the final section of this chapter will oppose the two positions, highlighting the differences and similarities between them.

Liberal culturalism

For liberal culturalists autonomy is of central concern. While their respective descriptions of this value differ, they are notably similar in that they reflect notions of self-authorship, critical reflection, and the capacity to change one's conception of the good.¹⁰ As such the common conception of autonomy underlying the liberal culturalist position is reminiscent of that developed by Gerald Dworkin, who conceives of autonomy as:

⁷ See for a concise discussion of Weber's ideal types Kaesler 2003: 233-234.

⁸ Kymlicka, especially, has used the term 'liberal culturalism' in reference to a position allegedly straddling liberal nationalism and liberal multiculturalism, but difficult, upon inspection, to distinguish from the latter (his favored position). This terminology has not caught on in the literature, however. See Kymlicka 2001: 22-23 and chapter 3 especially.

⁹ I am not the first to use the term 'framework' in relation to political liberalism; see, e.g., Joppke 2008: 541, where he contrasts liberalism as 'procedural framework for toleration' with liberalism as 'substantive way of life', (in reference to citizenship debates and policy in, inter alia, the Netherlands).

¹⁰ Kymlicka, for instance, posits 'two preconditions for leading a good life'; 'that we lead our life from the inside' and 'that we be free to question those beliefs'; Kymlicka 1995: 81. Miller, in describing his liberal nationalist position, maintains that it is liberal in the sense that it is 'consistent with choosing one's own plan of life in Mill's sense'; Miller 1995: 47. This understanding of the importance of autonomy is not limited to liberal nationalists; Raz, a so-called liberal perfectionist, similarly emphasizes the dependence of freedom on choice, as do other liberal perfectionists; Raz 1994: 176. See, for a discussion and critique of the liberal perfectionist argument for personal autonomy Quong 2011: chapter 2.

‘a second-order capacity of persons to reflect critically upon their first-order preferences, desires, wishes, and so forth and the capacity to accept or attempt to change these in light of higher-order preferences and values.’¹¹

What is so desirable in the exercise of autonomy that it is taken as the central value of liberal culturalism?

Miller, in describing his liberal nationalist position, maintains that it is liberal in the sense that it is ‘consistent with choosing one’s own plan of life in Mill’s sense.’¹² Kymlicka argues that an individual be free to question received beliefs, and subsequently posits the necessity of a plurality of options to choose from.¹³ Other liberal authors not necessarily associated with liberal culturalism, but prioritizing autonomy just the same, similarly highlight the element of choice, or describe autonomy as ‘self-authorship’.¹⁴ The autonomous man valued in liberal theory, then, is defined not merely by his practical rationality and his ability to manipulate his desires and preferences, but especially by his capacity to do so in light of and for the sake of the life that he wishes to lead and regards as valuable. Investigating Miller’s reference to John Stuart Mill elucidates this capacity further.

What is Mill’s sense of choosing one’s own plan of life? Gray puts it as follows:

‘According to [Mill’s theory of human nature], human beings are understood to be engaged in recurrently revising the forms of life and modes of experience which they have inherited, and by which ‘human nature’ is itself constituted in any given time and place. In this account of man as a creature engaged in an endless process of self-transformation, what distinguishes human beings from members of other animal species is only their powers of reflexive thought and deliberate choice.’¹⁵

What distinguishes men from animals is that the former have powers of (reflexive) thought and deliberate choice. Moreover, for Mill, in order to be properly human, to live up to his potential, man must not only have these

¹¹ Dworkin, G. 1988: 20.

¹² Miller, 1995: 47.

¹³ Kymlicka 1995a: 81.

¹⁴ See, e.g., Raz 1994: 176, Tamir 1993: 32-33.

¹⁵ Gray 1983: 85. See also Lindley 1986: 55.

abilities, he must also exercise them, under pains of being no more than a 'fool satisfied'.¹⁶ For Kymlicka, this is a 'precondition for leading a good life':¹⁷

'Since we can be wrong about the worth or value of what we are currently doing, and since no one wants to lead a life based on false beliefs about its worth, it is of fundamental importance that we be able rationally to assess our conceptions of the good in the light of new information or experiences, and to revise them if they are not worthy of our continued allegiance.'¹⁸

This view posits man as a 'rational reviser', an agent willing and capable of deliberately changing his ends, i.e. that which he desires to pursue in life.¹⁹ It is possible to have 'false beliefs' about the value of one's conception of the good and to revise these on the basis of a rational assessment of the evidence provided by observations of the world. The recognition of the fallibility of one's beliefs and the contention that one can and indeed should reject beliefs found to be false after rational appraisal implies that the truth-value of one's beliefs is independent of the mental states of the individual holder of those beliefs. Thus liberal culturalism tends towards an *objectivist* account of value.²⁰ What distinguishes liberal culturalism from other comprehensive doctrines positing such an objectivist account of value, such as for example orthodox religious doctrines, is the insistence

¹⁶ 'it is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied'; Mill 2001 [1863]: 10.

¹⁷ According to Kymlicka, this is the second of two such preconditions. The first is 'that we lead our life from the inside, in accordance with our beliefs about what gives value to life.' Kymlicka 1995: 81.

¹⁸ *Ibid.*

¹⁹ The term 'rational reviser' is taken from Kukathas (2003: 56), who locates the term's origin in Buchanan 1975. Herein Buchanan posits a 'principle of revisability', i.e. that '[o]ne ought, ceteris paribus, to maintain an attitude of critical revisability toward one's own conception of the good (or life-plan) and of openmindedness toward competing conceptions.' (Buchanan 1975: 399).

²⁰ The distinction between objectivist and subjectivist accounts of value is variously named (e.g. moral realism/cognitivism vs. relativism/non-cognitivism/moral error theory/emotivism), figures in different fields (ethics, moral psychology, philosophy of mind), and is subject to differing conceptualizations on both sides of the distinction. As a consequence accounts of both objectivism and subjectivism are varied and often intricate. For the purposes of this dissertation, however, which have bearing on liberal theory, it will suffice to identify objectivist accounts of value as holding that evaluative beliefs can be true or false and can therefore be subjected to rational revision. See, e.g., Nagel 1986: 'The view that values are real is not the view that they are real occult entities or properties, but that they are real values: that our claims about value and about what people have reason to do may be true or false independent of our beliefs and inclinations.' (144).

on the fallibility of one's own beliefs and the related commitment to establishing their truth-value through continual, rational scrutiny.

The insistence on the possibility of being wrong about our reasons to act and the contention that we can and should aspire to a life that is not so misguided, assessing our beliefs and rejecting them if necessary, leads to a counterintuitive conclusion regarding liberal culturalism's commitment to autonomy. Because an individual, on the liberal culturalist account, is so inclined to hold himself and his conception of the good up to critical reflection, there is no reason why he should not be prepared to subject his normative beliefs to the critical appraisal of like-minded others. For if the end-goal of enquiry is to determine the best possible reasons for endorsing one's conception of the good, there is no reason to limit that process to one's own reflections. This means that in the process of critically appraising one's normative beliefs, an individual in a liberal cultural society should be prepared to subject those beliefs to interpersonal rational scrutiny as well. As a result, the upshot of a commitment to being autonomous may very well be that an individual's beliefs or reasons or values won't reflect his own, but society's better judgment.

Despite liberal culturalism's primary commitment to autonomy, which entails a critical stance of the individual vis-à-vis his cultural environment, liberal culturalism is also committed to the maintenance of the cultural environment itself. This is because of how cultures provide the objects of those 'first-order preferences, desires, wishes, and so forth' mentioned by Dworkin above.

The liberal culturalist argument why culture matters, which generates its concern for moral communities, is twofold: first the point is made that it is through cultures that individuals attach meaning and value to the world. The objects of our individual preferences, desires, and so forth are therefore to an important extent determined by the culture in which we are born. Therefore this culture merits concern.²¹

²¹ 'People make choices about the social practices around them, based on their beliefs about the value of these practices [...]. And to have a belief about the value of a practice is, in the first instance, a matter of understanding the meanings attached to it by our culture.' (Kymlicka 1995: 83). Tamir similarly states that outside particular human communities individuals 'cannot develop a language and a culture, or set themselves aims. Their lives become meaningless; there is no substance to their reflection, no set of norms and values in light of which they can make choices and become the free, autonomous persons that liberals assume them to be. Being situated, adhering to a particular tradition, and being intimate with a particular language, could therefore be seen as preconditions of personal autonomy' (Tamir 1993: 7).

But the observation that our actual preferences and desires are determined by our culture is in itself insufficient to distinguish liberal culturalism, which prioritizes autonomy, from framework liberalism (the position to be developed in the next section), which prioritizes the freedom of conscience, because as we will see in the next section, framework liberalism starts from this same premise that moral communities shape the way in which their members relate to the world. Therefore a further step is necessary in the development of liberal culturalism. This step involves the capacity to change, through critical reflection, one's desires and conception of the good that is intrinsic to autonomy.

According to Kymlicka cultures are not merely contexts generating meaning, but especially 'contexts of choice'.²² Miller similarly suggests that the kind of culture which merits concern is one that 'also provides [its bearers] with a background against which more individual choices about how to live can be made.'²³ Kymlicka describes such a culture as a 'societal culture', i.e.:

'a culture which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language.'²⁴

According to Kymlicka, such societal cultures tend to be national cultures, i.e. the cultures of 'culturally distinct, geographically concentrated, and institutionally complete societies'.²⁵ Miller also associates choice-generating cultures closely with nations, and by extension with nation-states.²⁶

Kymlicka's identification of societal cultures as 'contexts of choice' can be misleading, however, if the range of available options is left unspecified.

In a similar vein, Raz argues that '[f]reedom depends on options which depend on rules which constitute those options. ... [O]ptions presuppose a culture. They presuppose shared meanings and common practices.' (Raz 1994: 176).

²² Kymlicka 1995: 82.

²³ Miller 1995: 86.

²⁴ Kymlicka 1995: 76.

²⁵ *Ibid.*, 80.

²⁶ Indeed, Miller makes his comments in the context of an argument for national self-determination; Miller 1995: chapter 4.

For while a societal culture qua context of choice suggests a wide range of possibilities, especially when it is presented as institutionally reminiscent of the nation-state, the options actually available in a societal culture can be quite limited. Consider the following. According to Kymlicka North American Indian communities ‘whose homeland has been incorporated through conquest, colonization, or federation’ constituted an ‘ongoing societal culture’ at the moment they were so incorporated.²⁷ Though these groups undoubtedly ‘defined the range of socially meaningful options for their members’, however, thereby effectively determining the choices available to them, this statement is compatible with a complete lack of choice concerning the way of life they wished to pursue. On such a reading, that a societal culture constitutes a context of choice need not imply an availability of multiple options to choose from, let alone a commitment to autonomy.

Given liberal culturalism’s commitment to critical reflection and rational revision of one’s conception of the good, the context of choice offered by liberal cultural society should do more than define ‘the range of socially meaningful options’ for its members, however. It should also enable individuals willing and capable of reflexive thought to reject or accept the options available and perhaps also to imagine new options; i.e. it should not be a merely nominal, but a realistic context of choice. This is acknowledged by Kymlicka as well:

‘Individuals must therefore have the conditions necessary to acquire an awareness of different views about the good life, and an ability to examine these views intelligently. Hence the equally traditional concern for education, and freedom of expression and association.’²⁸

Other things being equal, satisfying these conditions is considerably easier in large, open societies than in small, closed communities. Kymlicka, it is well known, is especially concerned to argue that liberal society accommodate minority nations.²⁹ Such accommodation need not conflict with the liberal commitment to autonomy, Kymlicka states, arguing that it is possible to support minority nations without interfering with the individual freedom of their members to shape them to their liking, by guaranteeing minority

²⁷ Ibid. 23, 79.

²⁸ Kymlicka 1995: 81.

²⁹ Hence the subtitle of Kymlicka 1995: ‘*A liberal theory of minority rights*.’

nations 'language rights and territorial autonomy'.³⁰ Given Kymlicka's prior commitment to individual autonomy, it is necessary that such minority cultures are what Kymlicka calls 'institutionally complete', i.e. that they contain 'a full range of social, educational, economic, and political institutions, encompassing both public and private life.'³¹ For if a minority nation is less than institutionally complete the danger is real that the life choices of its members will be predetermined by communal needs or value patterns. The condition of institutional completeness, then, limits the applicability of Kymlicka's prescriptions substantially, arguably discounting many of precisely those minority nations that he wishes liberal society to accommodate. Be that as it may, Kymlicka's suggestion of protecting societal cultures while respecting individual autonomy by protecting the institutions that sustain those cultures is unproblematic when applied to nations that are institutionally complete, including, especially, nation-states. Such states can promote a liberal societal culture through their social, educational, economic, and political institutions.

The mere existence of those social, educational, economic, and political institutions typically associated with liberal democracy is insufficient for the promotion of a liberal culturalist society, however. For liberal-democratic institutions need not protect (let alone promote) individual autonomy; they may also protect the freedom of conscience, which liberty includes the freedom to reject autonomy. Who can say, therefore, that the societal culture sustained by those institutions will place high value on autonomy, or that it will continue to do so even if it does? Given such concerns, the liberal democratic institutions of a liberal culturalist society will attempt to place limits on the kind of culture that can develop spontaneously: this culture must remain, fundamentally, a *liberal culturalist* culture, understood as a culture committed to individual autonomy. This means that the institutions of a liberal state that is committed to individual autonomy will promote that autonomy where possible, most especially in its educational institutions, but also through its civil institutions.

As a consequence of its commitment to autonomy, also, a liberal culturalist state will take care to distinguish the public from the private sphere. For a commitment to autonomy entails respect for the autonomous choices of citizens, which respect finds expression, *inter alia*, in respect for their

³⁰ Ibid. 27, 113.

³¹ Kymlicka 1995: 78.

privacy. At the same time, that very commitment to autonomy justifies inroads in the private sphere if necessary for the protection of individual autonomy. Where the autonomy of citizens threatens to be stifled directly or indirectly, the state is justified to intervene, for the protection and promotion of autonomy is of public concern.³² Though liberal culturalism, then, entails a respect for the privacy of members of liberal culturalist states to autonomously pursue their own conceptions of the good, as a consequence of that very commitment to autonomy it also effectively seeks to constrain the diversity of conceptions of the good actually pursued. These conceptions must be the result of the exercise of autonomy. Thus it can be said that under liberal culturalism the public pursuit of autonomy constrains the private endorsement of conceptions of the good. In what follows this characteristic will be referred to in shorthand by stating that the *direction of constraint* under liberal culturalism is public to private.

Liberal nationalists such as Miller sometimes argue that it is legitimate for nation-states to pursue 'non-neutrality where the national culture itself is at stake', i.e. when distinct expressions of the societal culture at a certain time and place are under threat of disappearing, such as 'a landscape, a musical tradition, a language'.³³ For them, promoting 'how we do things here' has an importance that goes beyond its role in stimulating autonomy; doing so sustains the national identity, which in its turn sustains the nation and the institutions of the nation-state.³⁴ Liberal culturalism, by contrast, argues no such thing. Being committed to individual autonomy, its primary concern is to ensure that the cultural environment sustaining such autonomy, the 'second-order capacity of persons to reflect critically' on their conception of the good, is maintained. While such a commitment will entail hostility to non-autonomous forms of life, it cannot support the preservation of tradition for tradition's sake, or of other cultural artifacts emerging in liberal culturalist society. That would amount to what Kymlicka has described as 'unfairly subsidizing some people's choices'.³⁵ A liberal culturalist state therefore has to tread a fine line between promoting a culture that isn't too thick, yet not so thin that members of society will fail to recognize the liberal culturalist identity they share. Overstepping

³² Mandatory public education is an example of such an intervention.

³³ Miller 1995: 195.

³⁴ See especially Miller 1995: 65-73. 'How we do things here' is not Miller's term; it is taken from Barry, 2002 (107), who is most likely using the phrase in reference to Taylor's discussion (in Taylor 1994) of the defense of liberal principles as 'how we do things' in liberal society (see Taylor 1994: 62-63).

³⁵ Kymlicka 1995: 113; see also Kymlicka 1989b: 885.

to one side, for instance by promoting religious or other comprehensive doctrines, will raise the liberal culturalist criticism that in promoting such thicker conceptions of 'how we do things here' the state is failing in its commitment to individual autonomy. Overstepping to the other side will raise the nationalist concern that failing some sense of union society is bound to unravel.

For liberal culturalism, therefore, the practical challenge is to promote individual autonomy as part of the public liberal culture, while keeping thicker conceptions of national identity at bay. For the second liberal position that attaches importance to culture, to be developed in the following section, the challenge is in some ways the inverse. This liberal position has as its starting point the realization that what an individual takes to be morally desirable is in many cases intrinsically bound to his or her particular way of life. If one is committed to justice for all, therefore, one must be committed to taking different ways of life seriously. Only by doing so can one prevent what is regarded by the majority of society to be a just state of affairs from being regarded by a minority as oppressive. This position I term 'framework liberalism'.

Framework liberalism

The central value inspiring framework liberalism is the freedom of conscience.³⁶ Combining respect for the freedom of conscience with the desire for political cooperation among members of disparate moral communities, framework liberals develop an institutional framework

³⁶ This is most explicit in the work of Kukathas, whose 'theory of freedom and diversity' seeks an answer to the question how 'human society [should] be ordered given that acting in accordance to conscience is prized, and that the world is marked by diversity' (2003: 74); see especially Kukathas 2003, chapters 2, 3, & 4. Larmore states that '[t]he principles of a liberal political order aim to be "neutral" with respect to controversial ideas of the good.' (Larmore 1996: 125); see Larmore 1987, chapter 3 & Larmore 1996, chapter 6. The idea is, perhaps, the least explicit in Rawls's work, though Rawls provides the most extensive account of its implications in Rawls 2005 [1993]. For Rawls freedom of conscience is treated as a given, and his project is to answer the 'fundamental question as to how citizens, who remain deeply divided on religious, philosophical, and moral doctrines, can still maintain a just and stable democratic society.' (2005 [1993]: 10). As Freeman writes in the introduction to *The Cambridge Companion to Rawls*, the idea pursued in Rawls 2005 [1993] 'seems to be that if moral and philosophical disagreement about the foundations of justice are inevitable even under free conditions [...], then respect for persons as free democratic citizens requires that metaphysical and epistemological questions of the foundations of justice be avoided in public reasoning about justice. They should be avoided to maintain the full freedom of conscience of citizens and to provide citizens with justifying reasons for the use of coercive force that all can reasonably accept.' (Freeman 2003: 35).

within which the practical benefits of political cooperation can be enjoyed without compromising individual moral beliefs. This liberal framework is sustained by a procedural morality that can draw on the support of all members of political society regardless of their conscientious beliefs.

In what follows, the anatomy of framework liberalism will be described by sketching the diverse relations between its three component parts, freedom of conscience, political cooperation, and the procedural morality. First, however, the value of freedom of conscience will be introduced.

An example can usefully serve to introduce the freedom of conscience. The following example is taken from the life of the Scottish athlete Eric Liddell, as depicted in the 1981-movie *Chariots of Fire*. Liddell, a rugby player turned runner, was a prime contender for the 100-meter dash at the Olympic games of 1924. Liddell also was a devout Christian, who would later follow in the footsteps of his parents as a missionary in China. During the Olympic games, his athletic pursuits clashed with his faith when he discovered that his qualifying heat for the 100-meter dash was to be held on Sunday, the Christian Sabbath. For Liddell there was no question that he could run on 'the Lord's day', and no amount of explanation, exhortation, or pressure on the part of the British Olympic committee or anyone else could persuade Liddell to ignore his conscience and run on Sunday. His reasons not to do so were intensely private, going to the heart of his faith, and made him impervious to public and political pressure to put 'country before God'. The problem for the Olympic committee, which faced derision at home, was only resolved when another runner offered to trade places with Liddell, so that Liddell would run in the 400-meter dash instead (which he won).

For Liddell, it is clear, running on the Sabbath is unconscionable. But what is the conscience from which this judgment emerges, and why does either deserve respect? From the example, it is clear that conscience is a faculty of moral judgment; conscience generates moral reasons. The example also shows that conscientious moral reasons are particularly strong reasons; they are not easily overridden.³⁷ When moving from the question 'what is conscience?' to the question 'why should conscience be respected?',

³⁷ Swan & Vallier describe conscience as "the faculty of moral judgment that generates categorical reasons for action grounded in a core network of moral reasons. Core moral reasons are moral reasons that have significant importance in an individual's practical deliberations and, consequently, order and structure that agent's entire network of moral reasons." (2012: 2).

however, the example raises a difficulty, for it is obvious that there is very little sympathy for Liddell's refusal to run among the general public and the Olympic committee.

The framework liberal answer to the question 'why should conscience be respected?' is that disagreements between moral communities about conscientious matters cannot always be settled, be it through processes of deliberation or by critical reflection. Rawls treats this as a 'general fact' of democratic society:

'that many of our most important judgments are made under conditions where it is not to be expected that conscientious persons with full powers of reason, even after free discussion, will all arrive at the same conclusion. Some conflicting reasonable judgments (especially important are those belonging under peoples' comprehensive doctrines) may be true, others false; conceivably, all may be false. These burdens of judgment are of the first significance for a democratic idea of toleration.'³⁸

The burdens of judgment referred to by Rawls partially concern the theoretical use of reason; how to weigh evidence, what inferences can be drawn therefrom, etc.³⁹ But judgment is also burdened by its normative sources:

'Religious and philosophical doctrines express views of the world and of our life with one another, severally and collectively, as a whole. Our individual and associative points of view, intellectual affinities, and affective attachments, are too diverse, especially in a free society, to enable those doctrines to serve as the basis of lasting and reasoned political agreement.'⁴⁰

³⁸ Rawls 2005 [1993]: 58. See also Larmore 1987: 'In modern times we have come to recognize a multiplicity of ways in which a fulfilled life can be lived, without any perceptible hierarchy among them. And we have also been forced to acknowledge that even where we do believe that we have discerned the superiority of some ways of life to others, reasonable people may often not share our view' (43)

³⁹ Rawls 2005 [1993]: 56-57.

⁴⁰ *Ibid.*, 58. Kukathas similarly states that: 'people do in fact think very differently about justice and morality no less than about other matters. And what convictions some people might share with others of the same faith, or from the same region, they cannot assume will be agreed to by those from other faiths, or regions, with whom they now interact as members of the same society' Kukathas 2003: 258.

Framework liberalism, then, is premised on what can be called a *perspectivist* account of value.⁴¹ On this account, while disagreements about empirical beliefs may be resolved reasonably, disagreements about normative beliefs cannot, because such beliefs are deeply rooted in the particular perspective from which believers view the world, and different communities provide different perspectives on that world.⁴² Such an account is a species of subjectivism, in the sense that it holds that disagreements concerning normative beliefs are not the result of deficiencies in reasoning or rationality, but of differences in disposition. On this account, there are no grounds to hold that disagreement concerning conceptions of the good can be overcome by rational argumentation or reasonable deliberation, because there is no ‘view from nowhere’.⁴³ For this reason framework liberalism allows members of moral communities the freedom not to subject their conscientious beliefs to the critical scrutiny of others. This, under framework liberalism, is what toleration amounts to.

Having introduced framework liberalism’s foundational value, the freedom of conscience, it is now possible to further develop the anatomy of framework liberalism by investigating the relationship between its three component parts, freedom of conscience, political cooperation (between moral communities), and procedural morality.

Freedom of conscience, it is clear, is paramount. It is not, however, unlimited. Its limits are the result of the moral commitment to cooperation between moral communities, and the resultant necessity for a procedural morality facilitating that cooperation. This interrelationship can be illustrated by reference to the theories of Rawls and Kukathas. In both

⁴¹ Though the term ‘perspectivism’ does not appear there, the position and its relevance to liberal theory and practice are defended in Lukes (1989), as well as how it relates to a number of meta-ethical theories including objectivism, subjectivism, and relativism. More generally, perspectivism is associated with the philosophy and method of Nietzsche especially; for an account of perspectivism in Nietzsche’s epistemology see, e.g. Clark 1990: chapter 5.

⁴² See also Rawls 1999b: ‘Diversity naturally arises from our limited powers and distinct perspectives; it is unrealistic to suppose that all our differences are rooted solely in ignorance and perversity, or else in the rivalries that result from scarcity. Justice as fairness tries to construct a conception of justice that takes deep and unresolvable differences on matters of fundamental significance as a permanent condition of human life.’ (329).

⁴³ Which is not the same as saying that such disagreement can never be so overcome; perspectivism does not deny the possibility of reaching agreement between perspectives, only that there is no privileged position from which to determine which, if any, perspective is true or false. A ‘view from nowhere’ is an allusion to Nagel’s book of the same name; see *supra*, fn. 20.

theories, the degree of freedom of conscience permitted to members of moral communities is affected by the content of procedural morality and vice versa. The content of procedural morality, on its part, is affected by the degree of political cooperation sought after by each theorist. These two theories will be discussed in turn.

Kukathas's chosen metaphor for liberal society is an archipelago.⁴⁴ The islands of the archipelago stand for moral communities. The political cooperation between these communities is minimal: it consists in their tolerating one another, across the metaphorical straits separating the islands of the archipelago. Because it is so minimal, the shared morality facilitating this form of cooperation can also be minimal, in the sense of making hardly any inroads on the respective comprehensive doctrines of each community: crucially, however, each community must be committed to the freedom of association of its members, which is taken to include a freedom of dissociation, i.e. a right of exit.⁴⁵ As long as individuals are not prevented from leaving those moral communities to which they belong, the political society that is the result of cooperation has no right to interfere with the goings-on within those communities.⁴⁶

Even under the minimal conditions defining Kukathas's liberal archipelago, then, the comprehensive doctrines of moral communities are not left unaffected by procedural morality. Under Kukathas's scheme, comprehensive doctrines are forced to include or adapt to one moral principle: the right of exit of members of the moral community. Under Rawls's conception of political liberalism, which is premised on a more substantive account of political cooperation between moral communities, the effects of the procedural morality necessary to that end on comprehensive doctrines are correspondingly more substantive.

For Rawls mere toleration is too minimal a conception of political cooperation. Rawls's goal is not toleration, but political unity. The basic question informing his project of political liberalism is:

'How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by

⁴⁴ See especially Kukathas 2003: 28-29.

⁴⁵ *Ibid.*, 95.

⁴⁶ Kukathas's interpretation of the right of exit has been subjected to much criticism; see e.g., Okin 2002: 227-228; Barry 2002: 141, 143; Galston 2002: 104; Fagan 2006; Crowder 2007: 127; Klosko 2005: 146.

reasonable though incompatible religious, philosophical, and moral doctrines?’⁴⁷

Central to his answer to this question is his contention that, though incompatible, the comprehensive doctrines held by the free and equal citizens be *reasonable*. For this commitment to reason reappears in the procedural morality forwarded by Rawls:

‘Persons are reasonable in one basic aspect when, among equals say, they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given assurance that others will likewise do so.’⁴⁸

This in turn limits the scope of the liberty of conscience (in relation to Kukathas), for according to Rawls, only those comprehensive doctrines which are reasonable should be accommodated by the liberal framework:

‘reasonable persons see that the burdens of judgment set limits on what can be reasonably justified to others, and so they endorse some form of liberty of conscience and freedom of thought. It is unreasonable for us to use political power, should we possess it, or share it with others, to repress comprehensive views that are not unreasonable.’⁴⁹

Note that Rawls speaks of ‘some form of liberty of conscience’; this freedom is not absolute. For Rawls, there is a proportional relationship between the reasonableness of one’s comprehensive doctrine and the degree of freedom of conscience one may enjoy.

In effect, under Rawls liberty of conscience is limited to reasonable doctrines. Such doctrines are reasonable if their adherents ‘will think it unreasonable to use political power, should they possess it, to repress comprehensive views that are not unreasonable, though different from their own.’⁵⁰ This is not stating simply that those doctrines are reasonable whose adherents are not unreasonable in terms of their procedural morality. This is because of the close relationship, in Rawls’s conception of political liberalism, between comprehensive doctrines and procedural

⁴⁷ Rawls 2005 [1993]: xviii.

⁴⁸ *Ibid.*, 49.

⁴⁹ Rawls 2005 [1993]: 61.

⁵⁰ *Ibid.*, 60.

morality.⁵¹ What makes a comprehensive doctrine reasonable for Rawls is that its adherents endorse, *as part of that comprehensive doctrine*, a reasonable political morality; such a morality is reasonable if it rejects forceful repression of comprehensive doctrines endorsing a similar political conception.⁵² Reasonable doctrines, then, are doctrines consisting of, *inter alia*, a reasonable procedural morality.

As a consequence of Rawls's limitation of the liberty of conscience to reasonable comprehensive doctrines, Rawls's political liberalism cannot be counted as a full-fledged framework liberal theory. Recall that, as described above, toleration under framework liberalism amounts to allowing members of moral communities the freedom not to subject their conscientious beliefs to the critical scrutiny of others. If we compare this conception of toleration to Rawls's position as presented here, we see first that under Rawls the freedom not to have one's beliefs critically scrutinized is reserved for members of reasonable moral communities. Secondly, the qualification of being reasonable in itself is linked to members of moral communities' willingness to subject their ideas about 'principles and standards as fair terms of cooperation' to reasonable public scrutiny, i.e. to justify their beliefs about fair terms of cooperation publicly to likeminded others. This introduces an element reminiscent of liberal culturalism into the procedural morality of Rawlsian political liberalism, namely the commitment to a normative ideal of public justification. Even as this commitment disqualifies Rawlsian political liberalism as a veritable form of framework liberalism, below we will see that framework liberalism cannot entirely rid itself of this element.

It is perhaps no surprise that while Kukathas's conception of the procedural morality necessary for political cooperation can be criticized as being premised on an emaciated notion of such cooperation, Rawls's conception of a reasonable political morality has been criticized for being too comprehensive: 'respect for the values of political liberalism' will only obtain 'if one's comprehensive doctrine endorses a view of political society as just such a system of fair cooperation.'⁵³ Rawls, most likely, would concede the point, for his project is precisely to show that one must endorse a system of fair cooperation between free and equal

⁵¹ *Ibid.*, 59-60.

⁵² A person may be reasonable without endorsing a particular reasonable comprehensive doctrine if he at least endorses the same views concerning the reasonable use of political power. *Ibid.*, 60. See also Scanlon 2003: 164.

⁵³ Mulhall and Swift 2003: 483.

citizens if one's comprehensive doctrine is to be compatible with political liberalism. Besides, Rawls could claim that even if the political conception limits the range of comprehensive doctrines compatible with liberalism, it does so on the basis of reasons of *political* morality, and not on the basis of any particular comprehensive doctrine.⁵⁴ In that sense at least his theory is procedurally neutral, if not substantively.⁵⁵ That notwithstanding, the question is legitimate whether, if Rawls is indeed concerned primarily with reasons of political morality, it is necessary for him to pass judgment on the reasonability and permissibility of comprehensive doctrines. Rawls suggests that a continuum must exist between the content of comprehensive doctrines and the content of a reasonable procedural morality. This might be questioned, however.

When conflicts arise over the legitimate use of political power, is it necessary to assess whether the comprehensive doctrines of the communities involved are reasonable in the sense that they consist of, *inter alia*, doctrines of political morality endorsing restraint in the use of political power and respect for other comprehensive doctrines exhibiting similar restraint? Is it necessary, for that matter, that such doctrines consist of *any* political morality? Or is the crucial issue whether the adherents of such doctrines, when engaging in politics, can act reasonably, regardless of the content of their comprehensive doctrine?

The possibility of a procedural morality that is not informed by any prior comprehensive doctrine is examined by Kukathas. Above, Kukathas's use of the metaphor of an archipelago was criticized as being too far from the reality faced by liberal societies. In actual liberal society, adherents of different comprehensive doctrines are not separated by sea-straits but intermingled; they share the same territory and are bound to interact, whether they want to or not. How can liberalism-conceived-as-archipelago be applied to such societies? According to Kukathas, thinking of liberalism as an archipelago helps us to see the public realm of actual liberal societies not as 'embodying an *established standpoint of morality*', such as, for example, that of Rawlsian reasonability, but as 'an area of *convergence* of different moral practices.'⁵⁶ 'All societies,' writes Kukathas, 'to varying degrees, harbour a variety of religions, languages, ethnicities, and cultural practices and, so, a variety of moral ideals.'⁵⁷ Interactions

⁵⁴ See Forst 2002: 55-56.

⁵⁵ *Ibid.*, 55.

⁵⁶ Kukathas 2003: 131-132.

⁵⁷ *Ibid.*, 132.

between these various groups invariably occur 'because isolationism has seldom been an easy or attractive option for communities.'⁵⁸ Out of these interactions emerges the public sphere, which Kukathas compares to the medieval commons. Where different communities have a shared interest in preserving 'civility and civil life', the result over time will be the emergence of a 'moral commons'.⁵⁹ Such a moral commons is not, however, a mere *modus vivendi* in the sense of a 'kind of consensus founded on a balancing of the power of different group interests':⁶⁰

'The reason this amounts to more than a balance of power is that the agreements reached are not *merely* compromises made by groups (or their representatives) with one another. Agreements or understandings reached between individuals and groups come to be accepted (or internalized) as more basic norms governing social relations. The product over time is a commons which acquires the character of a public space without a sovereign power – unowned but governed by norms which circumscribe behaviour within it.'⁶¹

Kukathas thus describes how a procedural morality might emerge in relative independence from, and exist together with, a number of disparate comprehensive doctrines. What matters is not whether or not this description is historically accurate, but whether the underlying intuition is plausible. For if it is indeed the case that members of moral communities are able to respect a distinctly procedural morality when dealing with others while applying their own comprehensive doctrine when among themselves, one might be brought to question whether it is indeed necessary that a reasonable political conception be rooted in a reasonable comprehensive doctrine. Charles Larmore, the third theorist of political liberalism mentioned above, suggests that this indeed need not be so:

'Controversy about ultimate and fundamental matters can go hand in hand with the conviction that we can nonetheless agree upon a core morality adequate for the purposes of political association. Indeed, only such a core morality can tell us that we

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Kukathas 2003: 132, referring to Rawls 1987: 10-11.

⁶¹ Ibid.

ought to give reasonable disagreement about the meaning of life a decisive role in the establishment of political principles.⁶²

The history of liberal democracies suggests this is indeed the case. Liberal democracies around the globe have developed institutional frameworks within which individuals with fundamentally different outlooks on morality, economics, even on politics itself can engage in debate with the object of shaping the world in their preferred image. Even while this may be taken as evidence that said individuals are not liberal (striving as they do, to shape the world in their own image), the crucial point is that they observe the rules of the game when engaging in it. In so doing, they differentiate between their role as citizen, ‘free of status and ascription,’ and other roles in which they ‘may be engaged with others in the pursuit of substantial ideals of the good life.’⁶³ At the heart of framework liberalism, then, lies what Larmore describes as a ‘divergence between *citoyen* and *homme*, between the “public” (the political) and the “private” (the nonpolitical).’⁶⁴ As such, following Larmore, framework liberalism can be seen as an ‘art of separation’ premised on the ability of individuals to distinguish between their different roles in life and the distinct moralities governing their behavior in each separate role.⁶⁵

If we grant that moral agents under the conditions of modernity are generally able to distinguish the different moral contexts of their respective lives, and the correspondingly different moralities governing these different contexts (e.g. family, work, public places, private associations, etc.) then the question whether any given comprehensive view in liberal society is reasonable loses much of its urgency. What is crucial, however, is that an individual, regardless of the (un)reasonableness of his comprehensive views, recognizes that those views, reasonable or not, are irrelevant when discussing matters of a strictly political morality, i.e., the basic structure of society. In doing so, of course, the individual is in effect ranking liberal procedural morality above his other commitments, but importantly, he need do so only in the context of the political.⁶⁶

A further reason to abstain from passing judgment directly on comprehensive views is that to do so contradicts the value at the core of

⁶² Larmore 1996: 216.

⁶³ Larmore 1996: 141.

⁶⁴ *Ibid.*, 75.

⁶⁵ *Ibid.*, 76.

⁶⁶ *Ibid.*, 140-141; see also Larmore 1987: 54-55.

framework liberalism, which is freedom of conscience.⁶⁷ While it is a given that a political society, even one premised on the freedom of conscience, cannot accommodate every comprehensive view, being premised on the freedom of conscience that accommodation should be governed by political considerations, and not by considerations pertaining to one particular comprehensive doctrine. That is to say that ultimately it is a matter of an individual's own conscience whether he is able to distinguish his comprehensive doctrine from the procedural morality governing social cooperation in the state. Conversely, as far as the state is concerned it is irrelevant *why* an individual observes the common political morality and the rules based thereon, as long as he does so.

What, then, is the substance of procedural morality? Is it merely that one treat one's neighbors with civility, as Kukathas seems to imply?⁶⁸ Or does it consist in Rawls's virtues of reasonable persons? While civility seems too thin, begging the question of what civility consists in, Rawls's virtues of reasonable persons seem too thick, presupposing as they do a continuity between an individual's (reasonable) comprehensive views and his (reasonable) political view. This continuity, we saw above, is not necessary for framework liberalism. Here, again, Larmore is helpful.

Larmore suggests that the procedural morality facilitating political cooperation should consist in the affirmation of two norms: the norm of 'rational dialogue', and the norm of 'equal respect'.⁶⁹ These norms provide 'the terms in which a liberal state ought to *announce publicly* the basis of its legitimacy.'⁷⁰ The first norm, the norm of rational dialogue, has bearing on how individual members of liberal society should sort out their disagreements. The norm of rational dialogue demands that '[w]hen disagreement arises, those wishing to continue the conversation should withdraw to neutral ground, in order either to resolve the dispute or, if that cannot be done rationally, to bypass it.'⁷¹ As Larmore is quick to point out, the norm of rational dialogue 'does not suffice by itself [...] to yield the liberal principle of neutrality', for that norm, of itself, 'does not rule out resorting to force, instead of discussion, to achieve a political settlement.'⁷² It is the second norm, the norm of *equal respect* for persons,

⁶⁷ See *supra*, fn. 36.

⁶⁸ See, e.g., Kukathas 2003: 75.

⁶⁹ Larmore 1996: 134.

⁷⁰ *Ibid.*; emphasis in the original.

⁷¹ Larmore 1987: 59.

⁷² *Ibid.* 68, 136.

which rules out force as a principled means of getting people to submit to political principles.⁷³ Drawing an analogy with the Kantian distinction between treating other persons solely as means or also as ends, Larmore stipulates that:

[t]o respect another person as an end is to insist that coercive or political principles be as justifiable to that person as they are to us. Equal respect involves treating in this way all persons to which such principles are to apply.⁷⁴

It is the norm of equal respect, then, that ensures that the political conception facilitating framework liberalism cannot be other than minimal; if political principles are principles that can justifiably be enforced across a range of comprehensive views, political principles cannot be principles which are unjustifiable according to any single one of those comprehensive views.⁷⁵ At the same time, the norms of equal respect and rational dialogue leave open what, exactly, will count as a justification, or a valid reason, for any given individual. Also, though it is to be expected that some comprehensive doctrines will fare better under framework liberalism than others, it is not stipulated in advance which comprehensive doctrines will ultimately turn out to be incompatible with the procedural morality advanced under framework liberalism.⁷⁶ This is because this compatibility turns less on the substance of any particular comprehensive doctrine than on the capability of persons to engage in the art of separation, i.e. to distinguish between their role as citizens and their role as members of moral communities. It is only in the first role that they must act in accord with the two political norms.⁷⁷

⁷³ Ibid., 136-137. Note that force is not ruled out categorically by the norm of equal respect; as Larmore points out, the distinguishing feature of *political* moral principles from moral principles more generally is that political principles are 'legitimate items of enforcement'; 'an association is political precisely insofar as it relies upon the legitimate use of force to secure compliance with its rules.' What the norm of equal respect for persons rules out, then, is the use of force in coming to agreement on the content of these political moral principles. See Larmore 1996: 136, 137.

⁷⁴ Ibid., 137.

⁷⁵ See *ibid.*, 137.

⁷⁶ How the norms of equal respect and rational dialogue will circumscribe the range of comprehensive views compatible with liberalism is discussed in Larmore 1996: 134-141.

⁷⁷ Larmore 1990: 351. See also, however, Shklar 1989: 'It cannot be denied that the experience of politics according to fair procedures and the rule of law do indirectly educate the citizens, even though that is not their overt purpose, which is purely political. [...] [N]o system of government, no system of legal procedures, and no system of public education is without psychological effect, and liberalism has no reason at all to apologize for the inclinations and habits that procedural fairness and responsible government are likely to encourage.' (33).

Larmore's two norms of rational dialogue and equal respect manage to strike a good balance between respecting freedom of conscience and facilitating political unity. As *norms* they govern behavior, without second-guessing individuals' motives for complying with them. At the same time, their content is sufficiently concrete to guide the institutional design of liberal political institutions, i.e. the liberal framework.

Contrasting Larmore's procedural morality with that of Rawls, finally, helps both to elucidate the *direction of constraint* of framework liberalism and to illustrate its consequences for framework liberal society. Recall that the direction of constraint, introduced in the previous section, determines whether the public affirmation of comprehensive views is *restricted by* or *restricts* the liberty of moral communities to endorse comprehensive doctrines at odds with said views. Above, Rawls's political liberalism was said to fall short of the demands of framework liberalism because of its commitment to the public justification of 'principles and standards as fair terms of cooperation'. Because of Rawls's basic commitment to reasonableness, principles and standards that cannot be justified publicly can be ignored in public debate. Individuals expressing publicly unjustifiable beliefs, in other words, need not be taken seriously. As a consequence, moral communities consisting of such individuals can be forced to conform to terms of cooperation that are regarded as fair on the basis of publicly justified reasons, even if those moral communities do not themselves support those reasons. Given that Rawls consents to the forcible coercion of members of moral communities that fail to meet public standards of reasonableness, it was concluded above, his political liberalism should be discounted as veritable species of framework liberalism. Larmore's political liberalism, however, offers different council. If members of moral communities regard 'coercive or political principles' as unjustifiable, those principles simply may not be applied to those communities. Respect for their comprehensive views trumps political principles that are at odds with those views. In terms of the direction of constraint, under framework liberalism the private constrains the public. This implies that in the most radical instance, framework liberal society must accept that a moral community chooses isolation from broader political society above submission to principles that it finds intolerable.

For moral communities not seeking or prepared to engage in isolation from society, the question remains to what degree these norms succeed in allowing their members to live by their particular comprehensive doctrines. Larmore indicates that disagreements about legitimate state

action or law should be resolved either by withdrawing 'to neutral ground' or by bypassing such disputes altogether, presumably by taking contested issues off of the agenda. But arguably not all state action or law can be taken off the agenda. A strictly pacifist moral community, per hypothetical example, may denounce state sponsored aggression. But if the state to which that community belongs is surrounded by aggressive neighbors vying for an opportunity at invasion, adhering to Larmore's principle of rational dialogue may well be the state's downfall. Arguably, then, there are matters of public concern that override individual moral communities' particular moral qualms. Some of these will be apparent, but others may be less so, for instance with regard to public health (vaccinations) or road safety (does a turban suffice as a crash helmet?). In such latter instances, what is justifiably of public concern will itself be a contentious matter. Be that as it may, if and when an issue is regarded as being of public concern, Larmore's principles no longer apply in full, for bypassing disputes is no longer an option. In such instances, where it is impossible to reach actual agreement yet impossible to abstain from taking a decision, the only way of according equal respect to persons is to resort to a normative ideal of public justification. In such instances, for lack of justificatory reasons actually endorsed by all members of society, framework liberalism must take recourse to public justification in the Rawlsian sense, with its inherent commitment to finding ideally reasonable, publicly justifiable reasons.

This, then, constitutes the only legitimate infraction of freedom of conscience in framework liberal society: when debating matters that are of public concern and cannot remain undecided without threatening the liberal framework itself, the commitment to acting only on the basis of actually reached agreement must cede to an ideal of public justification that includes a commitment to finding the best principles and standards for fair cooperation all around. This leads to the conclusion that regarding such matters of public concern, but only so regarding, framework liberalism contains an element of liberal culturalism.

Ultimately the success of framework liberalism depends on correctly identifying what is justifiably of public concern, and what private. The challenge for framework liberalism in practice, therefore, is to prevent the very question of what is properly political from becoming the contested issue. Fostering a shared understanding of the answer to that question is the principle means of forestalling the imposition, through societal institutions, of a comprehensive doctrine on moral communities unable to resist such imposition.

Liberal culturalism and framework liberalism opposed

Above, working from two distinct yet equally liberal values, two liberal approaches to moral communities have been developed. This section will go over the main points of each approach and highlight the differences between them.

The culturalist interpretation of liberalism, it was shown, prioritizes the value of individual autonomy. Prioritizing autonomy, i.e. the second-order capacity of persons to reflect critically on the life they (wish to) lead, has a double effect on liberal culturalism's appraisal of moral communities. First, as stated above, the liberal society endorsed by liberal culturalism is itself in certain regard a moral community, albeit in a qualified sense. This is because the members of liberal culturalist society, being committed to individual autonomy, in effect share a commitment to a partially comprehensive doctrine. The doctrine is only partially comprehensive, we saw, because it is compatible with a diversity of substantive ways of life. It is nonetheless comprehensive because the doctrine projects in no uncertain terms what is of value in human life, namely a life autonomously chosen, and what ideal of personal character is to be fostered in liberal citizens, namely individual autonomy. Therefore, liberal culturalism is committed to defending a particular moral community, namely that through which the commitment to individual autonomy is sustained.

Secondly, liberal culturalism's commitment to autonomy affects its appraisal of moral communities endorsing fully comprehensive doctrines in liberal society, such as orthodox religious communities, as well as the ability of members of such communities to maintain and pass on their comprehensive doctrines to their children. The more such a moral community's comprehensive doctrine is compatible with a commitment to autonomy, the easier it will be for that community to survive as a cohesive community in liberal culturalist society. The less so, the more pressure there will be on its members to adapt to the partial comprehensive doctrine of the majority. This is because of the liberal culturalist commitment to determining whether one's reasons, desires, beliefs, preferences, etc. are the best possible reasons, desires, etc. in light of what one knows about oneself, the world, and one's relation to the world. Because one can be mistaken in his conceptions of the good, an individual should be prepared to subject his beliefs to his own and also to interpersonal scrutiny. A liberal culturalist society therefore will feel little reservations in critically

appraising the beliefs and views of individuals, even if those individuals are themselves loath to subject those beliefs and views to such scrutiny.

This willingness to criticize comprehensive doctrines that are at odds with liberal culturalism is not merely a characteristic of liberal culturalist society, it will also be apparent in the institutions of the liberal culturalist state. Not only will the educational institutions actively foster autonomy in the future citizens of the state and will the state therefore be committed to a system of public education for all, the traditional liberties will also be interpreted in line with this commitment to autonomy and to correcting mistaken beliefs and comprehensive views. This especially entails pride of place for the freedom of expression, the liberty famously defended by Mill on the grounds that

[c]omplete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action; and on no other terms can a being with human faculties have any rational assurance of being right.⁷⁸

This prioritization of the freedom of expression in the liberal culturalist state can frustrate moral communities' attempts to shield their comprehensive doctrines from the critical scrutiny of non-likeminded others, thus constraining their liberty to endorse values or beliefs that are incompatible with the central value of autonomy and. The *direction of constraint* in a liberal culturalist society can therefore be said to run from public to private.

This does not mean, it is worth emphasizing, that liberal culturalism is intrinsically hostile towards moral communities endorsing substantive ways of life, such as religious communities. It is a common misconception that prioritizing autonomy involves a denial of the value of moral communities, or that liberal theory ignores the formative role of moral communities in the lives of their individual members. Liberal theorists, the misconception would have it, take man as the forger of his own identity, picking and choosing the conceptions of the good which he autonomously prefers, discarding those beliefs which don't meet his fancy.⁷⁹ This, as stated, is a misconception. Liberal theory in general, and

⁷⁸ Mill 1975 [1859]: 27.

⁷⁹ In its more sophisticated form, this criticism posits that liberal theory takes a view of man as 'unencumbered' by or prior to his ends, as argued in Sandel 1982. See for a discussion and critique of this critique Forst 2002: 8-16 (or the German original, Forst 1994).

so also liberal culturalism, does not deny that communities shape their individual members, nor even that communities are valuable, for that or for other reasons.⁸⁰ Given the formative role of moral communities in the lives of their members, however, it is all the more important for liberal culturalists that the comprehensive doctrines of such communities include a commitment to individual autonomy.

For liberal culturalism, then, the central value is individual autonomy, and the esteem in which moral communities are held is only positive in so far as they enable individuals to become and be autonomous. The purpose of the liberal culturalist state, on this view, is to ensure the liberty of members of society understood as a form of individual autonomy, or, stated negatively, to protect members of society against oppression, understood as the denial of autonomy, be it within a particular moral community or within society at large. The role of the state in liberal culturalism, then, is close to that originally attributed to it in (classical) liberal theory, namely to protect the freedom and rights of individuals. The esteem in which moral communities are held under liberal culturalism is similarly a function of their success or failure in fostering individual autonomy. Henceforth this estimation of moral communities under liberal culturalism will be referred to as the *instrumental* evaluation of moral communities.

The evaluation of moral communities under liberal culturalism is categorially different from that under framework liberalism. For framework liberals, the foundational value is the freedom of conscience. For framework liberals, liberal culturalism's prioritization of autonomy, even if it is only a second-order capacity, stands at odds with the freedom of conscience. On their account, societies committed to inculcating autonomy in their members are 'forcing them to be free', which they take as a contradiction in terms.⁸¹ Being able to live according to the comprehensive doctrine one has acquired, through chance or choice, is more significant

⁸⁰ Near the beginning of *A Theory of Justice*, for example, Rawls stipulates that '[n]o society can, of course, be a scheme of cooperation which men enter voluntarily in a literal sense; each person finds himself placed at birth in some particular position in some particular society, and the nature of this position materially affects his life prospects.' (1999a [1971]: 12).

⁸¹ The oft-quoted phrase 'forced to be free', used originally by Rousseau in his treatise *Du Contrat Social*, generally serves as shorthand for those concerned to point out the dangers of the state or society's deciding what liberty consists in. Berlin's essay "Two Concepts of Liberty" is a well-known expression of this fear that freedom understood as rational self-direction will degenerate into totalitarianism. See Berlin 1969 [1958]; Rousseau 1997 [1762].

for an individual's wellbeing than whether that comprehensive doctrine is compatible with or the product of individual autonomy. This connects to a perspectivist account of value. The freedom liberal society protects, on this view, is precisely the freedom to comprehend the world as it presents itself through one's comprehensive doctrine, and the liberty not to subject the tenets of that doctrine to the critical scrutiny of others or one's self.

Under framework liberalism the reason to accord value to moral communities is that moral communities furnish their members' moral beliefs. That moral communities are respected by framework liberals because they provide the beliefs of their members may seem similar, in form at least, to the reason that liberal culturalists value moral communities, namely because they instill autonomy in their members. There is a crucial difference, however. Above, it was stated that liberal culturalists value moral communities if and in so far as they manage to instill autonomy in their members. The positive evaluation of moral communities is therefore conditional upon the communities' success in fostering autonomy. But for framework liberals, the evaluation of moral communities is not similarly conditional, because moral communities by definition instill conscientious beliefs in their members. This follows from the understanding of a moral community as a community bound together by a comprehensive doctrine or a partial comprehensive doctrine that at least includes the community members' core conscientious beliefs.

For framework liberals freedom of conscience is the foundational value, because of the overriding importance of being able to live according to the dictates of one's conscience. Because these dictates, or first person reasons, are essentially tied to the moral community of which one is a member, moral communities are requisite for individual wellbeing, according to framework liberals. Therefore, henceforth in this thesis, framework liberals will be said to accord *intrinsic* importance to moral communities.

Because of the value accorded both to the individual conscience and to moral communities, under framework liberalism the scope of legitimate political action is constrained by the conceptions of the good endorsed by moral communities (the *direction of constraint* in such societies is from private to public). As a consequence, a framework liberal society will place more emphasis on liberties guarding the private realm, such as the freedom of religion, freedom of education, and, not in the least, the liberty of conscience.

Liberal culturalism and framework liberalism, then, each accord respect to moral communities. Being based on different central values, however, they each do so for different reasons and to a different degree. Liberal culturalism, being committed to individual autonomy, evaluates moral communities instrumentally, making their positive standing conditional upon moral communities' commitment to individual autonomy. Framework liberals, prioritizing the freedom of conscience, accord intrinsic importance to moral communities out of deference to the close connection between moral communities and the moral beliefs of their individual members. While the procedural morality of framework liberalism therefore fortifies the position of moral communities in framework liberal society, the viability of moral community in liberal culturalist society is determined only by the autonomous choices of its members.

The result of these two different evaluations of moral communities is two very different conceptions of liberal society. These two conceptions, one liberal culturalist and one framework liberal, can be distinguished not only in terms of their inspiring value and the degree of standing they accord to moral communities, but also in terms of what has been termed the direction of constraint in such societies. In liberal culturalist society, the public constrains the private; this is to say, the public commitment to autonomy sets definite limits on the diversity of comprehensive doctrines or conceptions of the good that are endorsed by its members. These must be the product of and otherwise compatible with autonomy. Under framework liberalism, to the contrary, the direction of constraint is from private to public. This is to say that under framework liberalism it is precisely the comprehensive doctrines endorsed by the members of society that limit the scope of the political; public measures that are indefensible on the grounds of privately held comprehensive doctrines must be rejected. As a consequence of their respective, opposed directions of constraint, while a framework liberal society can accommodate individuals and moral communities that are committed to individual autonomy, a liberal culturalist society will be less hospitable to individuals committed to freedom of conscience.

Though framework liberalism, finally, given its private-to-public direction of constraint, facilitates a wide diversity of comprehensive doctrines and conceptions of the good in society, when it comes to matters that are truly of public concern, e.g. reasons of state, it cannot but take recourse to processes of ideal justification which aim at discovering the best possible

justificatory reasons. Despite its fundamental commitment to diversity, then, in such cases the direction of constraint of the procedural morality governing decision taking in the public realm will flip from private-to-public to public-to-private. Justifying such a flip can be a matter of great contention.

The following box schematically presents the differences between liberal culturalism and framework liberalism.

Liberal Culturalism	↔	Framework Liberalism
Central value: Autonomy	↔	Central value: Conscience
Committed to one partially comprehensive doctrine	↔	Committed to a procedural morality accommodating a plurality of comprehensive doctrines
Committed to rationality as a means of finding truth	↔	Accommodating different perspectives on the truth
Fallibility of beliefs necessitates critical, rational scrutiny	↔	Perspectivist account of value allows for insulation from criticism
Interpersonal scrutiny	↔	Equal respect
Instrumental evaluation of moral communities	↔	Moral communities accorded intrinsic importance
Freedom of speech	↔	Freedom of Conscience and Religion
Public education	↔	Educational liberty
Direction of Constraint: Public → Private	↔	Direction of Constraint: Private → Public

Box 1: Liberal culturalism and framework liberalism opposed

Conclusion: Two liberal approaches to moral communities

In this chapter two interpretations of liberalism have been developed, each starting from a specific central value and pursuing that value to its theoretical terminating point in liberal theory. The purpose to be served by these interpretations is to aid the analysis of a number of parliamentary debates in the following chapters, in order to find an answer to the question of the standing, understood in the terms of contemporary liberal political philosophy, that Dutch Parliament accords to moral communities, as evidenced in parliamentary debates since 2000. Because of this purpose both interpretations draw on liberal theories providing distinct and differing arguments for the treatment of moral communities in liberal society. The first group of theories, referred to as liberal culturalist theories, makes moral communities' standing dependent upon the exercise of individual autonomy by their members, these theories' central value. The second group of theories, called framework liberal theories, gives moral communities pride of place in liberal society because of the close ties between such communities and their members' conscience, the freedom of which is the central value informing these theories. By magnifying their respective central values, as well as the other elements of the two liberal approaches to moral communities, the differences between them are intensified, culminating in the schematic opposition between liberal culturalism and framework liberalism outlined in Box 1. This stylized opposition promises to aid the analysis of debates in the following chapters by facilitating the process of determining, through textual interpretation, the position taken by a given party in a debate. It facilitates this process by providing a range of contrasting pairs from which to infer a party's position vis-à-vis either of the two approaches, thereby helping to render that position, which will often prove to be implicit, explicit.

The conception of autonomy inspiring liberal culturalism is the second-order capacity to question and criticize received beliefs for the purpose of determining the best way to live. For liberal culturalists, engaging this capacity is a virtue, i.e. it is a disposition that is to be fostered in members of liberal society. Moral communities warrant special concern with regard to autonomy, liberal culturalists maintain, for two reasons. First, a moral community that embraces the value of autonomy is more liable to promote it than one that rejects autonomy. Second, moral communities provide their members with contexts of choice; they provide individuals with a diversity of meaningful options to choose from in determining the

best way to live. Given liberal culturalism's commitment to autonomy, the educational and civil institutions of a liberal culturalist society will justifiably promote a public liberal culture that is particularly favorable to it. At the same time, they must take care not to promote substantive ways of life, for that would run counter to the promotion of individual autonomy. While individual autonomy is compatible with a variety of such substantive ways of life, the commitment to exercising autonomy for the sake of determining the best way to live involves a willingness not only to subject one's beliefs to critical self-examination, but also to interpersonal scrutiny. As a consequence of these characteristics, under liberal culturalism the public commitment to a partially comprehensive doctrine promoting individual autonomy constrains the liberty to endorse conflicting comprehensive doctrines in private.

Framework liberalism is grounded in respect for the freedom of conscience. Framework liberals are therefore especially concerned to respect the conscience of members of moral communities. Under framework liberalism, a procedural morality enables members of the political community to cooperate politically despite their differing conscientious beliefs. If members of the political community find proposed measures unconscionable and consensus or compromise are not forthcoming, this procedural morality dictates that those measures cannot be forced upon those members and must therefore be taken off the agenda. In that sense, under framework liberalism the scope of the political is constrained by the privately held conceptions of the good of individual members of society. If and so far as members of society are able to observe procedural morality in the public sphere, what they do and believe as members of a moral community is their own concern, as long as a moral community does not force members to remain in the community against their will. Central to framework liberalism, therefore, is the art of separating the public from the private, and the values applicable to each realm. Only by doing so can it be ensured that communities will not encroach each other's privacy by claiming that what goes on there is a matter of public concern.

Finally, liberal culturalism and framework liberalism can be distinguished on the basis of the respective standing they accord to moral communities. Each interpretation of liberalism accords value to moral communities, but each does so for different reasons and to a different degree. Liberal culturalists attach instrumental value to moral communities, if and in so far as such communities are successful in fostering individual autonomy in their members. This instrumental value also attaches to the liberal society

itself, which is regarded as a moral community in its own right, endorsing a partially comprehensive doctrine in which individual autonomy is the central value. Framework liberals, to the contrary, cannot differentiate between particular moral communities, because all moral communities supply their members with the first person beliefs that inform their individual conscience. As a consequence, framework liberals regard all moral communities as intrinsically important and the only reason to constrain their liberty must be a reason of state.

Chapter 2

The Historical Background to the Integration Debates: the Rise and Fall of Multiculturalism in the Netherlands

Introduction

In order to provide the reader with the context of the integration debates that will be analyzed in the following chapters, and as a point of reference therein, this chapter will briefly sketch the historical background against which those debates took place. A central feature in this background is the Dutch minorities policy of the 1980s. This policy, which was implemented officially in 1983 and partially discontinued already in the late 1980s, gave official sanction to a number of earlier institutions and instruments aimed at improving the position and prospects of minority groups in the Netherlands.¹ A much noted element of this policy is ‘integration without loss of identity’, i.e. the idea that minority integration did not necessitate minorities to shed their particular cultural identities and could even benefit from their active maintenance.² It is especially due to ‘integration without loss of identity’, which is variously presented in the literature as a central instrument of the minorities policy or as its general motif, that the minorities policy has widely been described as ‘multiculturalist’ or ‘multiculturalist *avant la lettre*’.³

This chapter will briefly sketch the background of the Dutch minorities policy, its central institutions, and the growing dissatisfaction with minorities accommodation in the 1990s and early 2000s. Elsewhere, these developments have been referred to as ‘the rise and fall of multiculturalism’ in the Netherlands.⁴ Such accounts of the rise and fall of multiculturalism in the Netherlands link the minorities policy, which is treated as the highpoint of multiculturalism in the Netherlands, to the

¹ See the ‘Minorities Memorandum’ of 1983 (*Minderhedennota*), Kamerstukken II, 16102, nr. 21.

² See, e.g., Entzinger 2006: 123-125; Duyvendak, Pels & Rijkschroeff 2005: 5, 6; De Zwart 2012: 303; Duyvendak & Scholten 2012: 272-273; Vasta 2007: 733; Ghorashi 2006: 7. See also Vink 2007: 344-345.

³ What is generally meant thereby is that the Dutch state accommodated minority groups as groups, through policies, institutions, and funds aimed at protecting or even reinforcing their identities. For example, an influential rendition of the minorities policy and subsequent events is titled *The Rise and Fall of Multiculturalism: the Case of the Netherlands* (Entzinger 2003). Koopmans *et al.* similarly speak of the ‘Dutch version of multiculturalism’ (2005: 72) and Penninx describes these policies in part as ‘multicultural *avant la lettre*’ (2005: 4). See also Penninx, Garcés-Mascareñas & Scholten 2006: 5; Bruquetas-Callejo *et al.* 2007: 16; Koopmans *et al.* 2005: 71. The normative underpinnings of multiculturalist policies are developed in, *inter alia*, Taylor 1994, Kymlicka 1995, Modood 2007, and Parekh 2006. Though these accounts differ in their prescriptions, their normative core is strongly similar to that of framework liberalism as developed in the previous chapter, including especially its perspectivist account of value and the intrinsic importance accorded to moral communities.

⁴ See esp. Entzinger 2003.

earlier period of ‘pillarization’, during which Dutch society was allegedly strictly and institutionally divided along religious and ideological lines (roughly between the late 19th century and the second half of the 1960s). This chapter will follow their lead, demonstrating close ties between the period of pillarization and the minorities policy. The most important of these ties, it will be suggested, is normative: the desire to treat religious and cultural minorities equitably. Subsequently, the growing dissatisfaction with the accommodation of minority groups in the Netherlands will be illustrated by reference to a number of political and social developments to do especially, but not exclusively, with the growing visible presence of the Islam as a minority religion in the Netherlands.

Pillarization and Pacification – a very short introduction

‘Pillarization’ (*‘verzuiling’*) is the popular term for the segmentation of Dutch society along religious and ideological lines that lasted from the late 19th century until the second half of the 1960s. In particular the term refers to the existence of parallel civic institutions for a few of the largest societal groups, such as trade unions, political parties, schools, clubs, broadcasting associations, newspapers, and hospitals, which existence allowed or stimulated, but in any case facilitated, members of such societal groups, or ‘pillars’, to interact predominantly with members of their own circle.⁵ Pillars are identified on the basis of religion or ideology, though not without contention.⁶ The existence of a Catholic pillar is undisputed, for example, but a single Protestant pillar is less easily discernible, given competing Protestant denominations and the existence of institutions catering to all Protestants or only to members of a single denomination.⁷ Similarly, the secular part of the nation is sometimes treated as a single pillar and sometimes as two, Social Democrat and Liberal respectively.⁸ Members of the latter, finally, most likely would not have viewed themselves as members of a specific pillar, but rather as non-members of any pillar.⁹ Notwithstanding such definitional disputes, both then and now, and acknowledging that many representations of pillarization are

⁵ A good introduction to pillarization and related concepts is provided in Andeweg & Irwin 2014: 33-46.

⁶ See, for an exposé of the difficulties inherent in defining both ‘pillar’ and ‘pillarization’, Hoogenboom 1996: 41-48.

⁷ Andeweg & Irwin 2014: 36-37.

⁸ *Ibid.*, 37.

⁹ Andeweg & Irwin 2014: 37.

overly stylized, the existence, sketched above, of multiple organizational networks broadly identifiable on the basis of shared allegiances or non-allegiances of their members is not in dispute. Moreover, and therein partially lies its relevance for the present work, as evident from the literature on the rise and fall of multiculturalism in the Netherlands, pillarization has become something of a topos in the popular, and in some cases also the academic, account of recent Dutch history.¹⁰

A central chapter in this account is that of 'the Pacification of 1917' and the ensuing period of 'pacification politics'.¹¹ For the existence of multiple pillars in Dutch society was not without risks; the societal isolation and independence provided by the pillars could also stoke animosity between them, and given that no single pillar commanded a majority in Dutch Parliament, the various religious and ideological fault lines running through Dutch society might easily emerge in Dutch politics and destabilize the nation. According to the Dutch political scientist Lijphart, the antidote to such disruptive tendencies as were inherent in pillarization, was to be found at the top of the pillars.¹² Here, societal elites worked together to counteract any centrifugal tendencies coming from below. Such elite cooperation Lijphart termed 'consociational power sharing', and he located its emergence in the years leading up to the Pacification of 1917.¹³ While Lijphart's analysis has been subjected to sustained criticism, what is not disputed is elite cooperation itself.¹⁴ The political elites, it is agreed,

¹⁰ Already in 1983, Stuurman writes: 'In Dutch historiography, the social sciences, and political discourse *pillarization* has become an almost axiomatic concept. A reference to *pillarization* generally points to the uniqueness and distinctiveness of Dutch political history. A clear description of the term '*pillarization*' is seldom offered. It is one of those words of which it is taken for granted that everyone 'knows' what it means.' (*In de Nederlandse geschiedschrijving, de sociale Wetenschappen en het politieke spraakgebruik is de verzuiling een bijna vanzelfsprekend begrip geworden. Met een verwijzing naar de verzuiling duidt men gewoonlijk het eigene en kenmerkende van de Nederlandse politieke geschiedenis aan. Een heldere omschrijving van het begrip 'verzuiling' wordt lang niet altijd gegeven. Het is één van die woorden waarbij stilzwijgend wordt verondersteld dat iedereen wel 'weet' wat er mee bedoeld wordt.*); Stuurman 1983: 11.

¹¹ A note on terminology: while 'the Pacification' and 'the Pacification of 1917' refer to the resolution of a number of deep grained conflicts in Dutch politics in 1917 (see below), 'the period of pacification politics' or 'pacification politics' refers to the period, starting in 1917 and lasting for almost half a century, in which politics in general was governed by an ethos reminiscent of that which made the Great Pacification of 1917 possible.

¹² 'The success of this system depends to a large extent on the leaders' joint efforts at peace-keeping and peaceful change.' Lijphart 1974: 112.

¹³ *Ibid.*, 104-112.

¹⁴ See generally Andeweg & Irwin 2014: 43-46. See also Koole & Daalder 2002: 23-25. Andeweg (2000) provides a discussion of Lijphart's theory of consociational democracy and its critics. In 1984 *Acta Politica* devoted a special edition to 'Consociationalism, pillarization

generally observed those rules of the game as described by Lijphart.¹⁵ The Pacification of 1917 stands symbolically as the moment of their adoption.

The Pacification of 1917 brought to a close two issues which had divided Dutch society for nearly two decades: the 'school struggle', which revolved around the financing of religious schools and pitted Liberals against religious parties, and the question of universal suffrage, in which Social Democrats were opposed by the religious groups especially, as well as by certain Liberal factions. In the end result, all parties were appeased; the religious parties got state financing for denominational schools, the Social Democrats got universal suffrage, and the Liberals' continuing political viability was saved, despite universal suffrage, by the introduction of proportional representation.¹⁶ The intricacies of the settlement of these disputes need not occupy us here. What is more important, in light of the purposes of this chapter, is that the Pacification of 1917, according to the stylized account popularized by Lijphart, set the standard for elite cooperation for almost half a century.¹⁷ The fundamental tenets of this cooperation, and the most relevant in light of the purposes of this chapter, were the fundamental commitment to cooperation at the elite level, i.e. to keep the conversation going, and the agreement to disagree on matters ideological and religious, which entailed a high degree of autonomy for the pillars to manage their own affairs and effectively constrained the scope of the political to matters that were not religiously or ideologically contentious.¹⁸ These fundamental tenets of pacification politics are highly reminiscent of the interpretation of liberalism identified in the previous chapter as framework liberalism, with its commitment to a

and conflict-management in the Low countries' in which Lijphart's original analysis and theory were both defended and criticized (Van Schendelen 1984a). Van Schendelen provides an overview of criticisms in his contribution to the special edition (Van Schendelen 1984b). See also, for alternative accounts of the relative political stability in the Netherlands during the period of pacification politics, Daalder 1990a, Hoogenboom 1996 and Stuurman 1983.

¹⁵ As set out in chapter VII of Lijphart 1974 ('The Rules of the Game').

¹⁶ *Ibid.*, 104-112; Andeweg & Irwin 2014: 40.

¹⁷ Daalder for instance contends that the elite cooperation during this era, which he does not dispute, is not the result of the Pacification of 1917 but should be understood as the heritage of the political mores of the Dutch Republic, with its 'emphasis on pluralism and tolerance' (*'nadruk op verscheidenheid en tolerantie'*; Daalder 1990b: 65).

¹⁸ With regard the Netherlands in particular Lijphart discerns seven 'rules of the game': politics is serious business, agreement to disagree, summit diplomacy, proportionality, depoliticization, secrecy, and the government's right to govern (Lijphart 1974: chapter VII). Abstracting from the Netherlands, Lijphart reduced these seven rules to four principles (of which the first two were the most important): executive power-sharing, a high degree of autonomy for the segments, proportionality of allocated funds, and minority veto (Lijphart 1977: 25). See also Andeweg & Irwin 2014: 40-41.

procedural morality facilitating political cooperation between different moral communities and its private to public direction of constraint, i.e. its acknowledgment that the comprehensive views of moral communities restrict the scope of legitimate political action.

In light of the subject of this chapter there are two reasons in particular to revisit pillarization and pacification politics. The first is that, as stated above, these are both topoi that, as such, exercise influence; since the seminal work of Lijphart the period of pacification politics, i.e. roughly the half century after 1917, is identified as a period of cooperation and relative stability (excepting, of course, the Second World War). This places pillarization in a favorable light for posterity – including those policy makers confronted with integration issues in the second half of the twentieth century. The second, less obvious, reason that the period of pacification politics is relevant to the present investigation is the procedural morality that applied during that period (regardless whether it was caused by the Pacification of 1917, as Lijphart has it, or was a residue of the Dutch Republic, as certain of his critics maintain).¹⁹ For as will be suggested in the present chapter, parts of this procedural morality were to outlast pillarization. These two separate aspects of pillarization, i.e. the alleged influence of a stylized and romanticized account of pillarization on later policy makers and the lasting effects of the procedural morality associated, in that account, with pacification politics especially, will be discussed in turn.

Pillarization and the Minorities Policy

Much of the literature on the rise and fall of multiculturalism in the Netherlands argues that though Dutch society could no longer itself be characterized as pillarized in the 1970s and 80s, when the country was confronted by large groups of newcomers from the Mediterranean and Surinam in those years, policy makers turned to its pillarized past for inspiration on how to integrate these new groups.²⁰ The result, it is argued, was a deliberate attempt at the institutional accommodation of minority groups. The central idea inspiring such accommodation was that

¹⁹ See, for Daalder's contention that pacification politics stems from the era of the Dutch Republic, *supra*, fn. 17.

²⁰ See especially Entzinger 2003: 64; Entzinger 2006: 124; Koopmans 2003: 166 (for the Dutch original, see Koopmans 2002); Koopmans *et al.* 2005: 71, 72. See also Uitermark *et al.* 2005: 627 and Uitermark 2010: 45 & 52.

strengthening the identity of members of the new minority groups would facilitate their social and economic emancipation in much the same way as pillarization had helped the emancipation of Catholics, socialist workers, and certain protestant groups in the late 19th and early 20th century in the Netherlands.²¹ Because it is precisely this same objective of the minorities policy which has caused commentators to label it ‘multiculturalist’ or ‘multiculturalist *avant la lettre*’, henceforth this interpretation of the minorities policy as having been directly inspired by the image policy makers and certain influential scholars had of pillarization will be referred to as the ‘pillarization-cum-multiculturalism thesis’.²²

The pillarization-cum-multiculturalism thesis has both been reiterated widely and subjected to critical scrutiny in the literature. As regards its reiteration it has in some cases suffered from a Chinese-whisper effect, the institutions and the normative commitment to multiculturalism gaining in number and strength respectively from publication to publication, without attention to historical accuracy or conceptual clarity. This has caused critics to point out a number of discrepancies in the pillarization-cum-multiculturalism thesis, such as the manifest failure of the minorities policy to establish anything akin to the pillars of old,²³ the existence of local counter-currents to official multiculturalism,²⁴ or evidence of more pragmatic or prudential reasons underpinning allegedly faux-multiculturalist policies.²⁵ At the same time, yet other authors present evidence of far-ranging rights for religious minorities in the Netherlands, linking these rights to pillarization as well.²⁶ Surveying the literature, one

²¹ This underlying rationale of the minorities policy of the 1980s is broadly identified in the literature, also by authors who do not subscribe to the pillarization-cum-multiculturalism thesis; see, e.g., Entzinger 2003: 63; Entzinger 2006: 125; Uitermark 2010: 45; Penninx, Garcés-Masareñas & Scholten 2006: 5; Duyvendak & Scholten 2012: 272; Duyvendak, Pels & Rijkschroeff 2005: 6; Guiraudon, Phalet & Ter Wal 2005: 77; Joppke 2004: 247-248; Joppke 2007b: 329-331.

²² See *supra*, fn. 20. The pillarization-cum-multiculturalism thesis is reiterated in much academic literature on ethnicity, gender, and race especially; see, e.g. Vasta 2007: 714, 716; Prins & Saharso 2008: 369; Guiraudon, Phalet & Ter Wal 2005: 75; Korteweg & Yurdakul 2009: 221. Duyvendak & Scholten (2012) discuss the pillarization-cum-multiculturalism thesis (in other terms) critically (272-273). For other authors taking a different view of the pillarization-cum-multiculturalism thesis, see below.

²³ See Vink 2007: 344.

²⁴ See Penninx, Garcés-Masareñas & Scholten 2006: 5-6. See also Musterd & Ostendorf 2009: 1517.

²⁵ See De Zwart 2012: 304-305.

²⁶ Koopmans & Statham (2003) speak of the ‘continued relevance of the institutional inheritance of pillarization’ even after ‘Dutch minority policy moved away from [its] idealist undiluted multiculturalism of the 1980s’ (214). See also Koopmans 2007: 275-276.

begins to understand how a Chinese-whisper might take effect, given the variety of groups, goals, and instruments involved in the minorities Policy.

A careful reading of the literature suggests that two distinctions must be observed if one is to correctly represent the pillarization-cum-multiculturalism thesis.²⁷ The first is the distinction between two kinds of moral community, ethnic groups and religious groups respectively. While certain socio-economically underprivileged ethnic groups, such as Moluccans, Surinamese, Antilleans, gypsies, and guest workers of various origins were targeted by the minorities policy directly, religious groups only profited from the minorities policy indirectly, though perhaps ultimately more substantially than ethnic groups.²⁸ That religious groups could profit from the minorities policy without being direct beneficiaries of that policy has everything to do with the second distinction, which is that between the parallel institutions through which the minorities policy attempted to accommodate ethnic minorities directly on the one hand, and the equitable application of existing legal provisions to all religious groups in the Netherlands as a consequence of the minorities policy on the other.²⁹

The institutional accommodation of minorities

Nowhere is the Chinese-whisper effect mentioned above more visible in the literature than with regard to the institutional accommodation of minorities. While a number of influential early renditions of the rise and fall of multiculturalism in the Netherlands, such as most notably Entzinger (2003 and 2006), Koopmans & Statham (2003), and Koopmans *et al.* (2005), observe the distinctions indicated above between policy and law and ethnic and religious minorities respectively, the significance of these distinctions is not always appreciated in later publications. Korteweg & Yurdakul, for example, fail to distinguish between the direct and indirect beneficiaries of the minorities policy, in describing how:

27 Authors careful to make these distinctions are especially Penninx 2005 (5), Bruquetas-Callejo *et al.* 2007 (27-28), and Duyvendak, Pels & Rijkschroeff 2005 (8). The distinction is also apparent in Entzinger 2003 and 2005, in Koopmans and Statham 2003, and in Koopmans *et al.* 2005, see below.

28 See, e.g., Penninx 2005: 2.

29 Duyvendak & Scholten call this the distinction between '*generic* legacies of pillarization [affecting] immigrant integration processes' and '*immigration* integration policies *per se*' (2012: 273, italics in the original). See also Koopmans & Statham 2003: 214; Koopmans *et al.* 2005: 71, 144.

‘[l]arge scale immigration from Muslim countries led the Dutch government to establish a Muslim pillar, thus marking immigrants from predominantly Muslim countries by their religion as well as their national origin.’³⁰

Religion and ethnicity are similarly confounded in Ghorashi’s account of the influence of pillarization on the minorities policy. Due to its success in pacifying the religious and political conflicts of the early 20th century in the Netherlands, writes Ghorashi, the model of pillarization was thought applicable to integration in the 1980s also. Moreover, it was especially with regard to immigrants from *Islamic* countries that both politicians and academia were liable to think in terms of the establishment of a new kind of pillar.³¹ But to the extent that the minorities policy targeted groups on the basis of a shared identity, that identity was ethnic, not religious.

An example of the failure to heed the second distinction, that between institutions originating directly from policy or indirectly through law, is provided by Joppke (2007a), which describes the minorities policy as:

‘Europe’s most prominent and proudly exhibited multiculturalism policy, which envisaged ‘emancipation’ for designated ‘ethnic minorities’, but within their own state-supported ethnic infrastructures, including ethnic schools, ethnic hospitals and ethnic media.’³²

The ‘ethnic infrastructure’ supported by the state as a part of the minorities policy, we shall see below, did not consist of ethnic schools or media, let alone hospitals. There were *religious* schools and *religious* media for newcomers, though (but not hospitals, nor trade unions or most of the other civic institutions associated with pillarization).³³ The existence of such schools and media, however, was not the result of direct government involvement, but of the equitable application to newcomers of existing legal provisions for religious groups.³⁴

³⁰ Korteweg & Yurdakul 2009: 221. The references to Entzinger 2003 and Koopmans *et al.* 2005 are without page numbers.

³¹ Ghorashi 2006: 11, referring to Koopmans 2003: 166, 167.

³² Joppke 2007a: 5, referring to Koopmans 2003 and Koopmans *et al.* 2005.

³³ See especially Rath *et al.* 2001: 263.

³⁴ Duyvendak *et al.* 2004; Penninx 2005: 5; Bruquetas-Callejo *et al.* 2007: 27-28; and Duyvendak, Pels & Rijkschroeff 2005: 8.

Regarding the institutions which were the direct result of the minorities policy, it is difficult to maintain that this policy wished to establish pillars, even for ethnic communities. In fact, the literature is neither very forthcoming nor very concrete with regard to the parallel institutions provided for by the minorities policy at the national level. Only three institutions are repeatedly mentioned: 'education in the language and culture of immigrants', 'consultation bodies', and 'self-organizations'.³⁵ These three shall be discussed in turn.

The existence of a policy of mother-tongue education for immigrants figures prominently in many evaluations of the 1980s minorities policy as multiculturalist (Joppke, for instance, refers to this policy as 'linguistic multiculturalism').³⁶ It is good to realize, therefore, that mother-tongue education did not entail a full education in immigrants' mother tongue, let alone the existence of ethnic schools, but only that part of the regular, Dutch curriculum could be reserved for teaching the children of immigrants their mother tongue. Originally students could follow up to five hours of mother-tongue teaching per week, later this was cut back to two-and-a-half hours, usually at the cost of missing core subjects.³⁷ Notably also, the 'mother tongue' taught was not necessarily the mother tongue of the minorities. Teachers were generally selected through or in accordance with the national governments of the countries of origin of minority groups, and thus spoke and taught in the official language. This often was not the language spoken by immigrants, however. For example, while most Moroccans in the Netherlands spoke predominantly Berber, mother tongue education for them effectively meant learning a new language, Arabic, the official language of Morocco.³⁸ Finally, the practice of mother tongue education fell far behind its official endorsement, as

³⁵ The literature generally speaks of 'consultative bodies'; I prefer 'consultation bodies'. Entzinger 2006: 124; Koopmans *et al.* 2005: 71; Koopmans & Statham 2003: 214; Penninx, Garcés-Masareñas & Scholten 2006: 8-10; Bruquetas-Callejo *et al.* 2007: 16; Penninx 2005: 3, 4; Vasta 2007: 716, 717; Duyvendak & Scholten 2012: 27; Duyvendak, Pels & Rijkschroeff 2005: 5; Uitermark 2010: 52; Uitermark *et al.* 2005: 626.

³⁶ Joppke takes the term 'linguistic multiculturalism' from Koopmans 2005 (24), where Koopmans speaks of the 'well-intended linguistic multiculturalism' of the Netherlands (Joppke 2007b: 333). See, for other notable identifications of mother-tongue education as multiculturalist, Entzinger 2003: 64-65; Entzinger 2006: 124-125; Phillips 2007: 6-7.

³⁷ See Entzinger 2003: 65; Lucassen and Köbben 1992: 104. The reduction from five to two-and-a-half hours may have been caused by a devastating report on mother tongue teaching published by the inspection of education in 1982 (Lucassen and Köbben 1992: 104).

³⁸ Similar problems existed for the Moluccans (Malay vs. Moluccan) and some Turks belonging to the Turkish Aramean minority. See Lucassen and Köbben 1992: 65-66, 101-104.

did the funds allocated to it.³⁹ According to Lucassen and Köbber, the endorsement of mother tongue education by Dutch politicians and policy makers primarily served an ideological purpose – demonstrating that their ‘heart was in the right place.’⁴⁰ In practice most immigrant children were simply immersed in mainstream Dutch education.⁴¹

A similar discrepancy obtains when we look more closely at the consultation bodies that were set up in the 1980s. As Koopmans & Statham state, these were meant to incorporate

‘minority elites into the policy process through subsidization of representative organizations and their inclusion in the policy deliberation and implementation processes.’⁴²

Elsewhere, Koopmans equates the existence of consultation bodies with ‘representation rights’.⁴³ This identification of consultation bodies with representation rights is potentially misleading if such representation rights are interpreted as guaranteeing minority conscience communities’ representation in political bodies such as parliament.⁴⁴ The consultation bodies’ purpose was not representation in that specific sense, but more generally to give the target groups of the minorities policy a voice in policy preparation, not in decision-making.⁴⁵ More to the point, however, the consultation bodies in practice failed to represent the targeted conscience communities even in that general sense. The reason that the consultation bodies set up by the minorities policy failed in their purpose is twofold. First of all, the ethnic communities they were supposed to represent generally were far from cohesive. As ethnicity under the minorities policy was a synonym for nationality, consultation bodies were set up for distinct nationalities, e.g. for Turks, Moroccans, etc. These immigrant communities, however, were generally divided internally, often along

³⁹ See, e.g. Lucassen and Köbber 1992: ‘If we look at the practice of education, we see that [education in the native language and culture] mostly served as an alibi. While [the ministry of Education and Science] propagated the benefits of [education in the native language and culture] widely, this stood in marked contrast to the meager financial means made available for the development of suitable and sufficient educational material, supplying good classrooms, etcetera.’ (117-118). See also Driessen 2000 and Vasta 2007 (‘the courses were amateurish and students were losing time from core classes.’ (717)).

⁴⁰ Lucassen and Köbber 1992: 117.

⁴¹ *Ibid.*, 128; see also 147.

⁴² Koopmans & Statham 2003: 214.

⁴³ Koopmans 2005: 8.

⁴⁴ See, for such an interpretation, Kymlicka 1995: 32, 131-151.

⁴⁵ Penninx 2005: 3.

the political or religious lines they had imported from their countries of origin.⁴⁶ Representation was lopsided also, as potential representatives of minorities with left-leaning tendencies found it easier to gain access to the 'expanding minorities policy bureaucracy'.⁴⁷ The second reason the consultation bodies should not be regarded as especially representative of immigrant communities has to do with the representing elites. For in marked contrast to the pillars of old, the new minority groups had no natural elites; to the contrary, nearly all their members belonged to the same, social class of newly arrived labor migrants.⁴⁸ Those who did manage to acquire the skills and knowledge necessary to operate within the state bureaucracy soon lost legitimacy in the eyes of the members of the communities they were supposed to represent. Without those skills and acumen, however, the state bureaucracy did not regard them as legitimate spokesmen for their communities.⁴⁹

Of the three institutions making up the bulk of the minorities policy's institutional accommodation of ethnic minorities, it is the final institution, immigrant self-organizations, which comes closest to meeting the multiculturalist ideal retrospectively read into the minorities policy. Referred to also as 'minority associations', minority self-organizations were specifically geared to the goal of maintaining minority identities, and received subsidies to the end of stimulating migrant participation in cultural and social activities.⁵⁰ Self-organizations generally predated the minorities policy of the 1970s and -80s, however, in some cases having originated almost as early as the bilateral recruitment agreements through which the first Mediterranean guest workers arrived in the 1960s. In an early publication, Schmitter Heisler points out that many sending countries aided guest workers to Western Europe in establishing such organizations as a means of maintaining 'an ideology of return'.⁵¹ Though it is not clear whether this was the case in the Netherlands also, more recent research by Vermeulen does demonstrate that the emergence of Turkish self-organizations in Amsterdam (the focal point of his study) was strongly influenced by political activity in Turkey especially,

⁴⁶ Vermeulen (2006) provides an overview of the proliferation of Turkish organizations in Amsterdam (and Berlin) in relation to ideological, religious, and ethnic divisions imported from Turkey (63-69). See also Uitermark 2010: 52.

⁴⁷ Uitermark 2010: 52.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*, 53, referring to Köbber 1983.

⁵⁰ See, e.g. Uitermark 2010: 52; Vermeulen 2006: 71.

⁵¹ Schmitter Heisler 1986: 79-80.

resulting, for instance, in a proliferation of organizations in the early eighties, representing and linked to the wide diversity of political parties and religious movements in the homeland.⁵² The minorities policy of the 1980s increased the legitimacy of migrant organizations and gave them access to funding.⁵³

Reviewing these three institutions, which together form the core of the institutional accommodation of minority moral communities pursued by the minorities policy, it is hard to maintain that that policy seriously attempted to establish ethnic pillars in the Netherlands. Even so, a fundamental premise of that policy is that society can accommodate minority groups 'without loss of their identity', and that their integration in society can even benefit from the active maintenance of group identities. This lesson, arguably, was drawn from the stylized account of pillarization outlined above. Rather than attempting to recreate pillars, however, the minorities policy attempted to apply pacification politics to a new situation. Further evidence for this reading of events is provided by a short digression into 'the Moluccan problem'.

A few authors locate the origins of the minorities policy especially in the violent manifestation of Moluccan immigrants in the second half of the 1970s.⁵⁴ De Zwart (2012), for example, points to the lasting influence of the 'Moluccan Report',⁵⁵ a government report drafted in the direct aftermath of a number of Moluccan train- and school-hijackings in the second half of the 1970s, culminating in the train hijacking at De Punt in May 1977, which resulted in the death of two hostages and six of the nine hijackers.⁵⁶ Uitermark (2010) similarly points to the events described above as the 'trigger for the creation of the minorities policy'.⁵⁷

According to Uitermark, as a solution to the problem posed by ethnic minorities (as made manifest by the Moluccans) the established parties 'opted for the tried and tested strategy of cooptation through corporatism'.⁵⁸ This strategy was aimed at helping ethnic minorities to

⁵² Vermeulen 2006: 65.

⁵³ Ibid., 71, 74; Uitermark 2010: 52.

⁵⁴ See especially De Zwart 2012 and Uitermark 2010.

⁵⁵ The full title of this report translates as 'The problem of the Moluccan minority in the Netherlands' (*De problematiek van de Molukse minderheid in Nederland*); see Kamerstukken II, 14915, nrs. 1-2.

⁵⁶ De Zwart 2012: 304-305. See also Lucassen & Lucassen 2011: 78.

⁵⁷ Uitermark 2010: 48.

⁵⁸ 'Cooptation through corporatism' is elucidated by Uitermark as follows: 'minorities were

'socially and economically integrate into Dutch society without shedding their cultural identities.'⁵⁹ The Moluccan report puts it as follows:

'The Government is prepared to continue to support the Moluccan minority in the creation of the material possibilities for preserving and experiencing its particular cultural identity. Respect for the particular identity of the minority and recognition for the self-respect of its members can, in the opinion of the Government, help to promote the fruition of Moluccans in Dutch society.'⁶⁰

The Government is even prepared to accommodate groups of Moluccans who reject integration in Dutch society, recognizing their right to do so as long as they obey the law, are prepared to engage in dialogue with the host-country, and recognize the rights of individual members of their community to freely determine their own 'social destination'.⁶¹ There are limits to such accommodation, however:

'[The Government] will not be able to entertain the [material] desires [of those groups of Moluccans], if satisfying them would have negative effects on Dutch society as a whole, or if this would create deficiencies in wellbeing and welfare that would be difficult to surmount, or if this would entail the danger of creating communities that are hard to get access to.'⁶²

to be included through consultative structures and associations funded by the central state and incorporated into local governance networks.' Ibid.

⁵⁹ Idem. See also De Zwart 2012: 305. Though Uitermark, similarly to De Zwart, locates the origins of minorities policy in what he calls the 'Moluccan backlash', he makes no mention of the Moluccan report. Instead he points to the influence of the 1979 report of the Scientific Council for the Government, which was authored by Rinus Penninx (Wetenschappelijke Raad voor het Regeringsbeleid 1979). Penninx, similarly to Entzinger, figures prominently in the literature drawn on in this chapter, while having also played a crucial role in the development of the policies reviewed by that literature. See Uitermark 2010: 49-50. See also Bruquetas-Callejo *et al.* 2007: 14, which points to Penninx's 1979 report as a 'catalyst' of government policy, without mentioning the Moluccans nor the Moluccan report. This is not to imply that the 1979 report was not a catalyst, but only to point to the different interpretations of history, and to suggest that these interpretations could be influenced by personal involvement in that history.

⁶⁰ *'De Regering is bereid de Molukse minderheid te blijven bijstaan in het scheppen van de materiële mogelijkheden voor het bewaren en beleven van de eigen culturele identiteit. Respect voor het eigen karakter van de minderheid en eerbiediging van het zelfrespect van haar leden kunnen, naar het oordeel van de Regering, de ontplooiing van Molukkers in de Nederlandse samenleving mede bevorderen.'* Kamerstukken II, 14915, nrs. 1-2: 64.

⁶¹ *'maatschappelijke bestemming'*; Kamerstukken II, 14915, nrs. 1-2: 63-64.

⁶² *'[De Regering] zal op die verlangens niet kunnen ingaan, indien het voldoen daaraan voor de Nederlandse samenleving als geheel ongunstige gevolgen zou hebben, of binnen de Molukse minderheid tot moeilijk te overbruggen achterstanden in welzijn of welvaart zou leiden, dan wel*

Interpreting minorities policy as an exercise in political pragmatism might seem to diminish it in some way, as no longer reflecting a moral commitment to pluralism or to the wellbeing of conscience communities or their members, but only to maintaining order, as a reason of state. The reflections on framework liberalism in the preceding chapter, however, suggest the following, subtly different, reading of events.

The fundamental problem confronting the Dutch government, the example of the Moluccans shows, is that of societal sub-groups refusing to respect the rules of the Dutch moral commons. This refusal is perhaps understandable; first- and second generation immigrants have only recently come to inhabit those commons, do not feel especially welcome there, and in some instances do not even wish to become part of the Netherlands, still yearning as they do for their own commons in a different part of the world. However, it has become increasingly clear that there is no other option than their permanent residence in the Netherlands. The problem now facing the Netherlands is how to speedily integrate these newcomers into the Dutch moral commons, before their presence disrupts the existing order. How can the members of these minorities, then, quickly learn to respect the procedural morality governing public interactions in the Netherlands? The answer the government seems to have embraced is by giving them a direct stake in the moral commons. Not by creating pillars, but by demonstrating how the maintenance of a degree of cultural integrity and an acceptance of procedural morality were interconnected in the Netherlands. The maintenance of cultural identity, redistributive policies and ‘cooptation through corporatism’, then, may well have served the purpose of pacification. In applying these instruments, however, this pacification in effect sought to artificially create conditions similar to those identified in the previous chapter as giving rise to the procedural morality of framework liberalism.⁶³ There is room for pluralism in Dutch society, then, in so far as the members of moral communities such as the Moluccan minority are also integrated members of the Dutch moral commons and accept the procedural morality current in the Netherlands.

This reading suggests that the minorities policy was inspired by an implicit understanding of the Netherlands as a liberal framework in which minorities could retain their cultural identities in so far as they partook also

het gevaar zou inhouden van het ontstaan van moeilijk toegankelijke samenlevingsverbanden. Kamerstukken II, 14915, nrs. 1-2: 64.

⁶³ See *supra*, 39-41.

in the moral commons and respected the procedural morality governing political interaction. This understanding of the Netherlands fit well with the stylized representation of its pillarized past and especially the role of pacification politics therein. The next section will discuss a second, more direct way in which pacification politics influenced later developments. This bears on the second aspect of the minorities policy mentioned above, namely its fundamental commitment to an equitable application of legal provisions concerning religion especially to newcomers.

The equitable application of legal provisions

The second distinction that must be borne in mind when considering the influence of pillarization on the minorities policy of the 1980s is that between institutions established deliberately in order to accommodate ethnic minorities, and the consequences of the equitable application of legal provisions to newcomers in Dutch society. While there is some ambiguity in the literature as to whether that equitable application was itself one of the aims of the minorities policy, or whether it should be regarded as a separate development, all authors are agreed that the existing laws that enabled the new religious minorities to found schools and to receive funding for their own media, for example, were rooted in the pillarization era.⁶⁴ The most prominent of these laws was art. 23 of the Constitution, which article protects the liberty of education and secured governmental funding for denominational schools. Art. 23 was the direct result of the Pacification of 1917, and it alone is testimony to the lasting influence of the pillarization-era and especially of pacification politics.

In the literature the commitment to equity is often linked closely to the goal of socio-economic equality, and both are interpreted in light of the welfare state that was at its zenith at the time the minorities policy was developed.⁶⁵ On the face of it, however, there is no reason why a commitment to social economic equality and policies of redistribution must coincide

⁶⁴ While Entzinger (2003), for example, describes the goal of 'equality before the law' as one of the 'three basic objectives of minorities policy' (63), and Penninx (2005) describes how Dutch legislation was scrutinized, as a part of minorities policy, on discriminatory elements (3), Duyvendak, Pels and Rijkschroeff (2005), on account of the lack of direct support for Islamic organizations, state that 'integration policy is apparently not (particularly) relevant for the development of Islamic identity' in the Netherlands (9). But if equality before the law is a direct goal of integration policy, and that equality is what facilitates the development of Islamic organizations, this latter claim seems difficult to maintain.

⁶⁵ See, e.g., Penninx 2005: 6; Entzinger 2005: 125; Penninx 2006: 11; Uitermark 2010: 48, 52.

with the pursuit of equity in socio-cultural matters. Even though the two were jointly pursued in the policy goal of group emancipation, as stated in the previous section religious minorities were not considered to be target groups of the minorities policy at all, so the equitable application of religious provisions was not connected, in their case, to reaching socio-economic goals. In the application of religious provisions, equity was a goal in itself.

A different, yet equally significant measure pertaining to equity is that established welfare arrangements were similarly made accessible to newcomers and Dutch citizens alike. A central element of the minorities policy was that acquiring Dutch citizenship should not be required in order for newcomers to be eligible for many rights and provisions traditionally linked closely to that status.⁶⁶ Entzinger 2003 describes how the government undertook, as a part of the 1980s minorities policy, 'a range of measures aimed at gradually eliminating differences in treatment between citizens and non-citizens in almost every field'.⁶⁷ Foreign citizens were allowed to work in public service.⁶⁸ Welfare state provisions were made available to long-term foreign residents, 'in exactly the same way as to Netherlands citizens.'⁶⁹ In 1985, local voting rights were granted to foreign citizens who had lived in the Netherlands for at least five years.⁷⁰ And '[a]ll these measures were supplemented with a reinforced anti-discrimination policy.'⁷¹ Finally, '[d]uring the 1980s the conditions for naturalization were gradually eased, in particular for the second generation.'⁷² Though in much of the subsequent literature on Dutch multiculturalism the policies and institutions pertaining to integration without loss of identity tend to overshadow the abovementioned measures, arguably it is these measures, targeting individuals especially, which were more substantial, both as regards their relative weight in the minorities policy itself and in terms of their subsequent effects.

⁶⁶ Entzinger 2003: 65.

⁶⁷ *Ibid.*, 65.

⁶⁸ Except for the armed forces and the police; see Entzinger 2003: 65. See also Koopmans & Statham 2003: 214.

⁶⁹ Entzinger 2003: 65.

⁷⁰ *Ibid.*; Koopmans & Statham 2003: 214.

⁷¹ *Ibid.* 68, 65.

⁷² *Ibid.*, 66. According to De Heer the concept of civic integration was introduced as a corollary to the liberal practice of naturalization: 'Before naturalization was allowed, the migrant had to acquaint himself with Dutch society. "This is a matter of actual participation in society – a society one has accepted and where one feels quite at home". Civic integration was defined as actual participation in Dutch multicultural society' (The quote is from the Minorities Memorandum; see De Heer 2004: 179-180).

For it was the equitable application of legal provisions, more than the three institutions directly established by the minorities policy discussed in the previous section, which sorted the societal consequences associated with multiculturalism, and especially with the later backlash against multiculturalism. It was through this application especially that the presence of the Islam in the Netherlands became manifest, through the establishment of mosques and Islamic schools. Significant, also, is that unemployment among the newcomers grew sharply after the 1970s, and that the equitable application of welfare provisions pointed to above meant that newcomers received unemployment benefits on the same footing as native-born Dutch, as well as other welfare provisions, such as housing.⁷³ This, especially, was a source of resentment, especially among the lower classes in the urban neighborhoods in which most of the newcomers came to live, as the newcomers were often perceived by the original inhabitants of those neighborhoods as all too easily laying claim to welfare provisions to which they had no moral right.⁷⁴

The retreat of multiculturalism

Even during the heyday of the minorities policy in the 1980s, doubts existed concerning the prudence of the pursuit of integration without loss of identity for ethnic minorities especially. Critics feared that the social participation of newcomers would be hampered, rather than stimulated, by the promotion of particular identities.⁷⁵ Already in 1979 an influential advisory council to the Government, the Scientific Council for Government Policy, had explicitly rejected the strategy of integration without loss of identity, because such a policy would counteract natural and desirable processes of cultural adaptation, both on the side of minority and majority.⁷⁶ At the same time the council argued for the equitable application of religious provisions to newcomers, describing this as necessary for the establishment of the Netherlands as a 'multicultural society'.⁷⁷ According to the Council, also, the Dutch government should exercise restraint in pursuing its own (i.e. Dutch) cultural policies, implying that to do so would

⁷³ Uitermark provides a table of registered unemployment among native Dutch, Turks, and Moroccans between 1979 and 1985, based on Wolff & Penninx 1993: 22 & 51.

⁷⁴ See Lucassen & Lucassen 2011 for an evenhanded and insightful account of these events (especially 66-75, 92-96).

⁷⁵ Entzinger 2006: 125; see also Rath 1991.

⁷⁶ Wetenschappelijke Raad voor het Regeringsbeleid 1979: XXI; see also Vink 2007: 344.

⁷⁷ Wetenschappelijke Raad voor het Regeringsbeleid 1979: XXI.

conflict with the neutrality required of the state in such a multicultural society.⁷⁸

These initial doubts concerning the policy objective of integration without loss of identity grew during the 1980s.⁷⁹ Ultimately, this would lead to a change of policy in the first half of the 1990s, but well before then the fading enthusiasm for the policy was reflected in its implementation, which was halfhearted at best.⁸⁰ While the literature shows that integration without loss of identity for ethnic minorities soon lost impetus as a policy objective, though, the equitable application of religious and other provisions to newcomers was pursued more diligently. As a consequence, with the emergence of mosques in the Dutch landscape, by the 1990s the Islam was steadily becoming a visible presence in Dutch society.⁸¹ It is interesting in itself that the Islam seems to have emerged as a distinct social category warranting separate consideration fairly suddenly, sometime between the late 1980s and early 1990s. In 1986 an early critical examination of the emergent multicultural society of the Netherlands makes hardly a mention of the Islam for instance, focusing instead on racial tensions between native-born and Surinamese Dutch especially.⁸² Yet only five years later a prominent member of the liberal VVD, Bolkestein, publicly questioned the compatibility of the Islam with Western values, causing a small scandal as he did so.⁸³ That scandal is evidence of the strong taboo on discussing ethnic and cultural differences in the Netherlands in the 1980s especially, which taboo, it is suggested in the literature, may also have prevented earlier open discussions of any discomfiture with the emerging presence of the Islam.⁸⁴ This taboo perhaps explains why it took an international event to focus attention on the possible downside of that emerging presence. That event is commonly referred to as the Rushdie affair.

It has been said that the Rushdie affair worked as a 'catharsis' among the

⁷⁸ *Ibid.*

⁷⁹ Bruquetas-Callejo *et al.* 2007: 16-17.

⁸⁰ Duyvendak, Pels & Rijkschroeff write that '[a]lready in the mid-1980s [...] the objectives of identity maintenance and group emancipation faded into the background' (2005: 6). See also Duyvendak & Scholten 2012: 273; Uitermark 2010: 54-55; Rath *et al.* 2001: 33-36.

⁸¹ See also Rath *et al.* 2001: 261.

⁸² Vuijsje 1986.

⁸³ Discussed below.

⁸⁴ This taboo may have been strengthened by the presence of a single extreme-right Parliamentary MP, Janmaat, who during the 1980s vehemently opposed multicultural society. As a consequence of his opposition to multiculturalism, the subject was effectively taken off the political agenda, for fear of being associated with Janmaat.

Dutch intelligentsia, strongly influencing their opinion of the presence of religious minorities in the Netherlands.⁸⁵ Though the affair began almost as soon as Salman Rushdie's novel *The Satanic Verses* was published in September 1988, with worldwide protests by Muslims and book bans in many Muslim countries (but also in South Africa and India), it arguably started in earnest in 1989, when the Iranian ayatollah Khomeini issued a religious fatwa to kill Rushdie.⁸⁶ The fatwa sanctioned the religious protests against the book and its author, forcing Rushdie into hiding. In the years following the fatwa numerous bookstores selling the novel were bombed, especially in Great Britain but also in the United States. Islamists also targeted publishers, translators, and newspapers arguing for the right to read *The Satanic Verses*, causing, for example, the death of its Japanese translator in 1991 and the shooting of its Norwegian publisher in 1993. Many others perished in worldwide protests against publication or translation of the book. More than anything, however, the fatwa helped to frame the Rushdie affair in the West as a confrontation between Western, liberal values and Islam, between reason and unreason.⁸⁷

In the Netherlands the direct result of the Rushdie affair was the emergence of an intellectual critique of the Islam.⁸⁸ It is notable that this critique was not confined to either the left or the right of the political spectrum, but that the traditional opposition between right and left was suspended in the face of the perceived threat posed by the Islam. The intellectual critique of the Islam culminated in the appearance of a fictitious author ('Rasoel') in periodicals and on public television, castigating the Netherlands for its naiveté of Islamic intolerance in the years prior to the Rushdie affair.⁸⁹

The public proclamation of the incompatibility of the Islam and Western values by the liberal parliamentary leader Bolkestein in 1991, then, can best be understood against the background of the Rushdie affair, and not merely as a reaction to specifically Dutch developments.⁹⁰ This proclamation, first at the Liberal International Convention in Luzern and again in an opinion piece in a prominent Dutch newspaper, and the polemic it sparked off are generally marked in the literature as preliminary

⁸⁵ Tinnemans 1994: 338. See also Lucassen & Lucassen 2011: 23.

⁸⁶ Tinnemans describes these events as well as their repercussions for the Netherlands; see *ibid.*, 333-339.

⁸⁷ See, e.g., Buruma 2006: 30-31.

⁸⁸ See Lucassen & Lucassen 2011: 23-27; Tinnemans 1994: 336-339; Uitermark 2010: 60-61.

⁸⁹ See especially Shadid & Van Koningsveld 1992: 9-14. See also Uitermark 2010: 60-61; Tinnemans 1994: 355-356.

⁹⁰ As suggested also in Entzinger 2006: 126.

motions in the Dutch retreat from multiculturalism.⁹¹ Bolkestein was particularly worried about the proliferation of 'black schools', i.e. schools with a predominant immigrant population, in urban neighborhoods, and about the emergence of Islamic schools also, expressing doubts about the ability of such schools to transmit the values and beliefs that are central to the Western way of life.⁹² Bolkestein's intervention in the public debate therefore mixed elements of the elitist critique of Islam, epitomized by 'Rasoel', with more commonly held reservations about the changing face of Dutch society, especially in urban neighborhoods. According to Scholten, Bolkestein thus 'awoke a 'silent majority' that had been weary of multiculturalism but had been unable to speak out until then.'⁹³

Around the same time that Bolkestein leveled his critique at a specific culture, the Islam, the minorities policy more generally came under fire for being too concerned with the cultural approach to integration, and not enough with its social economic aspect.⁹⁴ Increasing participation in the labor market, especially, was to become a central goal of integration policy in the 1990s.⁹⁵ This shift was evident even before the 'purple' coalitions came to power in 1994.⁹⁶ These governments, consisting of 'red' social

⁹¹ See especially Uitermark 2010: 61-65; see also Entzinger 2003: 71; Entzinger 2006: 125; Penninx 2005: 7; Penninx, Garcés-Masareñas & Scholten 2006: 6; Bruquetas-Callejo *et al.* 2007: 17; Lucassen & Lucassen 2011: 24-25.

⁹² It is interesting, in that light, to see how Bolkestein, in his speech, links his concerns about the Islam both with minorities policy and with existing concerns about segregation in schools. After criticizing 'integration without loss of identity' Bolkestein makes positive mention of the attempt to forestall the emergence of 'black schools', by which are generally meant public schools in neighborhoods with a predominantly immigrant population, where native Dutch children are in the minority. This is interesting because the emergence of these schools has nothing to do with 'integration without loss of identity', nor with minorities policy in general, but with demographic changes in urban neighborhoods. It also has nothing to do with Islam, though Bolkestein immediately goes on to question the 'kind of Islam' that will be taught at Islamic schools, stating finally that it is '[o]n the basis of similar considerations' that the Scientific Council for Government Policy advises the termination of mother tongue teaching – which also has nothing to do with Islam. (Bolkestein 1991) Bolkestein is seemingly deliberately linking Islam to the emergence of 'black schools', which were much more visible and regarded as much more problematic than the (forty or so) Islamic schools in the Netherlands at the time – not because of Islam, but because of the societal segregation associated with such schools (see, e.g., Rath 1991: chapter 6). See also Rath *et al.*: 37.

⁹³ Scholten 2009: 568, referring to Entzinger 2005. See also, e.g., Penninx, Garcés-Masareñas & Scholten 2006: 6; Bruquetas-Callejo *et al.* 2007: 17; Ghorashi 2006: 5, referring to Entzinger 2003: 71.

⁹⁴ See esp. Wetenschappelijke Raad voor het Regeringsbeleid 1989; see also Bruquetas-Callejo *et al.* 2007: 16-17.

⁹⁵ Bruquetas-Callejo *et al.* 2007: 17.

⁹⁶ *Ibid.*

democrats (the PvdA) and 'blue' liberals (the conservative VVD and progressive D66 respectively), were to pioneer mandatory 'integration courses' for individual newcomers, thereby setting an example that would be followed throughout Western Europe. The general trend in which this policy fit predated the purple governments, however, as it was the predecessor government, a Christian Democrat-led coalition of the CDA and the PvdA, that officially jettisoned the group-oriented and cultural approach of the 1980s, focusing on the economic activation of individuals through education and employment instead.⁹⁷ Though the content of the integration courses was limited to rudimentary language and social skills, their introduction in 1998 reflected a growing belief that the ability of newcomers to integrate in Dutch society should not be taken for granted, and that integration requires a stronger commitment, both on the part of the government and on the part of newcomers.⁹⁸ It also reflected a degree of dissatisfaction with the integration of older generations of newcomers, the so-called 'oldcomers'.

Two years after the introduction of mandatory integration courses, yet another opinion piece, followed by yet another public debate, gave intellectual voice to this dissatisfaction.⁹⁹ Coming from the left of the political spectrum as it did, this intervention made clear that, as had been the case in the Rushdie affair, dissatisfaction with immigration and integration was not confined to conservatives and the reactionary right. The author, Paul Scheffer, was a prominent member of the social democratic PvdA. In his opinion piece, evocatively titled *The Multicultural Drama*, he took issue both with the 'cosmopolitan delusion' and 'cultural relativism' attributed by him to the political elite, and with practices and ideas of Muslims that are incompatible with liberal values such as individual equality and state neutrality.¹⁰⁰ According to Scheffer, under the pretext of multiculturalism, the Dutch ruling classes had allowed an ethnic underclass to develop which threatened both the social cohesion of Dutch society and the liberal democratic order. To counter this threat the Netherlands must reaffirm its own cultural identity; only then could it make clear to newcomers what was required for their integration. That,

⁹⁷ In the policy memorandum 'Integration Ethnic minorities' (*Integratiebeleid Etnische Minderheden*); Kamerstukken II, 23684, nr. 2. See also Bruquetas-Callejo *et al.* 2007: 17.

⁹⁸ Entzinger, who together with Van der Zwan, contributed to the development of these courses in the 1990s, provides a personal account of this development in Entzinger 2003: 75-77.

⁹⁹ See especially Uitermark 2010: 65-70.

¹⁰⁰ Scheffer 2000.

especially, was a commitment to liberal democratic principles, and a better knowledge of Dutch culture and history.

Scheffer's article, similarly to that of Bolkestein nine years earlier, generated both criticism and support.¹⁰¹ In the literature, it was soon heralded as a turning point in the debate, and as generating 'a respectable non-racist assimilationist view that can be opposed to the long existing multiculturalist option.'¹⁰² While it may have been a turning point in terms of its resonance among intellectuals, it shares its fundamental premise with the earlier intervention of Bolkestein, namely that liberal freedoms must be embedded culturally. Both interventions point to a growing appreciation of the Netherlands as a moral community in its own right, sustained by particular values, in which newcomers must be integrated not only socially, but culturally as well. Both interventions, also, point out the necessity of constraining private conceptions of the good on the grounds of a publicly shared morality. Finally, these interventions demonstrate an instrumental attitude with regard to the value of culture and cultures: culture is not an end in itself, but is either necessary for the maintenance of liberal freedoms, and therefore to be stimulated, or a threat to that maintenance, and therefore to be rejected. These elements are all highly reminiscent of liberal culturalism, viz. its understanding of liberalism as a partial comprehensive doctrine and liberal society as a moral community in its own right, its commitment to the protection of the cultural conditions for individual autonomy, and especially its rejection of moral communities whose comprehensive views are at odds with the public pursuit of those goals.

Other characteristics shared by Bolkestein and Scheffer's interventions are their level of abstraction, discussing integration in terms of cultures and values especially, and their target audience, which arguably was the Dutch intelligentsia. Both interventions, then, were fairly academic and their influence was largely confined to academic circles. In this they can be contrasted both with the critique of Islam generated by the Rushdie affair, which, though intellectual in its origins, often was much more polemical and blunt, and especially with the emergence of a 'populist' strain of national self-affirmation in the years to come, following the Al Qaeda attacks of September 11, 2001.¹⁰³

¹⁰¹ It was also the specific subject of a minor debate in the Second Chamber; see HTK 1999/2000, No. 70.

¹⁰² See for instance Entzinger 2003: 80.

¹⁰³ See, for examples of the former, Lucassen & Lucassen 2011: 23-24 and Uitermark 2010:

As with the Rushdie affair, Western misgivings about the Islam after the Al Qaeda attacks went hand in hand with liberal self-affirmation. Such periods are interesting, for in the course of self-affirmation values may be revealed or developed, but in any case explicated, which otherwise remain implicit. The Rushdie affair, for example, focused attention on the values of freedom of speech, individual creativity, and the liberty to criticize established religions. In the Netherlands the Al Qaeda attacks and their aftermath seem to have been particularly instrumental in displacing, or revealing the prior displacement of, whatever was left of the procedural morality identified above with pillarization and framework liberalism.¹⁰⁴

In the Netherlands this displacement is associated especially with the sudden popular success of political outsider Pim Fortuyn in 2001 and 2002. Fortuyn, whose flamboyant style of politics and vehement opposition to the purple policies of the preceding eight years appealed to and shocked different parts of the electorate in equal measure, was an outspoken critic of the Islam. During his prior career as an academic and publicist he had already published a book taking issue with the alleged 'Islamization of our Culture' signaled by its title,¹⁰⁵ and his political career, which was cut short by his murder by an animal rights activist in May 2002, shortly before the national elections, might aptly be characterized as a series of scandals provoked by, *inter alia*, his public denunciations of the Islam.¹⁰⁶ Two examples are his description of Islam as 'simply a backward culture' and, relatedly, his proposal to repeal the first article of the Dutch constitution, which prohibits discrimination.¹⁰⁷ Fortuyn was no racist, however, nor even anti-immigrant. What he was especially concerned about was the preservation of liberal freedoms. For much like Scheffer, Fortuyn believed that these liberties were under threat, both from the Islam and from the complacency of the ruling political elites.¹⁰⁸

After 9-11, Fortuyn's political message fell on fertile soil. Despite his

60. For a discussion of the latter, see below.

¹⁰⁴ Rath *et al.* (2001) suggest that the procedural morality of framework liberalism was displaced prior to 2001, stating that 'the general acceptance that religion had a recognized place in Dutch society was being eroded' at the same time that 'substantial numbers of Muslims' were settling in the Netherlands. This leads Rath *et al.* to conclude that '[h]istorical accident played Muslims false' (261)

¹⁰⁵ Fortuyn 1997.

¹⁰⁶ For an analysis of Fortuyn's influence on the public debate see especially Uitermark 2010: 70-77.

¹⁰⁷ Both remarks were made in an interview by the Dutch newspaper *De Volkskrant* on February 9, 2002 (Poorthuis & Wansink 2002).

¹⁰⁸ Entzinger 2006: 130.

murder shortly before the national elections in May 2002, or perhaps in part because of that murder, his party, the LPF (*List Pim Fortuyn*), gained a landslide victory, becoming the second-largest party in parliament, behind the Christian democratic CDA. Fortuyn's success, which has been linked, *inter alia*, to his outspoken position with regard to minority and immigration issues, forced political elites, if not to accept his criticism, in any case to address popular concerns to do with the lack of integration of minorities in Dutch society.¹⁰⁹ Though the LPF disappeared almost as quickly as it had risen to prominence, Fortuyn's legacy, according to the literature, was a turnaround in both publicly expressed attitudes and policies with regard to multiculturalism. Authors focusing on different aspects of this turnaround have called it, variously, an 'assimilationist turn', the 'fall of multiculturalism', the 'ascendancy of culturalism' or the emergence of 'new realism' in Dutch politics.¹¹⁰ Central to the development signaled by each of these authors is the increased acceptance of the premise underlying the previous interventions of Bolkestein and Scheffer, namely that liberal freedoms are secured especially through culture, and that the government may therefore legitimately pursue policies of cultural self-affirmation.

¹⁰⁹ Van Holsteyn 2003 and Van Holsteyn, Irwin & De Ridder 2003, on the basis of an analysis of Dutch parliamentary electoral studies. For an analysis of changes in party positions after Fortuyn, see Slegers 2007: 41-58.

¹¹⁰ Duyvendak & Scholten (2012) speak of an 'assimilationist turn in Dutch integration policy' (274); 'the fall of multiculturalism' was introduced, in relation to Dutch policy, by the title of Entzinger 2003; Uitermark charts the 'ascendancy of Culturalism' in chapter 5 of his 2010-dissertation research; 'new realism' is the term used by Prins to denote a mode of discourse which is distinguished, *inter alia*, by its 'insistence on the (re)affirmation of national identity' and by the 'affirmation of the values of western civilization over and against Islam, such as the separation of state and church, freedom of speech and equality of men and women.' Prins & Saharso 2008: 368. See also Prins 2002 and Prins 2004. Prins, who popularized the term 'new realism' after 2000, does not mention that Vuijsje coined the term in Vuijsje 1986.

Conclusion

This chapter provided a brief overview of the historical background to the parliamentary debates to be analyzed in the following chapters. The most significant feature of this background is the minorities policy of the 1980s, which has widely been heralded as ‘multiculturalist’ or ‘multiculturalist *avant la lettre*’. This chapter first discussed the alleged institutional and normative ties of the minorities policy to the period of pillarization, during which the Netherlands was divided along religious and ideological lines. During this time the organization of politics and society in the Netherlands were highly reminiscent of what in the previous chapter was termed framework liberalism. Though Dutch society itself was no longer pillarized in the 1970s and 1980s, when it was confronted at that time with the arrival of a large number of immigrants with distinct cultural and religious identities, the accommodation of these immigrant groups was influenced by laws and attitudes stemming from the pillarization era. These laws and attitudes were similarly reminiscent of framework liberalism. Though the academic literature on the resultant minorities policy tends to focus especially on the policy of integration without loss of identity, it was suggested that pillarization’s more lasting legacy for the minorities policy of the 1980s was the equitable treatment of religious minorities in the socio-cultural domain, dating at least from the era of pacification politics, and especially the equitable admission of newcomers to established welfare arrangements.

Even as these aspects of the minorities policy were taking effect, however, discomfort was growing in the Netherlands, especially concerning the growing presence of the Islam. The second part of this chapter discussed a number of events illustrating this growing discomfort, culminating in the political success of political newcomer Fortuyn in the early years of the new millennium. The first of these was the Rushdie affair, which saw the genesis of an intellectual critique of Islam among Dutch intelligentsia in the late eighties and early nineties. In 1991 also, the VVD-parliamentary leader Bolkestein publicly questioned the compatibility of Islam with Western values. The introduction of mandatory integration courses in the latter half of the 1990s reflected a growing degree of dissatisfaction with the integration of newcomers to Dutch society, and changing ideas concerning what can be desired of them. The publication of Paul Scheffer’s *The Multicultural Drama* in January 2000 is presented in the literature as a turning point in Dutch intellectual attitudes vis-à-vis both multiculturalism and Islam, and as having generated a ‘respectable

non-racist assimilationist view that can be opposed to the long existing multiculturalist option'. Shortly thereafter, in 2001/2002, Fortuyn's political success was testimony to a wider proliferation of such attitudes. All these events point to a weakening of the prior implicit commitment to framework liberalism. Many of these events can be characterized, also, in terms familiar from the discussion of liberal culturalism in the previous chapter, such as the growing appreciation of the Netherlands as a moral community in its own right, the instrumental attitude towards moral communities evidenced in the contributions of Bolkestein and Scheffer, and the unwillingness to accommodate conceptions of the good conflicting with publicly endorsed comprehensive views, implicit in the critique of Islam generated by the Rushdie affair and the explicit criticism leveled at Islam by Fortuyn.

Chapter 3

The Rejection of Framework Liberalism: Debating the Framework Convention for the Protection of National Minorities

Introduction: Shifting attitudes in the Netherlands

The next few chapters will focus on a number of debates occupying the Dutch Parliament between the year 2000 and 2013. All these debates have special bearing on moral communities, integration, and tolerance, and offer insight into how liberalism is conceived of in the Netherlands, and of the interplay between framework liberalism and liberal culturalism in that understanding. The current chapter will introduce and analyze the debate on the approval bill for the Council of Europe's *Framework Convention for the Protection of National Minorities*. This convention was drafted in 1994 and entered into force in 1998, but had yet to be ratified by the Netherlands in 2000. Spanning four eventful years at the start of the new millennium, the debate of this bill in the Second and First Chambers of Dutch Parliament offers a vivid illustration of changing perceptions with regard to minority integration and identity in the Netherlands. Also, it offers a good introduction to the various parties and positions in the debate.

It is sometimes said that the Netherlands 'lost its innocence' sometime during the early years of the new millennium. If this is indeed the case, when the Framework Convention's approval bill first went to Parliament's Second Chamber on March 15, 2000, the Netherlands had yet to lose that innocence. As described in the previous chapter, it was only after 9/11 and the appearance of Fortuyn that issues pertaining to immigration, integration and moral communities more generally became politically salient in the Netherlands. This is reflected in the early debates of the approval bill. For almost all the parties contributing to those debates, the Framework Convention's goal of protecting national minorities is not particularly relevant for the Netherlands. It is for the sake of the minorities in the recently independent countries of Eastern and Central Europe especially that the convention is attributed importance. It is primarily to set an example for those countries, then, that the Netherlands wishes to ratify the convention.

It is for the sake of setting an example, also, that the Second Chamber, in 2000, wishes to extend the protection of the convention to as broad a group of minorities in the Netherlands as possible; not only to the Frisians, the age-old inhabitants of the northern Dutch province of Fryslân, but also to all the more recently arrived groups: Roma and Sinti-gypsies having settled here over the past centuries; more recent arrivals from the ex-colonies and overseas territories in the East- and West-Indies; and finally

the youngest category of newcomers, labor migrants from predominantly Mediterranean countries and their children. All these later arrivals, officially known as the 'target groups of integration policy', are to be brought under the ambit of the convention. As we will see below, neither the Dutch government nor most of the parties in the Second Chamber see much inconsistency in pursuing the integration of these minorities while at the same time obliging the state to offer them the protection of the Framework Convention. This is not, it should be noted, because parties are of the opinion that integration is best pursued through the protection of minority identities (though this argument is forwarded in the debate by GroenLinks and the PvdA). It is primarily because parties simply don't regard the protection of minority identity to be much of a problem in the Netherlands, one way or the other, at the turn of the millennium.

Four years later, in 2004, all this has changed dramatically. After the terrorist attacks of September 11, 2001 and the subsequent murders of politician Pim Fortuyn in 2002 and filmmaker and columnist Theo van Gogh four weeks before the debate's final term in the First Chamber on November 30, 2004, the Netherlands has entered into a period of soul-searching and redefinition. The political landscape has changed substantially, and integration and immigration are both subject to intense public and political debate. These changes are reflected in the changed attitudes with respect to the bill on the Framework Convention. Instead of seeking as broad an application of the convention as possible, the Government in 2004, now with the support of nearly every party in the First Chamber, wishes exactly the converse: to limit the application of the convention to as narrow a group of minorities as possible. Ultimately this results in the ratified convention's being applied only to a single minority: the Frisians.

As this chapter will show, this decision and the parliamentary debates preceding it can be interpreted as a marked denial of the applicability of a procedural morality akin to that of framework liberalism to Dutch society as a whole.

The Framework Convention, the Frisians, and the target groups of integration policy

In 1994, considering that ‘the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace’, and also that ‘a pluralist and genuinely democratic society should not only respect the ethnic, cultural, linguistic and religious identity of each person belonging to a national minority, but also create appropriate conditions enabling them to express, preserve and develop this identity’ the Committee of Ministers of the Council of Europe agreed on the text of the Framework Convention for the Protection of National Minorities.¹ The Framework Convention (to be referred to henceforth as ‘the convention’) was opened to ratification in the following year. When the required number of signatories had ratified the convention it entered into force, on February 1, 1998.² At that time, the Netherlands had yet to ratify the treaty.

Though the states of Europe were thus agreed that the national minorities of other states warranted protection – in no small measure, presumably, because the former-Yugoslavia was currently engaged in one such ‘upheaval in European history’ – with regard to their own national minorities states were not so eager to be subjected to the scrutiny of their neighbors. This hesitance was reflected in the failure of the drafters to reach agreement on the definition of the convention’s single most important category: the ‘national minority’ of its title. Failing such agreement the drafters decided to leave the matter of what constituted a national minority and therefore of who would ultimately enjoy the protection of the convention to each individual signee to decide for himself.³

¹ From the preamble of the convention (hereinafter FCNM 1995): FCNM 1995: 3; see also the explanatory memorandum accompanying the bill; Explanatory Memorandum (*Memorie van Toelichting*), Kamerstukken II, 26389, nr. 3: 1. See for the convention: http://www.coe.int/t/dghl/monitoring/minorities/1_AtGlance/PDF_H%2895%2910_FCNM_ExplnReport_en.pdf.

² The convention formulates obligations of states rather than rights of minorities and their members. Also, the convention acknowledges a wide margin of appreciation on the part of states in meeting these obligations. The convention aims to protect individual members of national minorities, rather than national minorities as collective bodies. The convention does not have direct effect, i.e. inhabitants of ratifying countries are not supposed to be able to make a direct appeal to the convention’s articles in a court of law. See Kamerstukken II, 26389, nr. 3: 1-2.

³ Kamerstukken II, 26389, nr. 3: 3.

The Dutch Cabinet drafting the approval bill for the convention in 1999 was the second of two consecutive 'purple' coalitions governing the Netherlands from 1994 to 2002. Headed by Prime Minister Wim Kok, of the social-democratic PvdA, these consecutive governments, consisting further of members of the conservative liberal VVD and the progressive liberal D66, mixed leftist welfare statism with liberal market ideology in a Dutch variation on the then current international trend generally known as 'the third way'. Taking into consideration that it was under the purple governments that the Netherlands pioneered its civic integration policies, which are generally seen as anticipating the 'retreat from multiculturalism',⁴ it may come as a surprise that the government, given the freedom by the convention to interpret 'national minority' as broadly or narrowly as it wished, nevertheless opted for as broad an interpretation of the term as possible.⁵ Besides covering the Frisians, the territorially bounded and linguistically distinct nation inhabiting the northern province of 'Fryslân', the term, and therefore the convention, were also to apply to all 'legal residents of the Netherlands belonging to the target categories of integration policy', i.e., the civic integration policies mentioned above.⁶ According to the explanatory memorandum accompanying the approval bill, the convention can be regarded as 'the legal complement' to said policy, of which 'the leading principle' is that:

'integration is a two-sided process to which both *autochthons* and members of ethnic groups must contribute. It is expected that *autochthons* are open to the participation in society by members of ethnic groups, that they give them sufficient room to do so, and that they respect their norms and values. On the other hand it is expected of members of ethnic groups that they endeavor to participate in that society and to contribute to it, and that they respect the norms and values of the 'majority'.⁷

⁴ See *supra*, chapter 2, 76. See also: Joppke 2007b: 334.

⁵ Kamerstukken II, 26389, nr. 3: 2.

⁶ Kamerstukken II, 26389, nr. 3: 2. ('*legaal in Nederland verblijvende personen die behoren tot de doelgroepen van het integratiebeleid*')

⁷ Kamerstukken II, 26389, nr. 3: 2. ('*Het leidend beginsel van dat beleid is, dat integratie een tweezijdig proces is waaraan zowel door autochtonen als leden van etnische groepen een bijdrage dient te worden geleverd. Van de autochtonen mag worden verwacht dat zij openstaan voor deelname aan de samenleving door leden van etnische groepen, dat zij hen daartoe de ruimte bieden en dat zij hun normen en waarden respecteren. Aan de andere kant mag van leden van etnische groepen worden verwacht, dat zij zich inspinnen om aan die samenleving deel te nemen en daaraan een bijdrage te leveren en dat zij de normen en waarden van de «meerderheid» respecteren.*')

According to the government the convention offers 'international legal instruments' with which to substantiate this two-sided process.⁸ Illustrative hereof, according to the memorandum, are art. 4 of the convention, prohibiting discrimination of members of minorities; art. 5, compelling treaty parties to encourage the maintenance and development of the identity of members of national minorities and, in the words of the government, to combat assimilation; and art. 20, explicating the duty of members of minorities to respect the national laws and the rights of others, 'in particular those of persons belonging to the majority or to other national minorities'.⁹ While these and the other norms of the convention are at present met by the Netherlands, states the government in the memorandum, ratifying the treaty serves as a guarantee that in future the Netherlands will not fall below the threshold formulated in the treaty.¹⁰

The parallels between the Framework Convention and the 1980s minorities policy discussed in the previous chapter, with its implicit commitment to framework liberalism, are evident. Both are premised on the possibility of maintaining a diversity of moral communities within a single polity, within legal limits, and both emphasize the necessity of non-discrimination and mutual respect to that end. That notwithstanding, in its intended application of the convention the Dutch Government implicitly acknowledges that some moral communities are more easily maintained than others. For though the Government supports a broad definition of 'national minorities', going so far even as to say that it regards the adjective 'national' in 'national minorities' to be redundant, it makes a marked distinction between territorially isolated minorities on the one hand and minorities that are dispersed among the majority on the other. Only the Frisians, the majority population in the province of Fryslân, will receive the convention's full protection, including, notably, articles 10.2, 11.3, and 14.2.¹¹ These articles concern the use of minority languages between

⁸ Kamerstukken II, 26389, nr. 3: 2.

⁹ Kamerstukken II, 26389, nr. 3: 2-3. See also the convention (art. 4: 'any discrimination based on belonging to a national minority shall be prohibited'; art. 5.1: to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage'; art. 5.2: 'the Parties shall refrain from policies or practices aimed at assimilation of persons belonging to national minorities against their will and shall protect these persons from any action aimed at such assimilation'; art. 20: 'any person belonging to a national minority shall respect the national legislation and the rights of others, in particular those of persons belonging to the majority or to other national minorities'); FCNM 1995: 3, 7.

¹⁰ Kamerstukken II, 26389, nr. 3: 3.

¹¹ Kamerstukken II, 26389, nr. 3: 4. The memorandum states that these articles only apply

members of minorities and the administration (10.2), the language used to display traditional local names, street names and other topographical indications (11.3), and the use of minority languages in education (14.2) respectively.¹²

It is not because the Frisian identity is in more danger than other minority identities in the Netherlands that the Frisians can make exclusive use of these provisions, however. Because the Frisians form a local majority in Fryslân, where the Frisian language is, next to Dutch, an official language, their identity and culture are by default much more secure than those of other minorities in the Netherlands, and in Fryslân for that matter. It is rather because these provisions match the already established practice concerning the use of the Frisian language in Fryslân that they can be applied there. This is in part a practical matter; according all linguistic minorities in the Netherlands similar rights would entail enormous costs. It is also a normative matter, however. The Frisian right to a degree of cultural and linguistic autonomy is firmly established in the Netherlands, and has roots going back as far as the 12th century.¹³ Throughout the middle ages, the (proto-Dutch) *Hollanders* regularly fought the Frisians, attempting to subject the Frisians to their authority. Ultimately it was the Holy Roman Emperor Charles V who subordinated the Frisians, first to his rule in 1524 and subsequently to that of the centralized administration of the Dutch provinces in 1548.¹⁴ It was arguably through the centuries-long violent interaction with the *Hollanders* that the Frisians established themselves as firmly belonging, first to the territory of Fryslân, and later, as Fryslân, to the Netherlands, however. This process is illustrative of how the moral commons that is central to the account of framework liberalism, including in this case the right to a degree of territorial and cultural autonomy, can emerge from the interaction between moral communities.¹⁵ At the same time, it may very well be precisely the territorial concentration of the Frisians in Fryslân that facilitates the continuous normative commitment

to 'the Frisians'. It would be more precise to say 'in Fryslân' as these articles do not apply to Frisians living elsewhere in the Netherlands.

¹² See Convention; FCNM 1995: 4-6.

¹³ The period 1200-1500 is referred to, in Frisian lore, as the period of 'Frisian liberty', during which the Frisians had no sovereign ruler, despite repeated attempts by Holland especially to subject them to its rule. For an historical exploration of the myth and reality of Frisian Liberty, see Van Buijtenen 1953.

¹⁴ See, for a detailed account of the political process which resulted in Charles V's title over Fryslân, Theissen 1907: chapter 2. For an account of the unification of the Low Countries in 1548, see Blom & Lamberts 2006: 118-120.

¹⁵ See *supra*, 39-40.

to the maintenance of their identity and culture. For, in the case of the non-Frisian minorities falling under the convention, the debates show increasing doubts as to the compatibility of such a commitment with the necessities of integration.

One must bear in mind, also, that the Frisians, in contrast to most of the other minorities falling under the convention's intended scope in the Netherlands, are not a visible minority, and that the Frisian cultural identity has distinct overlaps with the Dutch majority identity. On the whole, while the Frisians are historically and linguistically distinct from the rest of the Netherlands, ethnically and culturally they are largely indistinguishable from the other original inhabitants of the Netherlands. They also share many social, economic, educational, and political institutions with the non-Frisian Netherlands. This institutional overlap coincides with an overlap of (partial) comprehensive doctrines. As a consequence of this close identity between Fryslân and the rest of the Netherlands, the Frisians are far less prone to fall victim to racism or discrimination than the new minorities. In so far as the treaty signatories take on the obligation to encourage the maintenance of the identity of members of national minorities, and to combat discrimination and assimilation, where the Frisians are concerned this obligation is met almost by default.

A final observation with regard to the memorandum accompanying the approval bill of the Framework Convention for the Protection of National Minorities concerns the goal of participation laid down therein, which goal is formulated in particular for 'ethnic groups', i.e. the target groups of integration policy. According to the memorandum, '*autochthons* are open to the participation in society by members of ethnic groups, [...] they give them sufficient room to do so, and [...] they respect their norms and values.'¹⁶ Members of ethnic groups, conversely, are expected to 'endeavor to participate in that society and to contribute to it, and [to] respect the norms and values of the 'majority''¹⁷ Note the similarity in approach to the minorities policy of the 1980s, evident in the premise that society can consist of a diversity of moral communities, in this case ethnic groups, with their own, distinct, norms and values. Note also, however, the emphasis on participation. More than that even, members of minorities are expected to 'contribute' to society. What does this mean? Is it merely a reflection of the fear of the possible consequences of societal isolation, which underlay the

¹⁶ See *supra*, note 7.

¹⁷ *Idem*.

minorities policy also? This is not elaborated. It is therefore instructive to contrast the target groups of integration policy, to which latter groups the imperatives to participate and contribute are addressed exclusively, with the Frisians on this point. Imagine that the Frisians were similarly required to participate in and contribute to Dutch society; addressed to the Frisians in Fryslân itself, this requirement would be redundant, for the Frisians constitute Dutch society in Fryslân. If it were to mean, however, that the Frisians must contribute to the broader Dutch society, outside of Fryslân, the requirement would imply that Frisian cultural autonomy depends on the value of the Frisians for the rest of the Netherlands. Such a requirement would run counter to the central goal of the Framework Convention itself, which is precisely to accomplish that respect of national minorities' rights be unconditional of the esteem in which they are held by the majority, or of other considerations, such as their economic or cultural value. It is hard to see why this would be any different for non-Frisian minorities.

Perhaps, however, the Dutch insistence on participation and contribution points to a realization that failing such participation and contribution the conditions cannot be created through which minority identities can be adequately protected. Be that as it may, the above considerations show, at minimum, that there is an uneasiness of fit between the stated objective of the Framework Convention, namely to establish an unconditional right to the preservation of the identity of national minorities, and the stated requirement of participation in and contribution to society. As we will see in the following two chapters, the notion of participation plays a central role in the integration debate.

As will be demonstrated in the following pages, at the start of the millennium the Second Chamber, like the Government, does not view the dissimilarity between the Frisians and the target groups of integration policy or the uneasiness of fit between the protection of minority identities and the pursuit of integration policies as practically debilitating. This should not be interpreted as an implicit commitment to framework liberalism, however. More than anything this seems to reflect the then prevailing idea that its own minorities posed no problems, one way or the other, for the Netherlands. Of course the memorandum accompanying the approval bill dutifully states that the 'most important reason for ratification of the Framework Treaty by the Kingdom [of the Netherlands] is, of course, that thereby the Kingdom will be bound to the principles

laid down in the Framework Treaty.¹⁸ But the repeated emphasis on the message the convention sends abroad, especially to countries in Central and Eastern Europe, and on the necessity of an adequate regime of minorities protection there, suggest that it is to those countries and their kind of minority problems that the convention is to apply, as far as the Government is concerned.¹⁹ As we will see, however, before the bill was finally to be passed in 2004, both the Government's and Parliament's appreciation of minority problems in the Netherlands would change dramatically. Acknowledging the relevance of the convention for the Netherlands and thus forced to take position, Parliament ultimately chooses to restrict the scope of the convention to a single, territorially bound minority: the Frisians. This choice, it is argued below, entails an implicit rejection of the broader applicability of framework liberalism to Dutch society.

Debating the Framework Convention in Parliament: the Second Chamber

Parliamentary debates in the Netherlands generally consist of two terms, sometimes followed by a third, in each chamber of Parliament. The lower house of Parliament, the 'Second Chamber', consisting of 150 directly chosen representatives, is the first arena, and the heart, of political debate. Only if a bill is passed in the Second Chamber will it be sent to the upper house, the 'First Chamber'. This chamber consists of 75 members who are chosen indirectly, by the members of the Provincial Assemblies. Members of the First Chamber are often considered to be the 'elder statesmen' of the Netherlands, having traveled the ranks of political parties and/or public office. As the First Chamber convenes only once a week, also, most of its members combine their parliamentary work with other employ, relatively often in academia or local public office. Often, as we shall see in the following chapters, members of the First Chamber draw upon their extra-parliamentary expertise in the debates. In general, also, the debates in the First Chamber are regarded as somewhat less political

¹⁸ Kamerstukken II, 26389, nr. 3: 5. (*'De belangrijkste reden voor het bekrachtigen van het Kaderverdrag door het Koninkrijk is uiteraard dat hiermee het Koninkrijk gebonden zal zijn aan de in het Kaderverdrag neergelegde beginselen.'*) That being said, the application of the convention within the Kingdom of the Netherlands is restricted to the Netherlands (and for instance does not include the Dutch Antilles). See Kamerstukken II, 26389, nr. 3: 16.

¹⁹ Kamerstukken II, 26389, nr. 3: 5. (*'het belang dat wordt gehecht aan een goede minderhedenbescherming, in Nederland zelf alsook – en vooral – in de Midden- en Oost-Europese landen'*).

and somewhat more focused on the legal and constitutional aspects of proposed measures.

The approval bill for the Framework Convention for the Protection of National Minorities was put up for debate in the Second Chamber of Dutch Parliament on March 15 of the year 2000. Due to intervening political and social developments, it took four and half years, during which two Cabinet governments came and went, before the approval law was passed. After the Second Chamber passed the bill in 2000 it was first debated in the First Chamber in 2001, then in 2004.

The first thing that stands out with regard to the debate in the Second Chamber is its brevity, especially in comparison to the other debates discussed in these chapters. Not only are parties' respective contributions short, not all parties in the Second Chamber take part in the debate, and of the parties that do only the opposition parties use more than a single term to contribute to the debate. This suggests that the subject matter of the debate, the protection of national minorities, was neither politically significant nor controversial at the time. This is also borne out by the parties' individual contributions, which can generally be characterized as mild, and by the lack of media attention for these debates, which were followed especially by the regional press of Fryslân.²⁰ That this general lack of urgency accompanying the debate in the Second Chamber had less to do with the subject-matter of the debate (i.e. the protection and status of national minorities) than with attitudes current in the Netherlands at the time (March 2000), is suggested by the fact that each subsequent debate in the First Chamber (in 2001 and 2004) exceeded the length of its predecessor considerably.²¹

²⁰ Only two national newspapers published articles concerning the First Chamber's criticism of the Government's interpretation of the bill in 2001; see "Eerste Kamer verdeeld over minderhedenverdrag." May 9, 2001. *Trouw*; "Senaat stuurt Van Boxtel terug; Kabinet legt verdrag over minderheden verkeerd uit." May 30, 2001. *Trouw*; "Minderhedenverdrag loopt vast in senaat." May 30, 2001. *Algemeen Dagblad*.

²¹ The single first term of the debate in the First Chamber (in May 2001) exceeded the length of the two terms of the Second Chamber; the final debate in the First Chamber (in November 2004), comprising of two terms, was longer still. On the other hand, the final adoption of the law in 2004 also generated hardly any press outside of Fryslân; two newspapers published opinion pieces criticizing the final interpretation of the bill; see Meijknecht & Letschert 2005 & Groenendijk 2005.

Three further features of the debate in the Second Chamber stand out especially:

- the widespread endorsement of the Cabinet's broad interpretation of the convention for the example it sets abroad;
- the relative absence of 'multiculturalist' justifications for minorities protection;
- the limited criticism of the Cabinet's proposal for including the target groups of Dutch integration policy in its definition of 'national minorities';

These subjects will be treated in turn. Subsequently a motion submitted by the orthodox Protestant party GPV, proposing to limit the convention's scope to the Frisians, will be briefly discussed. This motion, which failed to gain the support of the Second Chamber, is primarily of interest because it foreshadows the position to be adopted, four years later, in the First Chamber.

The exemplary Netherlands

There is unanimous agreement, in the Second Chamber in 2000, on the necessity for ratifying the convention. Most parties concur with the Government that the convention bears especially on the treatment of national minorities in other ratifying states, particularly those in Central and Eastern Europe.²² Only two parties, the social democratic PvdA and

²² The (conservative liberal) VVD states explicitly that '[t]his convention is especially important for the countries in Central and Eastern Europe', as does the (orthodox Protestant) GPV. *'Dit verdrag is met name van belang voor de landen in Midden- en Oost-Europa.'* (HTK 1999/2000, No. 56: 3973, VVD; represented by Rijpstra); *'benadrukken dat [...] dit verdrag vooral betekenis heeft voor de landen van Midden- en Oost-Europa'* (HTK 1999/2000, No. 56: 3968, GPV; ; represented by Van Middelkoop). Both (the progressive liberal) D66 and the (orthodox protestant) SGP point out that this importance stems from the 'minorities-question' which is still 'emphatically problematic' in these countries (SGP), as the 'distinct identity' of minorities is still prone to 'come under pressure' there (D66). *'Wat de waarde van het verdrag betreft zien wij ook vanuit de geschiedenis een belangrijke betekenis ervan voor Midden- en Oost-Europese landen, waar de minderhedenkwestie nadrukkelijk als problematiek aan de orde is.'* (HTK 1999/2000, No. 56: 3972, SGP; ; represented by Van der Staaij); *'waar de eigenheid van minderheidsgroeperingen nog vaak in het gedrang dreigt te komen'* (HTK 1999/2000, No. 56: 3970-3971, D66; ; represented by Ravestein.). The (Christian democratic) CDA, finally, wonders how 'the Netherlands will exert political pressure' on these countries 'in order to ensure observance of the convention': *'Op welke wijze zal Nederland politieke druk uitoefenen om de naleving van het verdrag te waarborgen?'* (HTK

the progressive 'GreenLeft' GroenLinks, discuss the convention in light of threats to minorities in the Netherlands.²³

Ratifying the convention, then, for the government as well as for most parties, serves the purpose especially of setting a good example for other countries. The wish to set such an example moves many parties to endorse the broad interpretation of the convention's scope suggested by the Government. The general attitude towards the convention, concerning its limited importance for the Netherlands and vice versa, is nicely summed up by the responsible minister (Van Boxtel, D66) during his second term in the debate on March 15, 2000:²⁴

'I think our extension of the target group of the convention enhances its value. We do not do so out of some desire to always be "*Nederland gidsland*".^[25] I think we have built up a tradition here of permanent discussion on the question of how we wish to treat minorities in our country. And that includes not only the Frisians, who happen to live together in a province, but also groups which have lived here for a long time or at least have been in our country for two or three generations. [...] The attitude we wish to project is that those groups also will be given the opportunity to safeguard their position in the Netherlands within the non-negotiable fundamental values and within the national laws and regulations. [...] If you just refer to the situation in Central and Eastern Europe, to the former-Yugoslavia, to the situation that is described so beautifully by Kaplan in his "Balkan Ghosts", where all those different ethnicities in the different territories are continuously in conflict with each other, then to them you could say: look at what we at least try in the Netherlands! We don't just have a province with inhabitants, but we have a diversity of minority groups in our country. We stand up for them, we point out their duties, and that is the way we would like to interpret this framework treaty.²⁶

1999/2000, No. 56: 3966, CDA; ; represented by Verburg).

²³ See *infra*, 96-97.

²⁴ The minister's second term follows the Chamber's first term.

²⁵ The Dutch phrase '*Nederland gidsland*' (literally 'the Netherlands guiding country') designates the Netherlands as having the duty to set the international standard of moral behavior.

²⁶ HTK 1999/2000, No. 56: 3982. (*'Ik vind het een meerwaarde dat wij de doelgroep vergroten. Dat doen wij niet omdat wij altijd maar "Nederland gidsland" willen zijn. Ik denk dat wij hier een traditie hebben opgebouwd van een permanente discussie over de vraag hoe wij in ons land met*

While most parties, like the minister, refer especially to the countries in Central and Eastern Europe, a few also explicitly mention Austria, where Jorg Haider's rightwing anti-immigrant party the FPÖ had recently joined the government coalition. Because of the success of such anti-immigrant parties, these parties argue, it is imperative that the convention not be interpreted as applying only to national minorities narrowly defined.²⁷ For most parties, however, the specter hanging over this convention is that haunting Central and Eastern Europe especially. The horror is that of countries which are segmented, much like the Netherlands under pillarization, but without an accompanying procedural morality ensuring mutual respect and forbearance between the segments.

In a very real sense, the Convention for the Protection of National Minorities constitutes a legal codification of a procedural morality for the peaceful accommodation of minority groups in segmented societies, stating explicitly what according respect to minorities entails. The question underlying the debate on the convention in the Netherlands is whether that procedural morality also reflects the way the Netherlands wishes to treat not just the Frisians, but its other minorities as well. The answer to this question depends on what kind of society parliamentarians understand the Netherlands to be, and relatedly on their conceptions of the standing of minority moral communities in that society.

The status and protection of minorities in the Netherlands

As mentioned, only two parties in the Second Chamber discuss the convention primarily in view of its implementation in the Netherlands.

minderheden omgaan. En dat zijn niet alleen Friezen, die toevallig bij elkaar in een provincie wonen, maar dat zijn ook groepen die hier of al heel lang of in ieder geval al twee of drie decennia in ons land aanwezig zijn. Het is dus niet alleen gebonden aan territoir. De houding die wij willen uitstralen, is dat die groepen ook in de gelegenheid zullen worden gesteld om hun positie in Nederland veilig te stellen binnen de ononderhandelbare grondwaarden en binnen de nationale wet- en regelgeving. Daar mag men mij permanent op aanspreken. Ik hecht er zeer aan om dat nog even heel expliciet te zeggen. Als je alleen maar de verwijzing maakt naar de situatie in Midden- en Oost-Europa, naar het voormalige Joegoslavië, naar de situatie die zo prachtig door Kaplan is beschreven in zijn "Balkan Ghosts", waar al die verschillende etniciteiten in de verschillende gebieden voortdurend met elkaar in conflict zijn, dan zou je in hun richting kunnen zeggen: kijk eens wat wij in ieder geval hier in Nederland proberen! Wij hebben niet alleen een provincie met inwoners, maar wij hebben meerdere minderheidsgroepen in ons land. Wij komen voor hen op, wij wijzen ze op hun plichten en dat is de manier waarop wij dit kaderverdrag zouden willen interpreteren.)

²⁷ See D66 and GroenLinks especially; HTK 1999/2000, No. 56: 3970 and 3971 respectively (Groenlinks is represented by Oedayraj Singh Varma).

Both hail from the left of the political spectrum: the social democrat PvdA and the progressive 'GreenLeft' party GroenLinks. That being said, the PvdA especially does not seem to regard the convention as a particularly urgent matter. In answer to another parliamentarian's criticism that the convention merely has 'symbolic value', the PvdA replies that 'nothing's wrong with a pretty symbol.'²⁸ Also, reflecting that if 80% of an urban neighborhood were to be Turkish, it might be a good idea were the elementary schools in that neighborhood to offer the lower grades education in Turkish, the PvdA refrains from pursuing the point further as 'this is not currently an issue'.²⁹ The PvdA does however see ratification of the convention as an opportunity to define more clearly which elements of minority cultures are and which elements are not compatible with the Dutch legal order, and calls on the Government to install a committee to study the matter. Significantly, the purport of this exercise is not only to discover that which is incompatible; as the party states, there may be 'elements that are regarded as essential to a culture' that are not protected by Dutch law, but possibly should be, implying that the Government has a positive role to play in ensuring that they are.³⁰

GroenLinks, on the other hand, explicitly welcomes the convention for the role it can play in combating assimilation, especially in light of the 'discussion that has recently been rekindled about integration and assimilation', a reference to the public debate instigated a few months earlier by Scheffer's newspaper article *The multicultural drama*.³¹ The party calls attention to a number of articles of the convention, repeatedly asking of the Government how it proposes to implement each article with regard to minorities in the Netherlands. GroenLinks is 'especially pleased' with art. 5, which obligates parties to promote 'the maintenance and development of identities of members of minorities' and to 'prevent assimilation', and emphasizes that it will 'strongly resist proposals for assimilation'.³² Thus the party projects and endorses an image of the Netherlands as a society consisting of a plurality of moral communities and welcomes the convention for its stipulation of the procedural morality facilitating their interaction. As such, support for central tenets of framework liberalism is implicit in GroenLinks' position in this debate.

²⁸ HTK 1999/2000, No. 56: 3967. In answer to the CDA; see HTK 1999/2000, No. 56: 3966. The PvdA is represented by Gortzak.

²⁹ HTK 1999/2000, No. 56: 3967.

³⁰ HTK 1999/2000, No. 56: 3967.

³¹ HTK 1999/2000, No. 56: 3971.

³² HTK 1999/2000, No. 56: 3971.

In response to the PvdA and GroenLinks especially the minister explicitly addresses the Government's view of the relative merits of integration and assimilation:

'Questions have been raised concerning the link with integration policy in the Netherlands. [...] This includes questions about whether or not to assimilate or integrate. Why don't I spell it out in black and white for a change: I believe that every minority in the Netherlands should assimilate where the basic rights are concerned that have been given the force of law. This is nonnegotiable. I cannot formulate this any clearer. But after that a door falls open, where many interpretations come into play, where issues and value patterns come in contact with each other which are not obstructed *expressis verbis* by law.'³³

In reaction to the PvdA's request to investigate what is tolerable and what intolerable under Dutch law, and GroenLinks' worry about the assimilation of members of minorities in the Netherlands, the minister concurs that these issues should be addressed. According to the minister, it is necessary to

'propagate what is nonnegotiable, where there is room to maneuver, where misunderstandings must be cleared out of the way, where lack of understanding of the Islam must be explained and where comparisons should be made to the way in which we, in the traditional *autochthon* society, handle a diversity of expressions and beliefs, what freedom that offers and what problems it entails.'³⁴

³³ 'Er is geïnformeerd naar de link met het integratiebeleid in Nederland. [...] Daarbij gaat het om vragen over het wel of niet assimileren of integreren. Laat ik het eens heel zwart-wit formuleren: ik vind dat iedere minderheid in Nederland moet assimileren als het gaat om de grondrechten die wij in wet- en regelgeving hebben vastgelegd. Dat is ononderhandelbaar. Ik kan het niet duidelijker formuleren. Maar daarna valt er een luik open, waar heel veel interpretaties opgeld gaan doen, waar zaken elkaar raken en waar waardepatronen elkaar raken die niet *expressis verbis* door wetgeving worden gehinderd'; HTK 1999/2000, No. 56: 3976.

³⁴ 'uitdragen wat ononderhandelbaar is, waar ruimtes liggen, waar misverstanden moeten worden opgeruimd, waar onbegrip over de islam moet worden verklaard en waar er een vergelijking moet worden gemaakt met de manier waarop wij in de traditioneel autochtone samenleving omgaan met een bandbreedte in uitingen en geloven, welke vrijheden dat biedt en welke problemen het met zich brengt'; HTK 1999/2000, No. 56: 3977.

The minister as yet offers no definite answers to these questions; this subject matter, he promises parliament, will be addressed in a future memorandum. When pressed by the SGP to answer whether or not the convention entails a departure from standing policy in so far as it consciously emphasizes, more than in the recent past, the ability to maintain and further develop cultural minority identities, the minister evades the question, claiming that it is too far-ranging, and repeating that the convention is compatible with existent law.³⁵ Put on the spot, then, the minister is wary to acknowledge that the bill may imply, in the terms of this thesis, a framework liberal interpretation of Dutch society. What is clear from his answers is that he at least regards the Netherlands as being committed to pluralism, though within clearly defined limits. His reference to how Dutch society traditionally handles ‘a diversity of expressions and beliefs’ is not very helpful, however, as that is precisely the question at issue. Does it do this on the basis of a procedural morality, premised on the continuing presence of a diversity of distinct moral communities in society, or on the basis of a shared (partial) comprehensive doctrine premised on the value of individual liberty?

GroenLinks, then, is the only party in the Second Chamber to welcome the convention as a bulwark against assimilationist pressures in the Netherlands. Most parties, including the PvdA, seem convinced that the ability of members of minorities in the Netherlands to develop and maintain their own identity is not especially compromised, and that this is not likely to change in the foreseeable future. Most parties in the Second Chamber therefore support the convention’s aim of maintaining minority cultures, but without considering the domestic consequences of that support in the Netherlands. This insouciance with regard to minority issues is reflected most directly in the casual treatment of what should, arguably, be the debate’s most central question, namely ‘what is a national minority?’.

What is a national minority?

During the debate the minister emphasizes that the convention’s primary purpose is to impress upon the countries of Central and Eastern Europe how they ought to treat national minorities. The broad definition of ‘national minorities’, therefore, should be seen in light of this cautionary

³⁵ HTK 1999/2000, No. 56: 3978.

function of the convention.³⁶ The majority of parties, it was shown above, take the same view of the convention, or at least endorse the Cabinet's broad definition of 'national minorities'.³⁷ The exceptions are the conservative orthodox Protestant parties GPV and the SGP. Two coalition members also, the conservative liberal VVD and progressive liberal D66, acknowledge certain tensions inherent in the broad definition. Ultimately, however, only the SGP takes these concerns as a reason to vote against the ratification bill.

The VVD questions whether the convention has anything to add to the existing legal protection of individual members of minorities, and is concerned that it may hamper integration policy.³⁸ More fundamentally, the VVD asks whether it would not be better to discard talk of 'minorities' altogether:

'Why do we still use the term 'minorities'? I know many minorities. [...] But aren't we discussing living in Dutch society, which comes with certain rights but also with certain duties? And those apply to all.'³⁹

The VVD, however, seems to regard this criticism more as an academic point than one with any direct consequences for its own stance regarding the treaty; the remark falls outside the scope of the convention, though the party would 'actually like to pursue the question further sometime.'⁴⁰

D66 similarly acknowledges certain principled shortcomings of the convention without regarding these as in any way practically debilitating. Even though the party recognizes that there may exist a tension between the convention on the one hand, 'with its emphasis on the rights of minorities,' and integration policy on the other, 'which attempts, in certain regard, to put less emphasis on distinct identities than happened in the

³⁶ HTK 1999/2000, No. 56: 3974.

³⁷ HTK 1999/2000, No. 56: 3966 (CDA); HTK 1999/2000, No. 56: 3967 (PvdA); HTK 1999/2000, No. 56: 3970 (D66); HTK 1999/2000, No. 56: 3971 (GroenLinks). For the VVD's position (which is ultimately supportive also) see below.

³⁸ 'Voegt dit verdrag iets toe aan het huidige beleid of zou het misschien zelfs een remmende werking kunnen hebben op het uitgezette beleid voor de integratie?'; HTK 1999/2000, No. 56: 3973.

³⁹ 'Waarom spreken wij nog over minderheden? Ik ken veel minderheden. [...] Maar het gaat toch om het leven in de Nederlandse samenleving, waaraan bepaalde rechten maar ook bepaalde plichten verbonden zijn? En die gelden voor allen'; HTK 1999/2000, No. 56: 3973.

⁴⁰ 'Het voert te ver voor dit kaderverdrag, maar ik zou eigenlijk graag eens dieper op die vraag willen ingaan.' HTK 1999/2000, No. 56: 3973.

past', the party does not regard this as problematic.⁴¹ Despite having taken notice also of the Council of State's advice concerning the approval bill, which states unequivocally that tension and conflict are to be expected when according minorities a principled right to their distinct identity on the one hand and pursuing a policy of integration on the other, D66 welcomes the Government's broad definition of 'national minorities', even if this means that the target groups of integration policy will not receive the convention's full protection.⁴²

In contrast to the VVD and D66 the orthodox Protestant parties GPV and SGP do pursue the point further. According to these parties the differences between national and ethnic minorities respectively are too great to bring both under the ambit of the same convention, both as a matter of definition – difficult enough in itself – and as regards their respective needs. Whereas integration policy concerning ethnic minorities is geared towards integration of members of minorities in society, the question of national minorities generally does not concern integration, but co-existence between the majority and a minority.⁴³ According to the SGP, the purport of the convention is

‘to make the national minorities that have inhabited a distinct country for generations and that are evidently distinct in culture and language from the majority the object of governmental protection, precisely because in some situations these minorities are suppressed or discriminated against.’⁴⁴

The SGP, then, recognizes the convention as a codification of a procedural morality protecting minority groups from each other and the majority. The party goes on to question the compatibility of such an implicitly liberal framework with the policy goal of minority integration. How can a convention so conceived function as ‘a kind of normative “underpinning” of the integration policy concerning ethnic minorities’, the party asks.⁴⁵ In

⁴¹ *‘enerzijds dit verdrag, met zijn nadruk op de rechten van minderheden, en anderzijds het integratiebeleid dat op bepaalde aspecten nu juist de vroegere nadruk op eigenheid probeert te relativieren’*; (HTK 1999/2000, No. 56: 3970)

⁴² HTK 1999/2000, No. 56: 3970.

⁴³ See HTK 1999/2000, No. 56: 3969.

⁴⁴ *‘om de nationale minderheden die sinds generaties in een bepaald land wonen en zich in cultuur en taal duidelijk van de meerderheid onderscheiden, tot voorwerp van bescherming van overheidswege te maken, juist omdat in sommige situaties die minderheden onderdrukt of gediscrimineerd werden of worden’*; HTK 1999/2000, No. 56: 3972.

⁴⁵ *‘een soort extra normatieve “underpinning” aan het integratiebeleid etnische minderheden’* (HTK 1999/2000, No. 56: 3972); see also HTK 1999/2000, No. 56: 3973.

answer to the Government's argument that the convention will serve to set a high standard for the protection of the identity of minorities during the process of their integration in Dutch society, the SGP points out that this would imply that their identity is not sufficiently protected by the Constitution and treaties to which the Netherlands is party to begin with.⁴⁶

The difficulty implicitly pointed out by these parties is that while the convention can best be interpreted as promoting the acceptance of a procedural morality protecting minorities, as groups, against other minorities and the majority, this is not necessarily, and probably not, the goal of integration policy. For that to be the goal of integration policy, there must at least be evidence of the existence of such a procedural morality in the Netherlands. This evidence is not readily available in the debate. Though there is repeated mention of the liberty to hold a diversity of beliefs, it is as of yet unclear whether that liberty is premised on a procedural morality akin to that of framework liberalism, or, for example, on a positive estimation of liberty which is grounded in a (partial) comprehensive doctrine, as in liberal culturalism.

The SGP and GPV, then, are more sensitive than other parties of the tensions that can result from the application of the convention, understood as a procedural morality, to a society ill-suited to that application. This also shows in their concern that the convention will be interpreted as laying down collective rights for national minorities.⁴⁷

Pointing out the close relationship between collective rights and the self-determination of minorities, the GPV warns that to do so is, 'especially in Central and Eastern Europe, political dynamite.'⁴⁸ Rather than granting collective rights to minorities, the party argues that the 'first task where human rights are concerned is and remains protecting these rights equally for all citizens.'⁴⁹ The SGP similarly asks the Government to elaborate on the relationship between individual and collective rights in the convention, implying that it doubts that this distinction is as clear-cut as the Government maintains, and that this should be regarded as worrisome.⁵⁰ The party also worries that the non-'traditional minorities',

⁴⁶ HTK 1999/2000, No. 56: 3972.

⁴⁷ The only other party mentioning collective rights is the VVD; see HTK 1999/2000, No. 56: 3973.

⁴⁸ 'Dat is, zeker in Midden- en Oost Europa, politiek dynamiet.' HTK 1999/2000, No. 56: 3968.

⁴⁹ 'De eerste taak op het gebied van de rechten van de mens is en blijft het waarborgen van deze rechten voor alle burgers op gelijke voet.' HTK 1999/2000, No. 56: 3968.

⁵⁰ HTK 1999/2000, No. 56: 3972.

i.e. the target groups of integration policy, will be able to derive 'new or additional rights' from the convention, especially with regard to religion.⁵¹ In that same vein, the GPV asks the Government to confirm that if,

'as we could read in the newspaper last week, three Islamic organizations in our country were to request that the Islamic Feast of Sacrifice were to be made an officially recognized holiday, than this request by these minorities could not be supported by calling upon the rights contained in this convention'.⁵²

What criticism there is, then, with regard to the broad interpretation of the term 'national minorities' favored by the Government, has bearing on the (in)compatibility of pursuing the integration of members of minorities while recognizing and protecting their distinct, moral community identity at the same time. The conservative liberal VVD, while allowing that the convention may serve a purpose for the Frisians, thinks it redundant against the background of existing individual liberties and tolerance in the Netherlands.⁵³ (This tolerance, by the way, according to the VVD is illustrated by the 'fact that the extreme right meets with hardly any success in the Netherlands'.⁵⁴) Given this freedom and tolerance, policy should be geared to removing those barriers to participation that still exist. Protecting minority identities, the VVD implies, is not helpful to that aim.⁵⁵ The VVD, then, seems to endorse a policy of indifference with regard to cultural identity, be it that of the majority or a minority. The two orthodox Protestant parties, on the other hand, while also critical of the Government's broad definition of 'national minority', are so less because they are of the opinion that the Government should be indifferent to cultural matters, than because they do not wish to give minorities, except for the Frisians, any cultural rights vis-à-vis the majority culture, especially in light of possible societal conflicts such rights may engender.

⁵¹ 'Kunnen er misschien nieuwe of aanvullende rechten aan dit kaderverdrag worden ontleend?' HTK 1999/2000, No. 56: 3973.

⁵² 'Als, zoals we vorige week in de krant konden lezen, in ons land een drietal islamitische organisaties vraagt om van het islamitisch offerfeest een officieel erkende feestdag te maken, dan kan dat verzoek van deze minderheden niet worden gesteund met een beroep op rechten ontleend aan dit verdrag,' HTK 1999/2000, No. 56: 3968.

⁵³ HTK 1999/2000, No. 56: 3973.

⁵⁴ 'Het gegeven dat extreem rechts in Nederland nagenoeg geen voet aan de grond krijgt, laat dat eveneens zien.' HTK 1999/2000, No. 56: 3973.

⁵⁵ HTK 1999/2000, No. 56: 3973.

The GPV's motion: the convention should apply only to the Frisians

The second term of the debate is used especially by the orthodox Protestant parties GPV and SGP, who reiterate their concern about the broad definition of 'national minorities' endorsed by the Cabinet.⁵⁶ The GPV repeats that the application of the convention in the Netherlands should be restricted to the Frisians. To that end, the party submits a motion explicating that ethnic minorities do not share in the characteristics necessary to be considered a national minority ('being situated in a distinct territory and having and wishing to maintain a distinct and long-established national identity') and that the treaty should therefore be applied exclusively to the Frisians.⁵⁷

When both motion and approval bill are put to the vote, the motion fails to garner majority support, however; only the CDA, the GPV, the SGP, and the RPF (another orthodox Protestant party) vote in favor.⁵⁸ That notwithstanding, all parties bar one vote in favor of adopting the cabinet's approval bill for the convention. The exception is not the GPV, as might be expected considering the motion submitted by that party, but the SGP, which party maintains that the broad definition of 'national minorities' is not beneficial to the protection of the traditional national minorities which were its original concern and that the implications of the convention for Dutch integration policy are insufficiently clear.⁵⁹

Summarizing the debate in the Second Chamber, it can be said that the Second Chamber as a whole, with the possible exception of GroenLinks and the orthodox Protestant parties, is not overly concerned about minority issues in the Netherlands. This is exemplified especially by the casual treatment of the possible consequences of the application of the convention to the target categories of integration policy in the debate. It seems that, for most parties, setting a good example abroad weighs heavier than assessing the convention's impact at home. There are two exceptions, however, corresponding to two divisions running through the Second Chamber. The first separates the PvdA and especially GroenLinks

⁵⁶ See HTK 1999/2000, No. 56: 3979-3981. CDA and GroenLinks also make use of the second term; CDA to remind the minister of the questions posed by the CDA in the first term that the minister failed to respond to, GroenLinks to emphasize their disagreement with the GPV's restrictive interpretation of 'national minorities'.

⁵⁷ *'zich op een bepaald grondgebied bevinden en vanouds een eigen nationale identiteit hebben en willen handhaven'*; HTK 1999/2000, No. 56: 3980. See also Kamerstukken II, 26389, nr. 6.

⁵⁸ Kamerstukken II, 26389, nr. 6.

⁵⁹ HTK 1999/2000, No. 56: 3980.

from the rest of the Chamber; the second concerns the position taken by the two orthodox Protestant parties with regard to the rest of the Chamber.

First, the PvdA, and especially GroenLinks, both stand apart from the rest of the Second Chamber with regard to the government's allotted role in protecting minority identities. Whereas most parties in the Second Chamber regard the existing regime in the Netherlands as sufficient for the protection and maintenance of minority identities, the PvdA and GroenLinks suggest that the state may have to take a more activist stance in order to protect minorities against assimilation (if they wish to be so protected). That being said all parties, including GroenLinks and the PvdA, agree that there are basic rights to which all members of society must conform, and that distinct cultural identities can only be enjoyed in so far as they do not conflict with those rights.

The second division separates the orthodox Protestant parties from the rest of the Second Chamber. This division concerns the broad definition of 'national minorities' proposed by the government. According to the GPV and SGP, the convention and the protection it entails should be restricted to the Frisians; the target groups of integration policy should not fall within the convention's scope. The other parties do not see the broad definition as particularly problematic. That most parties do not see the broad definition of 'national minorities' as problematic serves as a warning not to draw any strong conclusions from this particular debate in the Second Chamber. As pointed out above, for most parties minority issues as of yet lack the urgency necessary for them to clearly define their position on the matter. Even the GPV, which party argues unambiguously against the broad definition of 'national minorities', ultimately votes in favor of the bill. For most parties international considerations weigh more heavily than national considerations with regard to the convention. The exceptions are the SGP and GroenLinks. The SGP is the only party to vote against the bill as a consequence of reservations concerning its compatibility with Dutch integration policy, which policy the party implicitly supports. GroenLinks, conversely, is the only party to explicitly support the bill from the conviction that the government should actively support the development and maintenance of minority identities, thus harking back to the minorities policy of the 1980s, the policy retrospectively labeled as multiculturalist. GroenLinks' position seems to imply a rejection of the Dutch integration policy, though the party does not make this explicit.

In 2000, then, GroenLinks is the only party to explicitly voice its commitment to the organization of liberal society along framework liberal lines, while the PvdA makes it clear that it also would not be unsympathetic to such a society. Given the lack of urgency characterizing this particular debate, however, any further conclusions with regard to parties' understanding of the place of minority moral communities in liberal society are unwarranted.

Debating the Framework Convention in the First Chamber: the first term

After adoption by the Second Chamber it took more than a year for the draft approval law to be debated in the First Chamber of Dutch Parliament. One of the reasons accounting for this delay was the extensive written proceedings preceding the oral proceedings. The written proceedings are a first indication that a number of representatives in the First Chamber were more critical of the approval bill than their counterparts in the Second had been.⁶⁰ This was manifest in the oral proceedings also, which culminated in the minister's request, in light of the bill's likely defeat in the First Chamber, to suspend the proceedings until further notice. In what follows the similarities and dissimilarities between party-positions in the First and Second Chamber respectively will be addressed.

CDA

Though the position of most parties in the First Chamber is similar to their party's position in the Second, this is not the case for the Christian Democrats (CDA). In the Second Chamber the CDA had argued that 'the convention can entail a stimulus, or, in the words of the government, a useful legal support in developing and executing integration policy'.⁶¹ In the First Chamber, however, the CDA claims that the contradiction inherent in the Dutch interpretation of the convention as 'an integration instrument

⁶⁰ See the Reply Memorandum (*Memorie van Antwoord*), Kamerstukken I, 26389, nr. 60; the report of the standing committee for the interior and the high councils of state (*Nader voorlopig verslag van de vaste commissie voor binnenlandse zaken en hoge colleges van staat*), Kamerstukken I, 26389, nr. 60a; and the Further Reply Memorandum (*Nadere Memorie van Antwoord*), Kamerstukken I, 26389, nr. 60b.

⁶¹ 'Het kaderverdrag kan een stimulans betekenen of, zoals de regering het formuleert, een nuttige juridische steun in de rug zijn bij het ontwikkelen en uitvoeren van het integratiebeleid'; HTK 1999/2000, No. 56: 3967.

supplementing Dutch integration policy' is a 'more fundamental' reason to object to the approval law.⁶² According to the CDA, the convention

'lays a line of defense around groups that historically stand in a more or less strained relation to the government, and provides their members, and their children and their children's children, with claims against that government.'⁶³

Integration policy, however, is of a different nature, for it is 'geared precisely at clearing out of the way as fast as possible, if possible within one generation, a number of obstacles [to integration].'⁶⁴ The CDA thus recognizes that respecting the inherently framework liberal procedural morality laid down in the convention cannot be squared with the object of integration policy.

The CDA also points out the oddity of insisting that the protection of minority groups is important enough to bring them under the ambit of the treaty, while making whether or not they remain under that protection dependent on a ministerial decision: 'An attempt is made to immunize the position of national minorities by laying down an extra lock in the convention, and subsequently the key is handed over to the minister.'⁶⁵ As a consequence, a 'national minority' can cease to exist as such if, in the words of the Government's reply memorandum (as cited by the CDA)

'the members [of the minority] are regarded as self-supporting and unhampered free members of our society and as enjoying all associated rights, including cultural and linguistic rights. Under those circumstances extra protection, as envisaged by the convention, is no longer necessary.'⁶⁶

⁶² 'veel wezenlijker bezwaar, namelijk de uitleg van het verdrag door Nederland, dat in het verdrag een integratie-instrument ziet ter aanvulling van het Nederlands integratiebeleid.' HEK 2000/01, No. 31: 1390 (Dölle).

⁶³ 'Het verdrag legt een verdedigingslinie rond groepen die historisch in een min of meer gespannen verhouding staan tot de overheid, en verschafft de leden daarvan, hun kinderen en hun kinds kinderen aanspraken tegenover die overheid'; HEK 2000/01, No. 31: 1390.

⁶⁴ 'er juist op gericht om zo snel mogelijk, als het kan binnen een generatie, een aantal hindernissen op te ruimen.' HEK 2000/01, No. 31: 1390.

⁶⁵ 'Er wordt gepoogd om de positie van nationale minderheden te immuniseren door een extra slot in het verdrag op te nemen en vervolgens wordt de sleutel aan de minister gegeven'; HEK 2000/01, No. 31: 1391. As similar point was made in the Second Chamber by the SGP; see HTK 1999/2000, No. 56: 3972.

⁶⁶ 'dat de leden ervan geacht worden op eigen kracht en zonder enige hindernis te handelen als vrije burgers van onze samenleving en alle, ook de culturele en linguïstische rechten te genieten die daaraan verbonden zijn. In die situatie is een bijzondere bescherming als door

But what, on this account, should be made of the Frisians, asks the CDA. Why is their protection a continued necessity, even if they are clearly free and self-supporting members of Dutch society?⁶⁷

Other relevant issues raised by the CDA include the question whether members of minority groups desire the status of minority as conferred on them by the convention, and whether enhancing the status of minorities is desirable in light of existing academic debate which increasingly emphasizes that ethnic groups should be accorded legal personality and should be regarded as subjects of international law.⁶⁸

In the First Chamber the CDA, then, is much more sensitive to the problematic nature of protecting minority identities as *collective* identities. As far as the Frisians are concerned the CDA seems to regard the convention as redundant – presumably because the Frisians do not ‘historically stand in a more or less strained relation to the government’. As regards the new minorities the party favors integration, which the party seems to understand as a process by which members of these minorities become ‘self-supporting and unhampered free members of our society’ – who as such have all the rights necessary to enjoy their own culture already.

VVD

The VVD, like the CDA, believe that the Dutch constitution already offers the requisite protection of the cultural identity of all members of society, including members of minorities.⁶⁹ Given that the Netherlands is also party to the European Convention on Human Rights and the International Covenant on Civil and Political Rights the party questions what the convention has to add to the existing regime.⁷⁰ Not only that, but given the broad interpretation of national minorities favored by the government, the VVD fears that all manner of minority groups will

‘feel the desire, now the convention and the Dutch interpretation accommodate it so royally, to emphasize their own identity and to

het Kaderverdrag beoogd, niet meer vereist; HEK 2000/01, No. 31: 1391. See for the cited passage Kamerstukken I, 26389, nr. 60b: 7.

⁶⁷ HEK 2000/01, No. 31: 1391.

⁶⁸ HEK 2000/01, No. 31: 1391.

⁶⁹ HEK 2000/01, No. 31: 1393 (represented by Rensema).

⁷⁰ HEK 2000/01, No. 31: 1393.

develop it. Their language and culture will have to be stimulated.⁷¹

‘To stimulate’, argues the VVD, goes quite a bit further than ‘to respect’.⁷²

‘This is an essential point. There is no reason whatsoever to blame members of minorities for wanting to emphasize their own identity, but this in no way stands in the way of questioning whether a country with so many ‘national minorities’ [as the Netherlands] can form a good society.’⁷³

In the terms of this thesis, the party is thus raising the question of the feasibility of organizing Dutch liberal society along framework liberal lines. It immediately goes on to answer this question in the negative: the government’s professed belief that accommodating distinct identities and pursuing integration are mutually reinforcing is put down to ‘wishful thinking’.⁷⁴

‘It is, after all, to be expected that there will be a number of groups that will seek their strength in partial isolation. This can be a romantic notion that isn’t merely attractive but also dangerous.’⁷⁵

Finally, the party fears that applying the convention will fall foul of the principle of legal equality. How can it be explained that ‘a Frisian in Leeuwarden [(the capital of Fryslan)], who speaks outstanding Dutch, has the right to use his own language in education, in government, court, etc., and a Turk in Rotterdam does not’?⁷⁶

For these reasons the VVD, like the CDA, is highly critical of the bill. Interestingly, while the VVD in the Second Chamber emphasized that the

⁷¹ ‘Al deze groepen en groepjes zullen de behoefte hebben, nu het verdrag en de Nederlandse interpretatie hen die zo royaal biedt, om hun eigen identiteit te benadrukken en te ontwikkelen. Hun taal en cultuur zal bevorderd moeten worden’; HEK 2000/01, No. 31: 1394.

⁷² HEK 2000/01, No. 31: 1394.

⁷³ ‘Dat is een wezenlijk punt. Dat de personen die behoren tot een minderheid hun eigen identiteit willen vooropstellen is hen ook geenszins kwalijk te nemen, maar het is wel de vraag of een land met zo vele “nationale minderheden” een goede samenleving kan vormen.’; HEK 2000/01, No. 31: 1394.

⁷⁴ HEK 2000/01, No. 31: 1394.

⁷⁵ ‘Het is immers waarschijnlijk dat er verschillende groepen zullen zijn die in een eventueel gedeeltelijk isolement hun kracht zullen willen zoeken. Hierin kan een romantiek schuilen die niet alleen aantrekkelijk maar ook gevaarlijk is’; HEK 2000/01, No. 31: 1394.

⁷⁶ ‘Het zou mij grote moeite kosten, uit te leggen dat een Fries in Leeuwarden die voortreffelijk Nederlands spreekt, recht heeft op zijn eigen taal in onderwijs, bestuur, rechtspraak etc. en een Turk in Rotterdam niet’; HEK 2000/01, No. 31: 1396.

convention was redundant given the individual liberty of all inhabitants of the Netherlands to develop and pursue their own identity, in the First Chamber the party does not regard the convention as merely redundant, but as a possible threat to society. Reinforcing, by way of the convention, the position of minority groups is a threat to the maintenance of society itself, the party implies, implicitly rejecting framework liberalism as a blueprint for Dutch society as it does so.

SGP & ChristenUnie

The orthodox Protestant party SGP, representing in this debate the ChristenUnie as well (a new party dating from January 31, 2000, in which the abovementioned GPV is fused with a second, smaller orthodox Protestant party, the RPF) takes a stance similar to that of SGP and GPV in the Second Chamber, though, as with the CDA and VVD's respective contributions, the critique is somewhat more explicit and geared more to legal issues than that in the Second Chamber. For example, the SGP expresses its concern over the more robust legal base provided by the convention for positive action, above and beyond that which is necessary to combat discrimination.⁷⁷ Also, the party worries that the convention may acquire a significance in the national domain that is not foreseen at present; it is, after all, a human rights treaty, and these are prone to dynamic interpretation.⁷⁸

With regard to the compatibility of integration policy and the protection of national minorities, the SGP expresses doubts concerning the Cabinet's claim that integration and respect for distinct identities are mutually reinforcing rather than mutually exclusive.⁷⁹ Moreover, the party rejects the government's contention

‘that integration policy should be directed both to minority groups and the *autochtonous* part of society “in order to bring about, by mutual adjustment, a balanced plural society” [...].’⁸⁰

⁷⁷ HEK 2000/01, No. 31: 1397 (represented by Holdijk).

⁷⁸ HEK 2000/01, No. 31: 1397.

⁷⁹ HEK 2000/01, No. 31: 1397.

⁸⁰ ‘*dat integratie van minderheden en het respect voor eigenheid elkaar eerder versterken dan uitsluiten, kunnen wij nog steeds niet goed uit de voeten. Voor het uitgangspunt dat integratiebeleid zowel op de minderheidsgroepen als op het autochtone deel van de samenleving gericht moet zijn “om met wederzijdse aanpassing een evenwichtige plurale samenleving tot stand te brengen” [...] geldt hetzelfde*’; HEK 2000/01, No. 31: 1397, referring to the Cabinet's Reply Memorandum (Kamerstukken I, 26389, nr. 60: 9).

The implication is that the SGP, and therefore the ChristenUnie also, either regards the necessary adjustment as falling on the members of minority groups one-sidedly, or that the goal of integration policy should not be 'a balanced plural society', or both. In any case the party explicitly rejects any policies geared to bolstering the collective identity of 'persons or groups having settled in a country during the course of the twentieth century.'⁸¹

The SGP and the ChristenUnie, then, like the VVD hint that integration involves shedding particular group identities to the degree necessary for membership of the new society. Being a member of society and having a distinct identity do not necessarily go together naturally. Given that both the SGP and the ChristenUnie represent small segments of Dutch society which are quite distinct as a consequence of their religious identity, the party should not be taken to understand integration as adaptation to the majority identity, however. It remains to be seen, then, in what respect members of society, according to these parties, must be integrated, and to what extent they can pursue their own distinct identity.

D66

D66 expresses sympathy for the worry, expressed by the three previous parties, that despite the government's avowal that the convention will not have direct effect it will ultimately be invoked by individuals in court: 'It should not be possible for newcomers to dodge civic-integration duties. It should be impossible to act contrary to Dutch law by invoking one's culture or religion.'⁸² D66 chooses, however, to take the government on its word, though it does ask the minister to confirm that the treaty creates 'no new duties for the Dutch government within the Dutch legal order.'⁸³ (In an aside, considering the difficulty of finding an adequate definition for 'a significant minority', D66 suggests the following working definition: 'a minority becomes significant when it starts having problems concerning its acceptance by the majority.'⁸⁴)

⁸¹ 'personen of groepen die zich in de loop van de 20ste eeuw in een land hebben gevestigd.' HEK 2000/01, No. 31: 1398.

⁸² 'Nieuwkomers moeten zich niet aan inburgerings-verplichtingen kunnen onttrekken. Men moet zich niet, met een beroep op de eigen cultuur of religie, in strijd met de Nederlandse wet kunnen gedragen'; HEK 2000/01, No. 31: 1398 (represented by Terlouw).

⁸³ 'Ik neem aan dat er binnen de Nederlandse rechtsorde door het verdrag geen nieuwe verplichtingen voor de Nederlandse overheid worden geschapen. Kan de minister dit nogmaals bevestigen?'; HEK 2000/01, No. 31: 1398.

⁸⁴ 'Misschien is het wel een bruikbare definitie: een minderheid wordt substantieel als zij problemen krijgt met acceptatie door de meerderheid' HEK 2000/01, No. 31: 1398.

D66, then, takes a stance very close to its counterpart in the Second Chamber: cultural and religious experience should be protected, but do not provide title for the exemption of individuals from the Dutch law. The convention, in short, should add nothing to the protection of individual liberty already existent in the Netherlands.

PvdA

The PvdA expresses its regret that the Cabinet's broad interpretation of minorities is not received with more enthusiasm in the First Chamber.⁸⁵ At the same time the PvdA concedes that formal ratification of the convention, even under the broad interpretation (which it endorses), will have hardly any material consequences for the Netherlands.⁸⁶ Freedom of religion and 'other forms of cultural experience' are largely secured by the basic rights of the Dutch constitution, according to the party.⁸⁷ Indeed, for the Netherlands the convention contains 'nothing new under the sun'.⁸⁸ Nevertheless, it would constitute 'an international embarrassment of the first order' if the Netherlands were not prepared to take the measures that it demands of other European countries in the context of the convention.⁸⁹

The PvdA welcomes the convention especially in light of the role it can play in combatting assimilation. That is why it endorses the broad interpretation of the government:

'We believe such a broader definition does justice to the intentions of the convention, that wishes to further the integration of minorities without exacting assimilation. It cannot have been intended to set this treaty-mechanism in motion at the European level, while excluding the largest minority groups, for example the Muslims, from consideration, with which the Netherlands would fall back to the level of Austria.'⁹⁰

⁸⁵ HEK 2000/01, No. 31: 1401 (represented by Van Thijn).

⁸⁶ HEK 2000/01, No. 31: 1400.

⁸⁷ *'andere vormen van culturele beleving'*; HEK 2000/01, No. 31: 1400.

⁸⁸ *'niets nieuws onder de zon'*; HEK 2000/01, No. 31: 1400.

⁸⁹ *'dat het ons internationaal een blamage van de eerste orde zou opleveren'*; HEK 2000/01, No. 31: 1400.

⁹⁰ Referring to the recent formation of a coalition government with Jörg Haider's far-right party FPÖ in Austria. *'Het kan niet de bedoeling zijn dat in Europees verband deze verdragsmachinerie in werking wordt gezet, terwijl de grootste minderheidsgroepen, bijvoorbeeld de moslims, buiten beschouwing worden gelaten, waarmee Nederland zou terugvallen tot het niveau van Oostenrijk'*; HEK 2000/01, No. 31: 1401.

The PvdA does not condemn voluntary assimilation, however: every individual has the choice to what extent he or she wishes to adopt to Dutch society.⁹¹ That being said, the PvdA wishes to emphasize the existence of a number of ‘shared, fundamental values,’ which ‘cut right through all the cultural diversity’;

‘minima moralia, that flow from international treaties and the Dutch legal order, the Constitution in the lead, that deserve general recognition and respect and belong to our shared heritage.’⁹²

According to the PvdA cultural diversity ‘demands a shared defense of shared fundamental values and norms.’⁹³ The Netherlands has a reputation to live up to in this field, and the party expects the minister to ensure that the Netherlands does so by ratifying the convention.⁹⁴

The PvdA’s statements can be interpreted in two ways. One, tending towards framework liberalism, is that cultural diversity cannot exist without a shared commitment to a procedural morality governing the interaction between different moral communities. The *moralia* mentioned by the party, in that case, would be referring to such a procedural morality. The other interpretation, which tends more towards liberal culturalism, is that the scope of permissible cultural diversity in the Netherlands is determined by the acceptance, by the members of different moral communities, as a part of their comprehensive doctrines, of certain crucial values, such as the equality between the sexes, or the right to apostasy. Which interpretation is implied by the party depends in large part on its understanding of society and the place of minorities therein. Does it understand society as a collection of groups, or as a collection of individuals? Does ‘cultural diversity’ consist in a plurality of cultural groups living side by side, or in a plurality of individuals from different cultural backgrounds, managing their individual cultural identities as they individually please, together

⁹¹ HEK 2000/01, No. 31: 1401.

⁹² *‘dat er in de Nederlandse samenwerking, dwars door alle culturele diversiteit heen, een aantal gemeenschappelijke kernwaarden gelden, minima moralia, die voortvloeien uit internationale verdragen en de Nederlandse rechtsorde, de Grondwet voorop, die algemeen erkenning en respect verdienen en tot ons gemeenschappelijk erfgoed behoren’*; HEK 2000/01, No. 31: 1401. *‘Minima moralia’* perhaps is a misnomer, as arguably what the PvdA-MP has in mind are more properly Aristotle’s *magna moralia*, with which Adorno contrasted his observations of bourgeois life under the conditions of modernity, in his 1951-book *Minima Moralia: Reflexionen aus dem beschädigten Leben* (Adorno 2003 [1951]).

⁹³ *‘vraagt ook om een gemeenschappelijke verdediging van gemeenschappelijke kern-waarden en normen’*; HEK 2000/01, No. 31: 1402.

⁹⁴ HEK 2000/01, No. 31: 1402.

with whosoever they choose? Though the PvdA does not make this explicit, the emphasis the party places on individual choice in cultural matters, and also its specific mention of Muslims as a beneficiary of the convention, lead me to suggest that the latter, liberal culturalist interpretation is implicit in the party's contribution to the debate. The mention of Muslims is telling, in this regard, as the Muslim identity in the Netherlands does not denote a particular ethnic group, but rather a large group of believers from a wide variety of backgrounds. By mentioning the Muslims separately, the PvdA suggests that its concern lies more with discrimination against Muslims and possible threats to their religious liberty, than with maintaining a distinct Muslim community, and so also that it does not conceive of the Netherlands as consisting of a diversity of separate communities, but of individuals with a diversity of beliefs, views, etc.

GroenLinks

If GroenLinks in the Second Chamber interpreted the convention as a welcome explication of the procedural morality necessary for the kind of framework liberal accommodation of minorities favored by the party, its position in the First Chamber is somewhat confusing. For while here the party is similarly in favor of a broad definition of 'national minorities', implying thereby that the procedural morality laid down in the convention should not be limited to the status and treatment of the Frisians, at the same time it maintains that the current regime of minorities protection is sufficient for the recognition and protection of minority identities in the Netherlands, going so far as to challenge other parties to raise 'concrete issues that haven't yet been regulated in current Dutch law, with the exception of voting rights.'⁹⁵

According to GroenLinks the function of the convention is twofold: to better the prospects of minorities in so far as they are disadvantaged vis-à-vis the rest of society, and to express, protect, and develop the culturally distinct identity of a minority. This latter function meets a permanent need, 'even when concerning a fully emancipated minority, such as the Frisians'.⁹⁶ GroenLinks regrets that the government sees the need to

⁹⁵ *'Ik daag u uit om in tweede termijn concrete punten te noemen die nog niet in de huidige Nederlandse wetgeving zijn geregeld, afgezien van het kiesrecht'*; HEK 2000/01, No. 31: 1404 (Platvoet).

⁹⁶ *'ook als het een volledig geëmancipeerde minderheid betreft, zoals de Friezen'*; HEK 2000/01, No. 31: 1404.

distinguish between two different categories falling under the convention, arguing that

‘new ethnic and cultural minorities manifest themselves as groups and have, as constitutive parts of society, an equal right to the protection of their distinct ethnic, cultural, and linguistic identity, and/or their particular Weltanschauung.’⁹⁷

In this light GroenLinks finds the government’s choice to include minority groups within the ambit of the convention only on the basis of their relative disadvantage questionable; in principle the identity of the Japanese, for instance, is just as deserving of protection as that of the target groups of integration policy.⁹⁸ GroenLinks, then, seems to interpret the convention especially as a means of extending official, public recognition to minority cultures in the Netherlands, even though the existing regime of minorities protection means that recognition is not in itself necessary for the maintenance of those cultures. Be this as it may, it is in any case clear that GroenLinks conceives of Dutch society as consisting, at least in part, of a diversity of separate and distinct groups, and therefore to that extent as a framework liberal society.

The minister’s response to the first term

After stressing, once again, the importance of ratifying the convention for the sake of the Netherlands’ reputation abroad, the minister, representing the ‘purple’ coalition of PvdA, VVD, and D66, uses most of his response to address the expressed concern over the compatibility of the convention with integration policy.⁹⁹ According to minister Van Boxtel (D66), Dutch integration policy, with its emphasis both on rights and duties and on maintaining cultural identities, is liable to cause tensions, that is nothing new. But that is precisely where the strength of Dutch integration policy lies, and that is the reason that the Cabinet wants to see that approach to the treatment of minorities applied in other countries as well:

⁹⁷ ‘*nieuwe etnische en culturele minderheden zich als eenheden manifesteren en als constitutionerende delen van de samenleving evenzeer recht hebben op de bescherming van hun etnische, culturele, linguïstische en/of levensbeschouwelijke eigenheid*’; HEK 2000/01, No. 31: 1404.

⁹⁸ HEK 2000/01, No. 31: 1404.

⁹⁹ HEK 2000/01, No. 31: 1405.

‘That is not inconsistent; on the contrary, it is a forceful way of showing that we take this issue seriously in a world that is not static. [...] At present, the world is permanently in flux. We want to make clear that we also want to offer people that are new to our country a place, within the context of our basic and other legal norms, which everybody must respect.’¹⁰⁰

Ratifying the convention, according to the minister, will not necessitate any adjustments to existing law and policy in the Netherlands. Its particular relevance for the Netherlands lies in creating a minimum standard, a threshold below which the Netherlands cannot fall. This will also have an effect the dialogue between states, however.¹⁰¹

The society envisioned by the minister is a society in which groups can maintain their cultural identity, as long as they respect ‘basic legal and other norms’. Note that the minister does not mention shared values. The minister also mentions the world as ‘not static’ and ‘in flux’, implying that Dutch society is changing as well. Finally, the minister describes the tension that results from the policy of accommodating minority identities as its strong point, and as setting an example for other countries. This implies that the minister accepts that accommodating minority groups involves tolerating, within the limits set by the law, what one might regard to be disagreeable. All in all, the position defended by the minister here is highly reminiscent of framework liberalism.

The minister’s position, however, is not shared by a majority in the First Chamber. At the close of his term the minister expresses doubt that the bill will carry the day. He therefore asks the First Chamber for a recess in order to ‘discuss with my colleagues how we assess [the current situation] in light of our international standing and the course taken thus far.’¹⁰² Subsequently, the debate is adjourned indefinitely in preparation for the second term.

¹⁰⁰ *‘Ik heb willen betogen dat wij juist de kracht van ons Nederlands integratiebeleid, zoals dat tot nu toe gevoerd is, invlechten in de benadering van de positie van minderheden in een land. Dat is niet inconsistent, maar juist een krachtige manier om te laten zien dat wij de zaak serieus nemen in een wereld die niet statisch is. [...] De wereld is op dit moment permanent in beweging. Wij willen duidelijk maken dat wij binnen de context van onze grondwettelijke en andere wettelijke normen, waar eenieder zich aan moet houden, ook mensen die nieuw zijn in ons land een plek willen bieden’*; HEK 2000/01, No. 31: 1406.

¹⁰¹ HEK 2000/01, No. 31: 1405.

¹⁰² *‘Ik wil goed met mijn collega’s bespreken hoe wij dit zien in het licht van onze internationale positie en de gang die wij tot nu toe zijn gegaan’*; HEK 2000/01, No. 31: 1408.

Some reflections on the first term of the debate in the First Chamber

The content of the divisions and similarities between the parties in the First Chamber is roughly the same as in the Second, even though a number of parties have shifted their position. On the whole, parties are agreed that the importance of the convention lies in its application abroad and that existing rules and regulations in the Netherlands suffice to protect the members of minorities in Dutch society against assimilation. That being said, there is more awareness in the First Chamber than in the Second that the convention legally requires member states to do more than simply protect those members against assimilation, calling for the protection and maintenance of the distinct identities of the members as it does. No parties are willing to take those extra measures where the 'new', ethnic minorities are concerned (recall that for GroenLinks the current level of minority protection in the Netherlands is adequate).

This brings us directly to the first division, that concerning the responsibility of the government to protect distinct identities, which separated GroenLinks and the PvdA from the other parties in the Second Chamber. In the First Chamber the PvdA is more concerned with issues of discrimination and involuntary assimilation than with protecting minority identities as such. GroenLinks, however, in calling on the government to expand the target groups of the convention to include what one might call, following D66's suggestion, 'non-problematic minorities', sees a role for the government in explicitly recognizing that society consists of distinct and separate cultural groups, suggesting that the maintenance of their identity is also the government's responsibility. In doing so it stands in isolation from the rest of the Chamber.

The most apparent difference between Second and First Chambers, however, concerns the second division identified earlier, which separates parties in favor from those against the broad interpretation of the convention. In the First Chamber the CDA unambiguously sides with the orthodox Protestant parties in rejecting that broad interpretation. The VVD also, though this is more in line with its position in the Second Chamber, is much more outspoken in its rejection of the treaty. For both these parties the reason to reject the treaty is that it creates too many rights for minorities as groups, while they believe that the protection of minorities as individuals is adequate in the Netherlands.

In the spring of 2001, all parties represented in the debate in the First Chamber, with the partial exception of GroenLinks, regard the existing regime in the Netherlands to be largely sufficient for the protection of minority identities. Upholding individual liberty rights, combatting discrimination, and, presumably, treating the religious and cultural groups of newcomers equitably, are regarded as adequate and sufficient to that end. While some parties point out that there are limits to the diversity society can accommodate and stress the necessity of integration policies to accommodate diversity, parties on average seem to regard current integration policies as compatible with the protection of minority identities as well. All in all parties are agreed that there is room in Dutch society for minority moral communities. Society itself, however, is not understood as consisting primarily of such communities, as in framework liberalism, but as consisting of a diversity of individuals.

Debating the Framework Convention in the First Chamber: the second term¹⁰³

The temporary adjournment of the debate in the First Chamber lasts three and a half years. In the meantime the political context changes radically. The 'purple coalition' government of the second half of the nineties, consisting of PvdA, VVD, and D66, is replaced in 2002 by two consecutive governments headed by the CDA, first in a short-lived coalition with VVD and LPF (the party founded by Pim Fortuyn), then, from May 2003, together with VVD and D66. The extra-political context undergoes changes also. In 2004 the integration debate is well under way, fueled by global events such as the terrorist attacks of September 11, 2001 and local events such as the murders of Pim Fortuyn and, barely one month before the current debate's second term, Theo van Gogh, the latter by a Moroccan-Dutch inhabitant of Amsterdam.¹⁰⁴

The new political context has given rise to a reinvigorated integration policy, which, though at the time of the debate still in the making, puts less emphasis on accommodating distinct identities, and more on establishing a common identity.¹⁰⁵ In light of this new integration policy the new Cabinet, represented in the debate by minister Verdonk (VVD), has severed

¹⁰³ The PvdA requested, and was granted, a third term; HEK 2004/05, No. 7: 346 (represented by Van Thijn).

¹⁰⁴ See *supra*, 9.

¹⁰⁵ See also, *supra*, 79.

the link between the convention and integration policy, choosing to limit the convention's scope in the Netherlands to the Frisians, in exclusion of the target groups of integration policy (as requested, recall, in the Second Chamber by the GPV and the SGP). This relieves any tensions inherent in pursuing integration and identity maintenance simultaneously. It also emphasizes the categorical difference between the accommodation of territorially distinct minorities such as the Frisians and of minorities that are interspersed among the majority.

The composition of the First Chamber is also different, though a number of parties is represented by the same representative as in the first term (the CDA, the PvdA, and GroenLinks). Two parties not present during the first-but taking part in the second term of the debate are the OSF, the one-man 'Independent Senate-fraction', and the Socialist Party (the SP). While their respective contributions to the debate are distinct from those presented by other parties in the first term, the parties taking part in both terms show no deviations from the respective positions taken earlier. The CDA, the VVD and the orthodox Protestant parties, both of which are represented by the SGP, welcome the limitation of the convention to the Frisians.¹⁰⁶ The PvdA and GroenLinks regret the narrow interpretation of the convention now supported by the government.¹⁰⁷ D66 sees the convention primarily as an instrument for international dialogue concerning the treatment of minorities and therefore abstains from objecting to the treaty on the grounds of purely national considerations.¹⁰⁸

Nevertheless, a few new subjects are broached in the second term. In the following the focus will be on these new subjects. In light of the Government's new approach to integration policy, special attention will also be given to the new Cabinet-minister's contribution to the debate.

¹⁰⁶ The CDA expresses enthusiasm for the 'drastic revision' of its understanding of the convention (HEK 2004/05, No. 7: 301-302, Dölle); the VVD, while remaining skeptical of the necessity of applying of the treaty to the Netherlands, will not oppose ratification '[n]ow that the [interpretative] declaration is limited to the Frisians' (HEK 2004/05, No. 7: 304, De Graaf); the SGP states that given the approval law's legislative history the approval of the factions it represents is 'hardly surprising' (HEK 2004/05, No. 7: 305, represented by Holdijk).

¹⁰⁷ According to the PvdA the now current minimalist interpretation 'hollows out' the treaty (HEK 2004/05, No. 7: 300); GroenLinks sees 'little to be proud of' in the new interpretation (HEK 2004/05, No. 7: 305, represented by Platvoet).

¹⁰⁸ HEK 2004/05, No. 7: 312 (represented by Engels).

What is a national minority?

Now that the application of the convention is limited to the Frisians, a number of parties, in 2004, point to the necessity of at least taking special measures also for the protection of the Roma and Sinti (the PvdA, GroenLinks, the OSF, the SP).¹⁰⁹ This results in a squabble with the minister concerning the criteria for being considered a national minority. According to the Cabinet, these are five: a national minority's members have the Dutch nationality (by which is meant *citizenship*; see the discussion of the OSF's contribution below); they have a shared language, culture, and history that is distinct from that of the majority and so a distinct identity; they wish to preserve that identity; they are long established on Dutch soil and inhabit a distinct territory; and this area is strongly associated with them.¹¹⁰ According to the SP these criteria were cherry-picked to fit the Frisians and are otherwise arbitrary.¹¹¹ According to the minister the reason the Roma and Sinti do not fall under the convention is because they do not meet the fourth criterion, that of being long-established in the Netherlands, 'in the sense of [being] traditionally in the Netherlands.'¹¹² (The minister maintains that the Roma and Sinti have been in the Netherlands for 150 to 200 years. PvdA and GroenLinks say this is closer to 500 years.¹¹³)

With regard to the criteria for belonging to a national minority, the OSF's contribution is noteworthy. The OSF is the only party, in the entire debate, that explicitly takes the adjective 'national' in 'national minority' to refer not to the host nation, but to the nation that is a minority. According to the OSF the treaty protects the rights of national minorities, 'which are minority groups, that, literally speaking, belong to another nation, even if they have the citizenship of the state in which they live.'¹¹⁴ After pointing

¹⁰⁹ PvdA: HEK 2004/05, No. 7: 300; GroenLinks: HEK 2004/05, No. 7: 307; OSF: HEK 2004/05, No. 7: 309 (Ten Hoeve); SP: HEK 2004/05, No. 7: 310 (represented by Van Raak).

¹¹⁰ *'Ten eerste hebben de leden van een nationale minderheid de Nederlandse nationaliteit. Ten tweede onderscheiden zij zich van de meerderheid van de bevolking door eigen taal, cultuur en geschiedenis en dus door hun eigen identiteit. Ten derde: zij willen die identiteit ook bewaren. Ten vierde: zij zijn van oudsher op het grondgebied van Nederland gevestigd en wonen van oudsher binnen Nederland in een specifieke regio, waarvoor zij ook gezichtsbepalend zijn'*; HEK 2004/05, No. 7: 339 (Verdonk).

¹¹¹ HEK 2004/05, No. 7: 310.

¹¹² *'in de zin van traditioneel in Nederland'* HEK 2004/05, No. 7: 341.

¹¹³ HEK 2004/05, No. 7: 342.

¹¹⁴ *'Het verdrag beschermt de rechten van nationale minderheden, dat zijn minderheidsgroepen die, letterlijk genomen, tot een andere natie behoren, ook al hebben zij het staatsburgerschap van de staat waarin zij wonen'*; HEK 2004/05, No. 7: 308.

out that in the Netherlands it is uncommon to make a difference between citizenship and nationality, and that in some cases individuals can regard themselves as belonging to two nations, as is the case with the Frisians, the OSF concedes that the convention will for that very reason have little material consequence for the Frisians. Nevertheless, explicitly recognizing a national minority can have a psychological effect, and therefore the OSF is pleased that the Frisians fall within the scope of the convention.¹¹⁵

The OSF is equally pleased that the new minority groups are not recognized under the convention.¹¹⁶ This because the convention, besides obligating participating states to respect the human rights of members of national minorities, also confers ‘rights that nevertheless must be considered as *de facto* collective rights.’¹¹⁷ That the convention confers such collective rights is seen by the OSF as testimony that it is meant to apply to ‘traditional minorities.’¹¹⁸

‘The state which harbors these minorities on its territory, by whatever historical coincidence, carries responsibility for both the individual as the collective rights of these minorities, for who else should have to carry that responsibility?’¹¹⁹

It is because the Roma and Sinti constitute a *nation* that they too should be brought within the scope of the convention. In so doing the Netherlands would be shouldering its share of Europe’s collective responsibility for these groups.¹²⁰

The Netherlands is not similarly responsible for the members of new minorities, i.e. ‘the target groups of integration policy’:

‘Everyone who establishes himself here has the right to respectful acknowledgement of his identity, notwithstanding his duty not to make misuse of our society. That last remark applies to any given Dutchman. Integration is necessary to that end, but not

¹¹⁵ HEK 2004/05, No. 7: 308.

¹¹⁶ HEK 2004/05, No. 7: 308.

¹¹⁷ ‘*rechten die toch in feite als collectieve rechten moeten worden beschouwd.*’ HEK 2004/05, No. 7: 308.

¹¹⁸ HEK 2004/05, No. 7: 308.

¹¹⁹ ‘*De staat die deze minderheden op zijn territoir heeft, door wat voor historische toevalligheid dan ook, draagt de verantwoordelijkheid voor zowel de individuele als de collectieve rechten van die minderheden, want wie zou anders die verantwoordelijkheid moeten dragen?*’; HEK 2004/05, No. 7: 308.

¹²⁰ HEK 2004/05, No. 7: 309.

assimilation. The individual rights in the convention, that largely coincide with the general constitutional rights such as the freedom of expression, religion, association and assembly, and the right to be protected against discrimination, apply also of course to these new minorities. The rights that are attributed to collectives, however, do not; [...].¹²¹

For the OSF, then, nations such as the Frisians, the Roma, and the Sinti, that must reside in territories appropriated by other nations or states, have a right to be accommodated there as separate and distinct societies within the host society. For these 'traditional' minorities, the convention spells out a procedural morality to be respected by the host society, similar to the way framework liberalism sets forth a procedural morality in order to accommodate a plurality of groups inhabiting the same polity. With regard to other minorities in the Netherlands, including especially the target groups of integration policy, whose members' identity is established by reference to their country of origin, or that of their parents, this is not the case. These minorities have, though perhaps not always voluntarily, substituted the Netherlands for their own nation-state, thereby implicitly agreeing to become part of Dutch society. They must therefore integrate, though on the terms set out in its constitution.

The status and protection of minorities in the Netherlands

The contributions of members of the First Chamber also reflect the societal developments mentioned above. The VVD, for example, confesses that its doubts, large already, considering the purpose and necessity of the convention have only grown,

'now that the situation in the world and in our country has changed so drastically over the last three and a half years. This is a fact which we cannot and should not close our eyes to. Any measure of law or policy that could be interpreted as an invitation

¹²¹ 'Ieder die zich hier vestigt, heeft recht op eerbiediging van zijn identiteit, onverminderd zijn verplichting om geen misbruik te maken van onze maatschappij. Dat laatste geldt ook voor elke willekeurige Nederlander. Daarvoor is integratie noodzakelijk, maar geen assimilatie. De individuele rechten in het kaderverdrag, die voor een groot deel overeenkomen met de algemene grondrechten van vrijheid van meningsuiting, godsdienst, vereniging en vergadering en het recht om tegen discriminatie te worden beschermd, gaan natuurlijk ook op voor deze nieuwe minderheden. Maar dat geldt niet voor de rechten die aan de collectieven worden gegeven'; HEK 2004/05, No. 7: 308.

to minorities to withdraw further into themselves, should be omitted.¹²²

This statement is cited approvingly by the minister in her response as conveying 'one of the principles on which the new integration policy is based.'¹²³ The minister describes this new integration policy as follows:

'In the past much emphasis was placed on the acceptance of differences between minorities and the *autochthone* population. That policy was less concerned with bridging gaps. However, the unity of our society must be found precisely in what the participants have in common. That, I believe, is that we are all citizens of *one* society. Common citizenship for *autochthone* and *allochthone* residents is the goal of integration policy.'¹²⁴

Note that the minister speaks of *citizens of society*, and not citizens of the *state* or *members* of society. 'Citizen', this implies, is used to demarcate an identity rather than a legal-political status. For the minister, then, 'common citizenship' points to a shared identity rather than a shared status as citizen. Dutch society is also emphatically understood as *one* society, and not, for example, as a society consisting of different societal segments such as under pillarization, or of different cultural groups whose differences must be accepted mutually. This suggests that the minister implicitly understands the commonality of the Dutch in liberal culturalist terms as consisting in a shared (partial) comprehensive doctrine.

This emphasis on commonality is seen by the PvdA and GroenLinks as evidence that the new integration policy amounts to an 'assimilation

¹²² 'De grote aarzeling van de VVD-fractie over nut en noodzaak van het kaderverdrag voor Nederland [...] is er niet minder op geworden. Zij is eerder versterkt nu de situatie op het wereldtoneel en in ons land in de achterliggende drieënhalf jaar drastisch is gewijzigd. Dat is een gegeven waarvoor wij onze ogen niet kunnen en mogen sluiten. Elke wettelijke maatregel of beleidsmaatregel die zou kunnen worden opgevat als een uitnodiging aan minderheden om zich meer in zichzelf te keren, dient ons inziens achterwege te blijven'; HEK 2004/05, No. 7: 303-304.

¹²³ 'een van de beginselen waar het nieuwe integratiebeleid op gestoeld is.' HEK 2004/05, No. 7: 345.

¹²⁴ 'In het verleden is veel nadruk gelegd op de acceptatie van de verschillen tussen minderheden en de autochtone bevolking. Dat beleid was er minder op gericht, afstanden te overwinnen. Echter, de eenheid van onze samenleving moet juist worden gevonden in dat wat de deelnemers met elkaar gemeen hebben. Dat is naar mijn mening dat wij allemaal burgers zijn van één samenleving. Gedeeld burgerschap voor autochtone en allochtone ingezetenen is het doel van het integratiebeleid'; HEK 2004/05, No. 7: 338.

policy'.¹²⁵ In a similar vein the SP remarks that though common citizenship is the goal of integration policy, the government seems unconcerned about the mounting discrimination against Muslims. What are the minister's plans for preventing that the Netherlands itself will become a country that will be reprimanded for its treatment of minorities?¹²⁶ Perhaps, suggests the SP, we should 'ask the Muslims to move to Fryslân and feel themselves to be Frisian', for then they would fall within the scope of the convention.¹²⁷

The minister explicitly addresses the question of what kind of country, or rather, society the Netherlands wishes to be and what is necessary to that end. Answering the concern that the Netherlands is pursuing a *de facto* policy of assimilation, the minister emphasizes that

[t]here is a very large difference between integration policy as we wish to pursue it in the Netherlands and a policy of assimilation or uniformity. Our point of departure is a common foundation. Up till now that [common foundation] has always been missing.¹²⁸

This common foundation consists in speaking the same language, and in knowing and endorsing the values and norms of the Dutch society. 'Above and beyond that, anyone can enjoy his or her culture.'¹²⁹ While this seems to tend towards a liberal culturalist account of Dutch society, when pressed to elaborate on the content of the common values, the minister specifies that these

'are the values and norms of the *rechtsstaat*. We can be proud of our *rechtsstaat*, our democracy. We may expect people who wish to settle in the Netherlands to endorse those, our society's, most important values.'¹³⁰

¹²⁵ The PvdA's response to the minister is 'I take this as meaning that you are in favor of an assimilation policy.' (*Ik begrijp hieruit dat u een voorstander bent van en assimilatiebeleid*); HEK 2004/05, No. 7: 338; according to GroenLinks the 'turnaround in Dutch integration policy' 'reeks of assimilation.' (*de omslag in het Nederlandse integratiebeleid* 'naar assimilatie riekende tekst'; HEK 2004/05, No. 7: 305.

¹²⁶ HEK 2004/05, No. 7: 311.

¹²⁷ 'Moeten wij bijvoorbeeld alle moslims vragen om in Friesland te gaan wonen en zichzelf Fries te voelen? Dan zouden zij natuurlijk wel onder de bescherming van dit verdrag kunnen vallen.' HEK 2004/05, No. 7: 311.

¹²⁸ 'Er is een heel groot verschil tussen het integratiebeleid zoals wij het nu willen voeren in Nederland en een assimilatie- beleid of een eenheidsbeleid. Wij gaan uit van een gemeenschappelijke basis. Die heeft tot nu toe altijd gemankeerd'; HEK 2004/05, No. 7: 338.

¹²⁹ 'Daarboven kan een ieder genieten van zijn of haar cultuur.' HEK 2004/05, No. 7: 339.

¹³⁰ 'Het zijn de waarden en normen van onze rechtsstaat. Wij mogen trots zijn op onze rechtsstaat, onze democratie. Van mensen die zich in Nederland willen vestigen, mogen wij

The norms and values emphasized by the minister, the institutional values of the *rechtsstaat*, are reminiscent of the *moralia* referred to earlier by the PvdA. That notwithstanding it is the PvdA who now worry that society is demanding more of newcomers, referring to the extra-parliamentary debate on minority integration, which revolved, according to the party, around the question whether minorities should adapt to the '*Leitkultur*, to the dominant culture.'¹³¹ Is the Netherlands not becoming, asks the PvdA, a country that has too little respect for diversity? Emphasizing commonality should not come at the cost of forgetting about diversity.¹³² The minister denies pursuing an assimilationist policy, while emphasizing that it is necessary to be more explicit about 'what the Netherlands takes pride in.'¹³³ Ultimately, however, matters of culture and diversity are not the government's responsibility:

'Again, let it be clear that that common foundation is fixed and that beyond that enjoying the distinct culture and distinct identity of people and of countries of origin is the responsibility of citizens themselves and not of the government.'¹³⁴

That the government is not responsible for maintaining the culture and identity is implicitly called into question by GroenLinks, who once more expresses regret over the Cabinet's limitation of the scope of the convention to the Frisians. According to the party the convention advocates

'a multicultural society, within the frame of the *rechtsstaat*, of course, and so without any form of cultural relativism: a pluriform, diverse society, that, by the way, is a reality and which xenophobic rearguard actions will do nothing to change.'¹³⁵

verwachten dat zij die belangrijkste waarden van onze samenleving onderschrijven'; HEK 2004/05, No. 7: 339.

¹³¹ '*de Leitkultur, de dominante cultuur*'; HEK 2004/05, No. 7: 339. The concept of a Dutch *Leitkultur* was introduced in the Dutch debate by the CDA-parliamentary leader Verhagen, inspired thereto by his German Christian Democratic colleague Friedrich Merz, who introduced the term in German parliamentary debate. See De Waard 2002. See on the German *Leitkultur*-debate Joppke 2008: 540.

¹³² '*Natuurlijk zoeken wij naar wat wij gemeenschappelijk hebben, zeker op het gebied van normen en waarden en rechtsstatelijkheid. Dat neemt echter niet weg dat wij ook vorm moeten blijven geven aan diversiteit*'; HEK 2004/05, No. 7: 346.

¹³³ '*waar Nederland trots op is*'. HEK 2004/05, No. 7: 339.

¹³⁴ '*Laat nogmaals duidelijk zijn dat die gemeenschappelijke basis vaststaat en dat daarboven het beleven van de eigen cultuur en de eigen identiteit van mensen en van het land van oorsprong de eigen verantwoordelijkheid is van de burger en niet van de overheid*'; HEK 2004/05, No. 7: 339.

¹³⁵ '*Het verdrag bepleit een multiculturele samenleving, maar uiteraard binnen de kaders*

'Cultural relativism', it should be understood, stands for allowing practices which are contrary to the laws and rights accorded to all Dutch citizens. The PvdA, GroenLinks, and the minister, then, all agree that the norms and values of the *rechtsstaat* set the limits within which diversity can be accommodated in the Netherlands. Whereas the minister, however, is indifferent with regard to the ability of minorities to maintain their distinct identity, GroenLinks is not, and the SP and the PvdA are especially worried about discrimination. According to GroenLinks, the state should recognize minority identities. This in itself would stimulate their integration:

'integration has the most chance of succeeding if minority groups are given the chance, with respect for their cultural and religious identity, to integrate in society. You should not deny that identity, as is currently done in the Netherlands, also in politics.'¹³⁶

This implicitly liberal position, of course, is highly reminiscent of the minorities policy of the 1980s. In 2004 GroenLinks stands alone in its endorsement.

Adoption of the approval law in the First Chamber

Despite differences of opinion such as those outlined above, the bill concerning the convention is adopted without a vote.¹³⁷

Reflecting on the second term in the First Chamber

In line with earlier reflections in this chapter the similarities and divisions between the party positions in the First Chamber will be highlighted here. First, despite the changed political context, the divisions are still roughly the same as in the forgoing debates: there is a division separating parties on the basis of their support for a broad or narrow interpretation of the convention respectively, and a division concerning issues of identity and assimilation.

van de rechtstaat en dus zonder vorm van cultuurrelativisme: een pluriforme, diverse maatschappij, die overigens een realiteit is en waaraan xenofobe achterhoedegevechten niets zullen veranderen'; HEK 2004/05, No. 7: 307.

¹³⁶ 'Volgens mij is integratie het meest kansrijk, als je minderheidsgroepen met respect voor hun culturele en religieuze identiteit de kans geeft om in de samenleving te integreren. Je moet die identiteit niet ontkennen, zoals thans in Nederland gebeurt, ook in de politiek'; HEK 2004/05, No. 7: 306.

¹³⁷ HEK 2004/05, No. 7: 348.

With regard to the first division the PvdA and GroenLinks are joined by the SP in (now) deploring the narrow interpretation of the convention as covering only the Frisians and not the new ethnic minorities as well. That being said, all parties, including, notably, GroenLinks, seem to regard integration and participation to be legitimate goals of government policy.

The division concerning identity and assimilation separates GroenLinks, and to a lesser extent the PvdA and the SP, from the rest of the First Chamber. For GroenLinks distinct identities are a vehicle for the integration of minority groups and must be protected. That notwithstanding GroenLinks, and again to a lesser extent the PvdA, also seems to regard diversity as an end in itself, though ultimately it is the choice of members of minorities if they wish to preserve their identity. The PvdA and the SP both state that the protection offered the Frisians should also be granted to ethnic minorities. The rest of the First Chamber concurs with the minister, though in less explicit terms, that the maintenance of ethnic or cultural identities is not the responsibility of the state and that the existing regime in the Netherlands is sufficient for that maintenance.

The dominant similarity between all parties of the First Chamber, in line with the similarities in the previous debates, is that none of the parties deny that what diversity there is must be in conformity with the fundamental norms and values of the *rechtsstaat*.

Debating the Convention for the Protection of National Minorities: Conclusion

When the ratification bill for the Framework Convention for the Protection of National Minorities was presented to the Second Chamber in 2000, few members of Parliament welcomed it as necessary for the protection of minorities in the Netherlands. Though some MP's worried about assimilation and discrimination at home, most parties took the convention as applying especially to other countries, where minority groups were actively suppressed by hostile majorities. For the sake of setting an example for those countries, the Dutch government wished to offer the convention's protection to as broad a range of minorities as possible in the Netherlands. As a consequence, 'national minorities' were interpreted as including those minorities who were 'target groups of integration policy', i.e. minorities whose weak socio-economic performance and general marginalization in society were cause for worry. While some

MP's pointed to the difficulties inherent in pursuing integration policies for these groups while also taking on the duty to protect their particular minority identities, suggesting to limit the convention's application to the territorially bounded Frisians instead, this suggestion was not taken up by the Chamber. This should not be interpreted as a positive commitment to the preservation of minority identities in Dutch society, however, nor as a tacit commitment to framework liberalism. Rather, it seems that minority issues simply were not particularly salient in the Netherlands at that time.

In 2004, when the ratification bill was finally adopted in the First Chamber, minority issues had become salient, giving rise to a new appreciation of the implications of a broad interpretation of the convention. As a result, the Government had come to reject this earlier broad interpretation, choosing to limit the scope of the convention to the Frisians instead. In this it was ultimately supported by a majority of parties in the First Chamber.

The most significant finding of this chapter is a negative one: given a choice, the Netherlands chose not to accommodate minority moral communities as groups, except in the case of the Frisians, whose accommodation is already facilitated both by their territorial separation from and their close socio-cultural proximity to the rest of the Netherlands. This does not mean that the Netherlands is hostile to other minority moral communities in the Netherlands, only that it does not wish to confer collective rights on them, and that it believes the current regime facilitates their accommodation sufficiently. Notably, in 2004 also, increased emphasis is placed on the limits to diversity, which limits are not only legal but also cultural, consisting as they do in a shared allegiance to the values of the *rechtsstaat*. Relatedly, society is conceived of as consisting of individuals, not groups or segments.

The Framework Convention for the Protection of National Minorities serves as an example, it was suggested in this chapter, of a procedural morality governing the interaction between moral communities in a single polity. The choice to limit the scope of the convention to the Frisians demonstrates how much easier it is to sustain such a morality when societal divisions match territorial divisions. The parliamentary debates demonstrate, also, the difficulties inherent in sustaining minority moral communities whose members live dispersed among the majority. The major fear of doing so, finally, is that minority moral communities, as groups, will dissociate from the broader society. The possibility of such

dissociation is reason in itself not to stimulate the preservation of such communities or their communal identity.

To the extent that minorities wish to retain their cultural identity, most parties and the Government regard this to be an individual choice and the responsibility of minorities themselves. The Government's responsibility is for society as a whole. Given its fear of societal disintegration, the stress it places on society's homogeneity, and its emphasis of citizens' common identity, it seems that the shared values propagated by the Government should not be interpreted along framework liberal lines as constituting a procedural morality governing the interaction between groups or individuals in society, but rather as part of a shared comprehensive doctrine defining the contours of the Netherlands as a moral, liberal cultural community in its own right. This conclusion is only tentative, however, as the debates covered by this chapter only touched upon integration indirectly. Therefore, in the next two chapters, we will look more closely at three debates bearing specifically on the integration of newcomers to Dutch society, and what is thought to be necessary for that integration to be successful.

Chapter 4

How Do We Do Things Here? Debating Integration Policy

Introduction

The previous chapter demonstrated that by 2004 the Netherlands had become wary of the manifestation of minorities, as groups, in Dutch society. In this chapter we will see that this wariness corresponded, at least for the majority of parties in the Second Chamber, to a heightened appreciation of liberal culturalism, i.e. an interpretation of liberalism premised on the importance of individual autonomy and the instrumental moral value of moral communities. Nowhere is such an appreciation made more explicit than in the Government's official response to the conclusions drawn by a Parliamentary Investigative Committee convened in 2002 to review the results of three decades of integration policy in the Netherlands. Notwithstanding this widespread appreciation of liberal culturalism, this chapter, drawing on the Parliamentary debates conducted in response to these conclusions and the Government's response, points to the presence of a persistent strain of framework liberalism, most notably in the contributions of the small orthodox Protestant parties, the SGP and the ChristenUnie. Remarkably, GroenLinks, the lone party still committed to integration without loss of identity during the debates on the protection of national minorities, appears in these debates as one of the more explicit supporters of liberal culturalism.

The Parliamentary Investigation of Integration Policy and the Government's Response

During the yearly budgetary debate in September of 'the long year 2002', the leader of the Socialist Party (SP) submitted a motion to the Second Chamber calling for a parliamentary enquiry into the recent history of Dutch integration policy.¹ According to the motion, 'integration policy up till now has been insufficiently successful' and determining the causes of that insufficiency can be of help in formulating future policy.² The motion garnered the support of a large majority and in December 2002 the Second Chamber installed a 'temporary investigative committee integration policy'.³ This 'Committee Blok', named after its chair, the VVD

¹ Recall that 2002 saw the rise of Fortuyn, his murder, the arrival from nowhere of his party the LPF as the 2nd largest party in the Second Chamber and as coalition member to boot, and the coalition's subsequent speedy unraveling; hence: 'the long year 2002'. Perhaps the earliest appearance of the term is in Blokker (2003).

² 'dat het integratiebeleid tot nu toe onvoldoende geslaagd is'; Kamerstukken II, 28600, nr. 24.

³ 'tijdelijke Commissie onderzoek Integratiebeleid'; 117 members (of 150) voted in favor. Only

MP Blok, consisted of members of the seven parties that had voted in favor of the parliamentary enquiry: the SP, PvdA, GroenLinks, VVD, D66, CDA, and LPF (though only one member of that party supported the motion).

The committee published its findings in 2004, in its final report, 'Building Bridges'.⁴ One of the central conclusions drawn by the committee is that despite the progress made in the integration of newcomers, '[c]ausal links to general integration policy are difficult to establish, with exception of the enhancement of the legal status of *allochthons*.'⁵ The conclusion that drew the most attention, however, was that 'the integration of many *allochthons* has been fully or partially successful and that this is a major accomplishment, both on the side of the *allochthons* concerned as on that of the receiving society.'⁶ This was anathema to the VVD and the CDA especially, though they vented their criticism of the committee's findings more explicitly outside of parliament than during the parliamentary debates.⁷ In parliament these two parties, both of which were members of the coalition government (together with D66), simply expressed their regret that the committee had not drawn the explicit conclusion that integration had been a failure.⁸ In light of such strong opinions, expressed by coalition members, there is some irony in that one of the other main conclusions drawn by the committee received much less attention, namely that 'discrimination in public life unfortunately is a reality. In that regard many *allochthons* feel integrated, but not accepted.'⁹

The Government's official response to *Building Bridges* is no less candid. In response to the committee's conclusion that the integration of many

the members of the orthodox Protestant parties SGP and CU, and almost all the members of the two parties that were new to Parliament, *Leefbaar Nederland* ('Livable Netherlands' (LN), two seats) and the List Pim Fortuyn (LPF, 26 seats), voted against the motion. One member of the LPF voted in favor of the motion; HTK 2001/02, No. 3: 180.

⁴ *'Bruggen bouwen'*; Kamerstukken II, 28689, nrs. 8-9, Eindrapport Tijdelijke Commissie Onderzoek Integratiebeleid (hereinafter 'Kamerstukken II, 28689, nrs. 8-9').

⁵ *'Oorzakelijke verbanden met algemeen integratiebeleid zijn moeilijk aantoonbaar, met uitzondering van de verbetering van de rechtspositie van allochtonen'*; Kamerstukken II, 28689, nrs. 8-9: 522.

⁶ *'dat integratie van veel allochtonen geheel of gedeeltelijk geslaagd is en dat is een prestatie van formaat, zowel van de betreffende allochtone burgers als van de hen ontvangende samenleving'*; Kamerstukken II, 28689, nrs. 8-9: 520.

⁷ See, e.g., Santing, Froukje. 2004, 17 January. "Conclusie: integratie mislukt." *NRC Handelsblad*; "Commissie-Blok moet integratiedebat meer inhoud geven." 2004, 17 January. *Het Financieele Dagblad*.

⁸ See especially HTK 2003/04, No. 63: 4095 (for the CDA's response) and 4102 (for the VVD's response).

⁹ *'dat discriminatie in het openbare leven helaas een realiteit is. Zo voelen veel allochtonen zich zelf geïntegreerd maar niet geaccepteerd'*; Kamerstukken II, 28689, nrs. 8-9: 522.

allochthons had been fully or partially successful, for example, the Government contends that this

‘also means that it must be concluded of other large groups of *allochthons* that their integration is not yet fully successful or that it is completely unsuccessful, and that their integration is therefore a failure. This last conclusion is decisive for the Cabinet.’¹⁰

The lagging integration of many newcomers is reason for the government to pursue its ‘integration policy new style’, which we encountered already in the previous chapter. Here, the Government spells out the new approach to integration in more detail, making it explicit that the new policy entails a departure from

‘multiculturalism as a normative ideal, from the inconsequentiality of the past and from a government which takes ethnic minorities by the hand as if they are in constant need of care.’¹¹

Central to Integration policy new style are ‘[c]ommon citizenship, individual responsibility, concrete and verifiable goals, increasing options, and, where necessary, obligations.’¹² Its principle goal is to eradicate the dividing lines existing or threatening to develop between minorities and autochthons. The Government’s motto is ‘participation’. Integration policy new style is ‘a call to the *allochthonous* and autochthonous population to participate actively, without denying mutual differences, in a truly shared society.’¹³

According to the Government, the integration policies of the past revolved too much around ‘the acceptance of difference – in living habits, customs, ideas, and attitudes, in short, in culture’, and not enough around that

¹⁰ *‘betekent ook dat van andere grote groepen allochtonen moet worden geconcludeerd dat hun integratie nog niet geheel of geheel niet is geslaagd en dus mislukt is. Deze laatste conclusie is voor het kabinet doorslaggevend’*; Kamerstukken II, 28689, nr. 17: 5-6.

¹¹ *‘het multiculturalisme als normatief ideaal, van de vrijblijvendheid van het verleden en van een overheid die etnische minderheden bij de hand neemt als waren zij een zorgcategorie’*; Kamerstukken II, 28689, nr. 17: 3.

¹² *‘Gedeeld burgerschap, eigen verantwoordelijkheid, concrete en controleerbare doelen, vergroting van keuzemogelijkheden en, waar nodig, verplichtingen’*; Kamerstukken II, 28689, nr. 17: 3.

¹³ *‘Meedoen is het motto van dit kabinet. Het is ook een oproep aan de allochtone en autochtone bevolking om zonder ontkenning van de onderlinge verschillen actief te participeren aan een daadwerkelijk gedeelde samenleving’*; Kamerstukken II, 28689, nr. 17: 3.

which was common to all.¹⁴ Such cultivation of distinct identities makes ‘the preservation of cohesion’ difficult.¹⁵ This was underestimated in the past.¹⁶ According to the Government:

[d]iversity, the characteristic *par excellence* of Dutch society, can only flourish when there is agreement concerning basic values and when everyone observes prevailing norms. Unity as condition for diversity.¹⁷

The Government explicitly states that emphasizing that which is common does not entail pursuing a policy of assimilation. Common citizenship can only be achieved if integration is a two-sided process. There must be a ‘mutual openness to accept each other as equal participants in a common society.’¹⁸ It does mean, however, that Government policy will stress that which is or should be common to all: the Dutch language, shared values, and those norms deemed to be binding upon all. This, according to the Government, is the essence of ‘common citizenship.’¹⁹ Common citizenship underpins ‘active participation in society. Active citizens participate in economic, social, cultural, and political life. Integration is participation.’²⁰

‘Multiculturality’ has its limits, however, and can only ‘take form within the framework of the democratic *rechtsstaat*, which encapsulates the values and norms of our society.’²¹ One of these basic values is the individual freedom ‘to live one’s life in accord with one’s own, well-considered preferences.’²² Note the explicit mention that one’s preferences be ‘well-considered’. This strongly suggests that individual freedom, for the Government consists in the exercise of individual autonomy. This is also

¹⁴ ‘*de acceptatie van het verschil, – in leefwijze, gewoonten, opvattingen en houdingen, kortom in cultuur*’; Kamerstukken II, 28689, nr. 17: 7.

¹⁵ ‘*het behoud van samenhang*’; Kamerstukken II, 28689, nr. 17: 7.

¹⁶ Kamerstukken II, 28689, nr. 17: 7.

¹⁷ ‘*Pluriformiteit, het kenmerk bij uitstek van de Nederlandse samenleving, kan alleen dan floreren wanneer er consensus is over basiswaarden en wanneer men zich houdt aan vigerende normen. Eenheid als voorwaarde voor verscheidenheid*’; Kamerstukken II, 28689, nr. 17: 7.

¹⁸ ‘*een wederzijdse openheid is om elkaar te accepteren als gelijkwaardige deelnemers aan een gedeelde samenleving*’; Kamerstukken II, 28689, nr. 17: 7-8.

¹⁹ ‘*gedeeld burgerschap*’; Kamerstukken II, 28689, nr. 17: 7.

²⁰ ‘*actieve deelname aan de samenleving. Actieve burgers doen mee aan het economische, sociale, culturele en politieke leven. Integratie is meedoen*’; Kamerstukken II, 28689, nr. 17: 7.

²¹ ‘*dient gestalte te krijgen binnen de kaders van de democratische rechts- staat, waarin de waarden en normen van onze samenleving besloten liggen*’; Kamerstukken II, 28689, nr. 17: 8.

²² ‘*De vrijheid van individuen om het leven naar eigen, weloverwogen, voorkeur in te richten behoort tot de gemeenschappelijke kernwaarden van de Nederlandse samenleving*’; Kamerstukken II, 28689, nr. 17: 8.

borne out by the Government's wish to engage minorities in discussions concerning subjects such as 'the position and rights of women in Dutch society', 'social pressure in marriage', 'attitudes concerning homosexuality', and 'unacceptable forms of social pressure sometimes exerted over women and more in particular girls, for example to wear a headscarf when out of the house.'²³ More generally, the Government worries about the lagging emancipation of women in certain ethnic communities, where, according to the Government, 'the position of women is comparable to that of autochthons of the same sex in the period before the first feminist wave.'²⁴

The Government, then, in its response to *Building Bridges*, puts forth an interpretation of individual freedom and liberal society that is highly reminiscent of that underlying liberal culturalism. This is also evident in its treatment of Islam, a moral community that obviously worries the Government. According to the Government, the Islam is 'increasingly seen as impacting on integration, often negatively, sometimes as an opportunity.'²⁵ Many view the Islam as contrary to the 'process of modernization that Dutch society has gone through during the past forty years.'²⁶ This 'negative appreciation' of the Islam has intensified as a consequence of the involvement of Muslims in international terrorist activity.²⁷

The Government suggests a number of ways in which problems associated with the Islam can be addressed. With regard to headscarves, for example, the Government refuses to accept that wearing a headscarf is always the result of freely exercised choice. Therefore, the Cabinet wishes to go into debate with the relevant groups on this issue.²⁸ The Government also pledges its support to academic research of 'the Islam in the modern world' and to the development of educational modules such as 'Islam

²³ 'de positie en de rechten van vrouwen in de Nederlandse samenleving, sociale dwang bij huwelijken, de houding ten opzichte van homoseksualiteit en onaanvaardbare vormen van sociale pressie die soms op vrouwen en meer in het bijzonder op jonge meisjes wordt uitgeoefend, bijvoorbeeld om buitenshuis een hoofddoek te dragen'; Kamerstukken II, 28689, nr. 17: 8.

²⁴ 'de positie van vrouwen vergelijkbaar met die van hun autochtone seksegenoten in de periode vóór de eerste feministische golf'; Kamerstukken II, 28689, nr. 17: 28.

²⁵ 'in toenemende mate gezien als een factor in de integratie van allochtonen, vaak in negatieve zin, soms als kans'; Kamerstukken II, 28689, nr. 17: 33.

²⁶ 'het moderniseringsproces dat de Nederlandse samenleving in de afgelopen veertig jaar heeft doorgemaakt'; Kamerstukken II, 28689, nr. 17: 33.

²⁷ 'negatieve appreciatie'; Kamerstukken II, 28689, nr. 17: 33.

²⁸ Kamerstukken II, 28689, nr. 17: 30.

and western society'.²⁹ Furthermore, the Government wishes to stimulate debate concerning the Islam and Muslims in the Netherlands by initiating public debates and conferences.³⁰ It also finds it desirable that imams be trained in the Netherlands, so that the Islamic community will not have to rely on imams from abroad. This is expected to reinforce the involvement of Muslims in Dutch society.³¹

Summarizing, the Government posits that though there is room for diversity, citizens should be 'modern', 'emancipated', and 'open-minded'. 'Openness' is both an individual virtue and a characteristic of Dutch society. It is desirable that the adherents of the Islam especially, or at least those Muslims living in the Netherlands, embrace these 'modern' tenets of Dutch society. Though the Government does not speak literally of autonomy, its position seems to be that there is room for the Islam, as long as its practitioners are autonomous men and women. The Government wishes to foster these qualities through education and debate. The Government views integration as consisting in, or demonstrated through, active participation in economic, social, cultural, and political life. In order to facilitate such participation the Government aims especially to promote its ideal of common citizenship in civic integration courses and education.

Whereas in the previous chapter, then, there were only hints that the Dutch Government, in 2004, subscribed to a liberal culturalist interpretation of individual liberty and liberal society, here it embraces that position unambiguously. In the following pages, we will see that many, though not all, parties in the Second Chamber endorse a similar position, though few do so as forcefully as the Government in its response to *Building Bridges*. Those parties taking a different view, we will see, stand much closer to framework liberalism.

Debating integration in the Second Chamber: the first term

The debate on *Building Bridges* took place in the Second Chamber in August and September 2004. Marijnissen, the SP-leader who had instigated the parliamentary investigation of integration policy two years earlier, opened the debate in the first term, followed by the leaders of

²⁹ 'islam in de moderne wereld', 'islam en de westerse samenleving'; Kamerstukken II, 28689, nr. 17: 35.

³⁰ Kamerstukken II, 28689, nr. 17: 35.

³¹ Kamerstukken II, 28689, nr. 17: 33.

GroenLinks, the orthodox Protestant ChristenUnie, the PvdA (the largest opposition party), the VVD (the second largest coalition party), D66 (the smallest coalition party), the Groep Lazrak (a one-man party consisting of a dissenter from the SP), the orthodox Protestant SGP, the leading coalition party CDA, and finally the LPF.

In what follows first parties' respective views of society, more in particular their ideas about diversity, culture, and shared values in society, will be presented. This first section aims to clarify parties' hopes and expectations of integration: what is the integrated society they strive for, and how do the moral communities of newcomers fit in that society? Subsequently a separate section will discuss parties' treatment of the Islam. As many parties refer implicitly or explicitly to the Islam in the debate, it seems that their views on diversity are influenced at least in part by that religious presence in the Netherlands. Thereafter, we will discuss another recurring theme in the debate, namely the necessity of combating segregation, both residential and educational. Though parties rarely make explicit why social segregation is a problem, their treatment of the subject suggests that they are especially concerned about the socio-economic marginalization of moral communities, and not their socio-cultural difference *in se*. First, however, by way of prologue to the actual debate, an oft-discussed subject (both in and outside of Parliament) will be given its (brief) due, namely the tone of the debate.

The tone of the debate

During the debate, nearly every party in the Second Chamber explicitly addresses the tone of the public and political debate on immigrant integration.³² Even so, very few parties harboring objections to the debate's tone care to elaborate on them. The SP and the ChristenUnie merely state that the tone or the sharpness of the debate is not conducive to integration, or that it generates a climate in which newcomers feel unwelcome, or that the tone can be interpreted as disrespectful and generally has counterproductive effects.³³ The PvdA is more explicit, berating the

³² Note that this section treats the tone of the debate as one of the subjects discussed in the debate, and not as an object of analysis itself. For a linguistic analysis of the tone of parliamentary speeches during roughly the same period as that covered in this thesis, see Van Leeuwen (2015).

³³ HTK 2003/04, No. 92: 5932 (SP, represented by Marijnissen); HTK 2003/04, No. 92: 5944 (ChristenUnie, represented by Rouvoet).

‘offhand manner in which *allochthons* and Muslims are discussed, by the way in which the civic integration policies of this Cabinet problematize every *allochthon* willy-nilly and send them all on a civic integration course, by the manner in which their imam or mosque is discussed.’³⁴

GroenLinks similarly worries that the tendency to make sweeping statements about Muslims, and the way in which anxiety about the Islam is expressed, give rise to feelings of stigmatization and isolation among Muslims.³⁵ D66 points out that the tone of the parliamentary debate can affect the broader societal climate and have an impact on the participation of *allochthons* in society.³⁶ ‘Respect and nuance’ are therefore necessary.³⁷

Opposite the parties objecting to the tone of the debate stand the VVD and the CDA. According to the CDA a certain degree of sharpness is necessary, for integration in and identification with the Netherlands will not happen of their own accord.³⁸ Integration is only possible if ‘problems are addressed unequivocally and a demanding integration policy is formulated, if nuance is coupled to sharpness and sharpness to nuance.’³⁹ The VVD is more directly dismissive of any allegations that the party’s tone might be too sharp. Having been accused in the past of ‘agitation’, ‘Islamophobia’, and ‘stigmatization’ – not so much in the Second Chamber, the party adds, but in other fora – the VVD qualifies these accusations as the reappearance of an old tendency on the part of the left to silence those who take a ‘realistic stance in the integration debate.’⁴⁰ In the past, such realism was said to play into the hands of the extreme right; now it is said

³⁴ ‘de zeer algemene manier waarop over allochtonen en moslims gesproken wordt, de manier waarop het inburgeringsbeleid van dit kabinet bij voorbaat elke allochtoon problematiseert en op een inburgeringscursus stuurt, door de manier waarop over hun imam/moskee gesproken wordt’; HTK 2003/04, No. 92: 5951 (represented by Bos).

³⁵ HTK 2003/04, No. 92: 5941 (Halsema).

³⁶ ‘De toon van een publiek debat over integratie van allochtonen bepaalt ook het klimaat en de ruimte waarin zij aan de samenleving deelnemen’; HTK 2003/04, No. 92: 5962 (represented by Dittrich).

³⁷ ‘Respect en nuance’; HTK 2003/04, No. 92: 5962.

³⁸ HTK 2003/04, No. 92: 5970 (represented by Verhagen).

³⁹ ‘als wij de problemen heel duidelijk benoemen en een veeleisend integratiebeleid formuleren, als wij nuance koppelen aan scherpte en scherpte aan nuance’; HTK 2003/04, No. 92: 5970-5971.

⁴⁰ The reference to the left is oblique; the representing MP, Van Aartsen refers to ‘those who have apparently picked themselves up since May 2002’ (*‘die zich blijkbaar na mei 2002 hebben hervonden’*); ‘May 2002’ refers to the elections which brought a landslide victory to the LPF and CDA and ended an eight years period of PvdA-led coalition governments. HTK 2003/04, No. 92: 5960.

to play into the hands of ‘islamists’.⁴¹ That, according to the VVD, will do no longer.⁴²

The SGP, while worrying about the tone of the debate in general, praises the Government for the tone of its response to the Committee’s report. The party does enquire, however, whether it might be possible for the VVD to admonish Ayaan Hirsi Ali

‘for her partial responsibility for the, in our eyes, unnecessarily hurtful and provocative character of the movie *Submission*, that will therefore probably have an opposite effect.’⁴³

Submission was a joint effort by the Somali-born VVD-MP, and outspoken critic of Islam, Hirsi Ali and filmmaker Theo van Gogh, who was to be murdered as a direct consequence of his collaboration on the project. The movie, a ten-minute critique of the Quran’s depiction of women, was understood by some as being deliberately offensive to Muslims for its projection of holy texts from the Quran on the naked bodies of battered women.

The LPF, finally, while not commenting on the debate’s sharpness or tone, does offer a constructive criticism. Why not, the party asks, refrain from speaking of autochthons and *allochthons* altogether?⁴⁴ Instead, following the example of countries such as the United States, Canada, and Australia, the LPF suggests speaking simply of Dutch nationals and resident aliens.⁴⁵

Different views of the integrated society

In what follows, a distillation will be presented, on the basis of parties’ contributions to the debate in the Second Chamber, of their respective views on the integrated society, i.e. on the society that is to be the endpoint of the process of integration. The views of most parties correspond clearly to either framework liberalism or liberal culturalism. A few parties take

⁴¹ ‘de “islamistische” reactie’; HTK 2003/04, No. 92: 5960.

⁴² HTK 2003/04, No. 92: 5960.

⁴³ ‘haar medeverantwoordelijkheid voor het, in onze ogen, onnodig kwetsende en provocerende karakter van de geruchtmakende film *Submission*, die daardoor waarschijnlijk een averechts effect zal hebben’; HTK 2003/04, No. 92: 5970 (represented by Van der Vlies).

⁴⁴ HTK 2003/04, No. 92: 5977. Other parties also voiced reservations concerning the autochthon-*allochthon* terminology, especially the SP and the PvdA (see HTK 2003/04, No. 92: 5937 and 5950 respectively).

⁴⁵ HTK 2003/04, No. 92: 5977 (represented by Nawijn).

in positions that can only be contrasted negatively with one of these positions. As the majority of parties in the Second Chamber endorses a variation of liberal culturalism, this position will be explicated first.

Parties' respective views of the integrated society can be inferred, most notably, from two sources. First there are explicit references to 'multiculturalism', 'multiculturality', or 'multicultural society', which all serve as negative reference points in the debate. Then there are the parties' exposés of the values that are necessary to maintain unity in diversity. Caution is necessary, however, for as we will see in the case of the the SGP and the ChristenUnie, a denunciation of multiculturalism does not entail an embrace of liberal culturalism.

Interestingly, one of the most explicit defenders of liberal culturalism in this debate is GroenLinks. This is unexpected, given that in the debate on the Convention for the Protection of National Minorities, conducted around the same time in the First Chamber, GroenLinks was the lone defender of that throwback to the 1980s minorities policy, integration without loss of identity. In this debate in the Second Chamber to the contrary, the party unambiguously voices its regret for supporting the Dutch policy of 'maintenance of distinct identities'.⁴⁶ The party now believes that 'existing cultural differences between all sorts of people in the Netherlands' were ignored for too long.⁴⁷ This is problematic for GroenLinks, it can be inferred from their contribution, not because the party no longer respects such cultural differences or the cultural organizations that wish to protect them, for it does, but because ignoring these differences stands in the way of achieving that which GroenLinks regards as the goal of integration, namely emancipation.⁴⁸

⁴⁶ *'het behoud van eigen identiteit'*; HTK 2003/04, No. 92: 5938. The reasons for this shift in the party's position are unclear, though it is not restricted to this debate. Under the leadership of Femke Halsema (representing the party in the current debate also), GroenLinks made no secret of its appreciation of social-liberal thinkers such as Rawls, incorporating his ideas in discussion papers and opinion pieces (see, e.g., Halsema & Van Gent 2005 and Snels & Halsema 2005). The shift did not go unobserved; in 2006 the (liberal) VVD's youth party JOVD awarded Halsema the 'Liberal of the Year'-award for 2005; see "Femke Halsema Liberaal van het Jaar:" January 6, 2006. *Trouw*.

⁴⁷ *'bestaande cultuurverschillen tussen allerlei mensen in Nederland'*; HTK 2003/04, No. 92: 5938.

⁴⁸ GroenLinks explicitly states its enduring respect for cultural difference and organizations promoting distinct identities (*'voor cultureel verschil en voor culturele organisaties die hun eigen identiteit willen uitdragen of beschermen'*), HTK 2003/04, No. 92: 5941. The party also explicitly states that it regards emancipation as the goal, and integration as the means (*'Integratie is een middel, emancipatie van mensen is wat ons betreft het doel.'*) HTK 2003/04, No. 92: 5941.

In contrast to most other parties GroenLinks states its view of society quite explicitly during the debate:

‘We strive for a society in which not your postal code, not your place of birth, not your ethnicity determines what your chances in this life will be. We strive for a society that knows social and economic independence of people, and equality of man and woman. We endorse also the ideal of a non-conformist, free society. As Rosa Luxemburg once said: the freedom to be different is the most essential liberty people have.’⁴⁹

While GroenLinks, then, still regards respect for cultural differences as intrinsic to such a society, this respect does not extend to the internal practices of groups that are contrary to individual liberty or emancipation. The government may not restrict religious communities unduly, but communities also may not restrict the liberty of their members: ‘coercion within communities’ is not to be tolerated.⁵⁰

At various points in the debate, GroenLinks calls on the Government to support secularization among Muslims, to strengthen the position of *allochthonous* women, to strive for socio-economic equality and equal educational opportunities, and to combat discrimination.⁵¹ For GroenLinks, then, the integrated society is constituted by emancipated individuals, be it from religious authority, sexual domination, economic deprivation, or cultural or racial stigmatization. Diversity is desirable, but only as the result of the freely exercised choice of emancipated

⁴⁹ ‘Wij streven naar een samenleving waarin niet je postcode, niet de plek waar je geboren bent, niet je etniciteit bepaalt wat je kansen in dit leven zijn. Wij streven naar een samenleving die sociale en economische zelfstandigheid kent van mensen, en gelijkheid van man en vrouw. Wij huldigen ook het ideaal van een non-conformistische, vrije samenleving. Zoals Rosa Luxemburg ooit zei: de vrijheid om anders te zijn is uiteindelijk de meest wezenlijke vrijheid die mensen bezitten’; HTK 2003/04, No. 92: 5941. Perhaps the quotation referred to is ‘*Freiheit ist immer nur Freiheit des Andersdenkenden*.’ (‘Freedom is always only the freedom of those who think differently.’) (written by Luxemburg in the margins of the original transcript of her essay ‘*Zur russischen Revolution*’ (‘On the Russian Revolution’); see *Rosa Luxemburg und die Freiheit der Andersdenkenden. Extraausgabe des unvollendeten Manuskripts “Zur Russischen Revolution” und anderer Quellen zur Polemik mit Lenin*. 1990.

⁵⁰ ‘geen dwang in eigen kring’. HTK 2003/04, No. 92: 5941.

⁵¹ Secularization: HTK 2003/04, No. 92: 5941 (GroenLinks points to a reported trend of secularization among Muslims, reported in ‘*Moslim in Nederland*’ (Muslim in the Netherlands’; Phalet & Praag 2004); strengthening the position of *allochthonous* women: HTK 2003/04, No. 92: 5942; socio-economic equality: HTK 2003/04, No. 92: 5942; equal educational prospects: HTK 2003/04, No. 92: 5943; combating discrimination: HTK 2003/04, No. 92: 5939.

individuals.⁵² It is not desirable where it is the result of the unquestioned acceptance of traditional, religious, or other types of authority.

This implicit defense of autonomy and the more explicit subjugation of diversity and cultural allegiances to individual choice marks GroenLinks as taking in a liberal culturalist position in this debate. Though it states it in different terms, so does the CDA.

According to the CDA cultural diversity could have been a good thing if *allochthons* and autochthons were mutually accepting, but ‘faces are averted and people stand opposed in mutual distrust.’⁵³ A new integration policy is therefore necessary in order to prevent ‘large disparities in this country, riots and ghettos like in the rest of Europe.’⁵⁴ Living together with people from diverse backgrounds necessitates ‘jettisoning the cultural relativism that was, for a long time, the foundation of our tolerant attitude.’⁵⁵ A ‘dominant Dutch or European culture’ must be known and recognized.⁵⁶

Explicitly emphasizing the dominant Dutch culture as it does, it may be thought that the CDA is endorsing a position that is too culturalist to still be liberal. A closer look, however, reveals that notwithstanding its rhetoric, the CDA is fairly straightforwardly liberal culturalist. The values that it regards to be central to that dominant culture, for instance, are ‘values such as the equality of man and woman, individual choice and individual freedom, truthfulness, and therefore liberty as a condition for exercising a religion.’⁵⁷ This emphasis on individual choice, truthfulness, and especially liberty as a condition for exercising a religion all strongly suggest an implicit endorsement of individual autonomy. At the same

⁵² HTK 2003/04, No. 92: 5941.

⁵³ ‘gezichten worden afgewend en mensen staan wantrouwend tegenover elkaar’; HTK 2003/04, No. 92: 5970.

⁵⁴ ‘grote tegenstellingen in dit land, rellen of getto’s zoals elders in Europa’; HTK 2003/04, No. 92: 5970. See also HTK 2003/04, No. 92: 5976, where the CDA maintains that Parliament had, before instigating the Committee Blok, come to the conclusion that society harbors a ‘potential bomb’; if we ‘were to refrain from dismantling it, we would experience a clash, riots, or increasing problems in Dutch society.’ (‘Wij constateerden dat er een potentiële bom in de samenleving was. Als wij die niet zouden demonteren, zouden wij een clash, rellen of in toenemende mate problemen in de Nederlandse samenleving krijgen.’)

⁵⁵ ‘moeten wij ook af van het cultuurrelativisme dat heel lang de basis was van onze tolerante houding’; HTK 2003/04, No. 92: 5971.

⁵⁶ ‘dominante Nederlandse of Europese cultuur’; HTK 2003/04, No. 92: 5971.

⁵⁷ ‘Ik denk aan waarden als de gelijkwaardigheid van man en vrouw, aan de persoonlijke keuzevrijheid en aan de vrijheid van mensen, van waarachtigheid, en dus aan vrijheid als voorwaarde voor het beleven van een godsdienst’ HTK 2003/04, No. 92: 5971.

time the Christian democrats also explicitly support religious and cultural diversity. This support, however, is only extended to those groups that are able to 'connect their deepest intentions – also regarding religion – with the *rechtsstaat* and democracy'.⁵⁸ Besides that, citizens must regard themselves as having a 'common foundation in history [...] and a feeling of solidarity with Dutch society'.⁵⁹ Taken together history, norms and values, and solidarity are the constituting elements of Dutch citizenship, according to the CDA.⁶⁰ This strongly suggests that the CDA regards Dutch society itself as constituting a moral community, premised on a shared commitment to maintaining the cultural conditions for individual freedom.

In contrast to the CDA, the VVD does not approach integration in terms of culture or shared values, but rather in terms of citizenship and rights and duties. Its position, however, shows marked similarities to that of the two foregoing parties. Stressing the necessity of state intervention to guarantee the 'liberal baseline' for all citizens, or, invoking Isaiah Berlin, their 'positive liberty' or their 'freedom to', the VVD implores the Government to ensure all citizens' 'development and emancipation'.⁶¹ Having successfully passed the liberal baseline citizens are free 'to dress, to eat, to engage in business' as they please.⁶² While the VVD does not celebrate diversity, it does emphasize its opposition to assimilation. Its goal is not '16 million cheese-heads with orange clogs on their heads', but 16 million 'citizens with rights and duties'.⁶³ That goal, it can be inferred from the VVD's contribution, entails a shared commitment to individual autonomy.

In light of these reflections on the connection between emancipation and individual autonomy it is notable that a number of parties besides GroenLinks and the VVD also mention emancipation as a desirable goal, even if they do not elaborate on the subject. The SP, for instance, remarks

⁵⁸ *Het komt er juist op aan dat alle groepen in ons land hun diepste intenties ± ook ten aanzien van de religie – weten te verbinden met de rechtsstaat en de democratie*; HTK 2003/04, No. 92: 5975.

⁵⁹ *Een gemeenschappelijke basis van geschiedenis, gedeelde waarden en normen en verbondenheid met de Nederlandse samenleving noemt het CDA Nederlands burgerschap*; HTK 2003/04, No. 92: 5971.

⁶⁰ HTK 2003/04, No. 92: 5971.

⁶¹ *'liberale ondergrens', 'positieve vrijheid', 'vrijheid tot', 'ontwikkeling en emancipatie'*; HTK 2003/04, No. 92: 5956.

⁶² *'te kleden, te eten, te ondernemen'*; HTK 2003/04, No. 92: 5956.

⁶³ *'16 miljoen burgers met rechten en plichten'*; HTK 2003/04, No. 92: 5956.

that increasing segregation hampers ‘emancipation, participation, and therefore integration’.⁶⁴ D66 similarly claims that ‘participation and emancipation’ are necessary to get by in our society.⁶⁵ The CDA also at one point remarks that successful role models are beneficial for the ‘emancipation and integration’ of newcomers.⁶⁶ And the PvdA finally implicitly endorses emancipation as desirable in claiming that current attitudes concerning emancipation legitimize intervening in the private domain in order to protect women against abuse by men.⁶⁷ While the SP seems to be invoking the concept of emancipation as developed in the socialist tradition especially, i.e. as the liberation of the working classes from domination, it is not always clear what other parties mean when using the term. As especially evident with regard to the PvdA’s contribution, they may only have the suppression of women in mind. In any case, none of these parties fills out its conception of emancipation in a way to suggest a particularly close relationship with autonomy, as GroenLinks and the VVD do.

The defining features of liberal culturalism, we saw in chapter 1, are a fundamental commitment to autonomy, an appreciation of groups as instrumentally, but not intrinsically, valuable, and a public to private direction of constraint. Of the parties mentioned in the previous paragraph, GroenLinks, the VVD, and the CDA take in a position that is unmistakably liberal culturalist. This position can be contrasted with that of the SGP and ChristenUnie in the debate. Their position is unmistakably framework liberal.

Above, caution was advised in interpreting a rejection of multiculturalism as an embrace of liberal culturalism. The contributions of the SGP and the ChristenUnie are a case in point. While the ChristenUnie concurs with much (but not all) of the Government’s response to *Building Bridges*, and the SGP explicitly endorses the departure from multiculturalism, both parties are quick to remind the Second Chamber that there are limits to what can be done in the way of forcing people to conform to common values.⁶⁸ Both parties worry especially that the Government’s emphasis on integration will generate pressure on members of religious groups to

⁶⁴ ‘emancipatie, participatie en dus integratie’; HTK 2003/04, No. 92: 5932.

⁶⁵ ‘participatie en emancipatie’; HTK 2003/04, No. 92: 5965.

⁶⁶ ‘integratie en emancipatie’; HTK 2003/04, No. 92: 5976.

⁶⁷ HTK 2003/04, No. 92: 5953.

⁶⁸ HTK 2003/04, No. 92: 5968; HTK 2003/04, No. 92: 5968 (SGP). HTK 2003/04, No. 92: 5944 (ChristenUnie).

adapt to the mainstream secular culture. 'Assimilation in a secularized culture and/or the privatization of religion', according to the SGP, 'can and should not be the alternative' to multiculturalism.⁶⁹ Besides, argues the ChristenUnie, if the 'meaning of culture, religion, and world-view for identity' is left un-acknowledged, integration will be impossible anyhow.⁷⁰

According to the ChristenUnie, the liberty to uphold distinct cultural and religious standards within one's own community must be respected, even if those standards run counter to our own values.⁷¹ The party is worried that fundamental rights and liberties will be infringed on the basis of 'personal opinions about the role of religion in public life'.⁷² Giving precedence to those personal opinions entails the risk of falling guilty of the very intolerance, 'not to say fundamentalism, that we say we wish to combat on other fronts'.⁷³ This applies even, 'whether we like it or not', with regard to the 'central values of Dutch society' and 'the possibilities for bringing people, autochthonous or *allochthonous*, to conform to those central values'.⁷⁴ The limits to government interference with distinct communities, according to the ChristenUnie, correspond to the boundaries of the public domain.⁷⁵

Integration is regarded by the ChristenUnie as a mutual process of 'fitting in' the newcomer, with his distinct cultural-religious identity, in the Dutch legal order.⁷⁶ Subsequently, and with some trepidation, the ChristenUnie admits its continued allegiance, in that sense, to the slogan 'integration without loss of identity'.⁷⁷

⁶⁹ *'Assimilatie in een gesecculariseerde cultuur en/of privatisering van de godsdienst kunnen en mogen het alternatief niet zijn'*; HTK 2003/04, No. 92: 5968.

⁷⁰ *'de betekenis van cultuur, religie en levensovertuiging voor de identiteit'*; HTK 2003/04, No. 92: 5945.

⁷¹ HTK 2003/04, No. 92: 5945.

⁷² *'eigen opvattingen over de rol van religie in het publieke leven'*; HTK 2003/04, No. 92: 5944-5945.

⁷³ *'om niet te zeggen fundamentalisme, als wat wij op andere fronten zeggen te willen bestrijden'*; HTK 2003/04, No. 92: 5945.

⁷⁴ *'Zelfs als het om kernwaarden van de Nederlandse samenleving gaat, zijn er – of wij dat nu leuk vinden of niet – grenzen aan de mogelijkheden om mensen, autochtoon of allochtoon, tot conformiteit aan die kernwaarden te brengen'*; HTK 2003/04, No. 92: 5945.

⁷⁵ HTK 2003/04, No. 92: 5945.

⁷⁶ *'inpassing'*; HTK 2003/04, No. 92: 5945.

⁷⁷ *'integratie met behoud van identiteit'*; HTK 2003/04, No. 92: 5945.

The SGP, similarly to the ChristenUnie, worries that the ‘secular morality of the majority’ is coming to dominate public life.⁷⁸ It should remain possible, states the SGP, to argue publicly and within the bounds of the law, against gay marriages, for instance, or in favor of the freedom of women to choose for a life as housewife.⁷⁹ ‘That has nothing to do with pre-modern opinions,’ but is a consequence of respecting diversity.⁸⁰ The current Government, in foisting all manner of emancipatory opinions on ethnic minorities, is trespassing in the very private sphere which it professes to respect.⁸¹ The party does concur with other parties, however, that ‘[t]rue coexistence is impossible without shared values and norms’, stressing, for example, the need for Dutch Muslims to accept ‘democratic values’.⁸²

The contributions of the SGP and the ChristenUnie forcefully point to the differences between understanding the Netherlands as a moral community in its own right, premised on what the SGP calls the secular morality of the majority, i.e. a (partial) comprehensive doctrine premised on the basic values of autonomy and rationality, and understanding it as a collection of moral communities, each endorsing their own comprehensive doctrine, yet converging in a moral commons where a procedural morality is respected by all. The shared values and norms invoked by the SGP at the close of the previous paragraph, therefore, can be interpreted as drawn from the moral commons, and constituting the procedural morality enabling ‘true coexistence’.

This leaves the PvdA, D66, the SP, and the LPF. None of these parties are as explicit in their position, at least in terms of the distinction between liberal culturalism and framework liberalism, as either of the aforementioned groups of parties. Their respective contributions to the debate, however, suggest that these parties tend more towards a liberal-culturalist understanding of Dutch society than towards framework liberalism. For each of these parties conceives of the central values of Dutch society not merely as constituting a procedural morality governing the relations

⁷⁸ *‘de seculiere meerderheids-moraal’*; HTK 2003/04, No. 92: 5968.

⁷⁹ HTK 2003/04, No. 92: 5968. The SGP agrees, however, that one should not detest homosexuals; ‘[t]rue love of one’s fellow-man takes no notice of race or sexual preference.’ (*‘Echte naastenliefde maakt geen onderscheid naar ras of geaardheid.’*)

⁸⁰ *‘Dat heeft niets met premoderne opvattingen te maken’*; HTK 2003/04, No. 92: 5968.

⁸¹ See, e.g., HTK 2003/04, No. 92: 5968. *‘Maar daarom moet de regering nog niet allerlei thema’s van emancipatoire aard opdringen aan of afdwingen bij etnische minderheden. Zij overschrijdt daarmee trouwens ook de zojuist genoemde grens tussen publiek en privaat [...]’*

⁸² *‘Zonder gedeelde waarden en normen is echt samenleven niet mogelijk’*; HTK 2003/04, No. 92: 5968; *‘democratische waarden’*; HTK 2003/04, No. 92: 5969.

between members of disparate moral communities, but as constitutive of a partial comprehensive doctrine upheld by Dutch society as a whole, and thereby constraining the content of whatever other comprehensive doctrine its members may choose to endorse. Not only do they thereby support the public to private direction of constraint that is one of the defining characteristics of liberal culturalism, some of these parties treat minority moral communities as impediments to integration, even as anachronistic. The PvdA, for example, contends that

‘modern-day citizens will increasingly have an identity that consists of distinct parts. [...] I believe our identity, our ancestry, the blood that flows through our veins, is becoming increasingly varied, evermore hybrid.’⁸³

It is necessary, according to the party, to accept that ‘the Netherlands will never be what it was [and] will never remain as it now is’ and that the ‘merging of ethnicity and culture will continue.’⁸⁴ In other words, it is impossible to understand Dutch society as consisting in a plurality of internally homogenous moral communities; rather, it consists of individuals, whose individual conceptions of the good reflect the inherent diversity of society. As a consequence, it is evermore important to sustain ‘the values that bind us, values that are central to the democratic *rechtsstaat*.’⁸⁵ These values include ‘the values of democracy, the relationship between men and women, homo and hetero, but also values like respect, liberty, and toleration.’⁸⁶ These values do not sustain themselves, and a society ‘that harbors a large group that frowns upon or even rejects those elementary values on ideological or other grounds, runs a grave risk. Integration, therefore, is also a cultural charge.’⁸⁷

‘This concerns the history and the future of our society, shared orientations, central values, civility. Precisely those who accept

⁸³ ‘zullen moderne burgers steeds vaker een identiteit hebben die uit verschillende delen is opgebouwd. [...] Ik denk dat onze identiteit, onze afkomst, het bloed dat door onze aderen stroomt, steeds minder eenduidig, steeds meer hybride wordt’; HTK 2003/04, No. 92: 5955.

⁸⁴ ‘Nederland wordt nooit meer wat het was. Nederland zal nooit blijven wat het nu is. De vermenging van etniciteit en cultuur zal doorgaan’; HTK 2003/04, No. 92: 5949.

⁸⁵ ‘de waarden die ons binden, waarden die centraal staan in de democratische rechtsstaat’; HTK 2003/04, No. 92: 5955.

⁸⁶ ‘de waarden van democratie, de verhouding tussen man en vrouw, om homo en hetero, maar ook om waarden als respect, vrijheid en tolerantie’; HTK 2003/04, No. 92: 5955.

⁸⁷ ‘waarin een grote groep die elementaire waarden op ideologische of andere gronden afwijst of zelfs afkeurt, bergt grote risico’s in zich. Integratie is dus ook een culturele opdracht’; HTK 2003/04, No. 92: 5955.

the diversity in our society and take it as a fundamental guideline will have to defend those values.’⁸⁸

The progressively liberal D66 point out the necessity of shared values in reference to a letter from a mother about her travails with the ‘black school’ attended by her son (rife with examples of sexual inequality), and her subsequent choice for a ‘white school’ a bit further away. After quoting verbatim from this letter D66 concludes that:

‘we should bar no holds in making sure that Dutch values, such as equal treatment of men and women, of homo- and heterosexuals, are instilled from an early age onward in school.’⁸⁹

The SP takes up a position in the debate that is in some ways hard to pin down, but is definitely liberal-culturalist in its application. According to the SP, it was a mistake to regard ‘multiculturalism’ as ‘a good concept’ for the integration of newcomers in the ‘existing and dominant culture.’⁹⁰ Rather, the party sees the participation of minorities in that dominant culture as the only ‘road to success.’⁹¹ It is therefore especially necessary to combat the rampant segregation in Dutch society on all fronts. At the same time the SP is one of the few parties to explicitly state that newcomers need not forsake or give up their ‘identity, history, or even their belief’ – going so far as to say that matters of the individual conscience are not to be subjected to public deliberation.⁹² Notwithstanding this overture to framework liberalism, the party is firmly against nonpublic education, however, stating unambiguously that public education

‘should devote explicit attention to that which unites us. History and social science must give attention to the emergence and existence of particular values and ensuing norms.’⁹³

⁸⁸ *Het gaat om het verleden en de toekomst van onze samenleving, om gedeelde oriëntaties, om kernwaarden, om beschaving. Juist wie de diversiteit in onze samenleving accepteert en die als uitgangspunt van zijn verhaal neemt, zal die kernwaarden moeten verdedigen.* HTK 2003/04, No. 92: 5955.

⁸⁹ *‘dat wij alles op alles moeten zetten om ervoor te zorgen dat Nederlandse waarden, zoals gelijke behandeling van mannen en vrouwen, van homo’s en hetero’s, al van jongs af aan op school worden bijgebracht’;* HTK 2003/04, No. 92: 5963.

⁹⁰ *‘De fout die lang gemaakt is, is denken dat multiculturaliteit een goed concept is voor de integratie van nieuwkomers in de bestaande en dominante cultuur’;* HTK 2003/04, No. 92: 5936.

⁹¹ *‘maar één weg die naar succes kan leiden’;* HTK 2003/04, No. 92: 5936.

⁹² *‘identiteit, hun verleden of zelfs hun geloof’;* HTK 2003/04, No. 92: 5936.

⁹³ *‘In het onderwijs moet expliciet aandacht worden besteed aan wat ons bindt. Geschiedenis en maatschappijleer dienen aandacht te schenken aan het ontstaan en bestaan van bepaalde*

Even so, the norms and values which are to be shared by all members of Dutch society chiefly concern what the party calls 'public morality': 'all those matters that are laid down in the Dutch law'.⁹⁴ This identification of morality with the formal legal order again suggests that the party is more concerned with imbuing all members of Dutch society with a procedural morality than with a comprehensive doctrine, another possible framework liberal element in its position. Despite these ambiguities, the party's overriding concern is for the integration in society of all its members, however. This concern moves it to take up a position on education that greatly limits the prospects for survival of any minority moral community that depends on nonpublic education for the maintenance of its particular identity. For that reason, and because of the party's general emphasis on the importance of integration above the preservation of minority moral communities, the conclusion that the SP tends to liberal culturalism is warranted. This is a point that will be returned to below.

This leaves the LPF. This party, while stressing the necessity of imparting Dutch culture and identity on immigrants, and also favoring a number of measures which have bearing thereon (such as combating segregation in schools and cutting back on subsidies for organizations promoting distinct cultures and identities), does not state explicitly wherein Dutch culture and identity consist, nor which values, societal or ethical, are crucial to it.⁹⁵ It does, however, unequivocally reject the old policies of integration without loss of identity. These policies, according to the party, were a crucial mistake.⁹⁶

In their discussion of what is necessary and what is permissible in a pluralist society, many discussions implicitly refer to the Islam. When the CDA, for example, states that violence against women and homosexuals and the instigation of hatred and anti-Semitism are contrary to Dutch democratic values, the party is implicitly referring to a number of recent, highly publicized incidents involving Muslims, or at least members of Dutch society who are associated with Islam such as the offspring of immigrants from Islamic countries. Such incidents or issues include recurring perpetrations of honor vengeance, homosexuals beaten up by Moroccan youth, an Imam calling homosexuals pigs and homosexuality

waarden en de daaruit voortvloeiende normen'; HTK 2003/04, No. 92: 5935.

⁹⁴ *'alle zaken die in de Nederlandse wet staan en die behoren tot wat wij waarden en normen, de publieke moraal noemen*'; HTK 2003/04, No. 92: 5936.

⁹⁵ HTK 2003/04, No. 92: 5977.

⁹⁶ HTK 2003/04, No. 92: 5977.

a disease, and harassment of Jews by young Muslims. The stress on the equal treatment of men and women and homo- and heterosexuals by both the PvdA and D66, and the repeated mention of the necessity of the emancipation of women by other parties also, similarly involve implicit references to attitudes or actions associated especially with Muslim new- and oldcomers or their offspring.

The Islam is also discussed more explicitly in the debate, however, though perhaps less than one might expect after reading the Government's response to *Building Bridges*. This explicit discussion is the subject of the next section.

Islam

The Islam figures in the debate in a number of ways. As we saw at the outset, the tone of the debate is often regarded as being particularly offensive to Muslims. The Islam also figures in discussions of education, which address the problem of segregated schools and the scope and desirability of freedom of education especially. The Government's plan for Dutch Imam-schools is also addressed explicitly. Then there are parties that refer to the Islam as a problem in itself, and parties who take issue with the treatment of the Islam by the Government. All in all, only D66 makes no explicit mention of the Islam or of Muslims whatsoever and the PvdA refrains from making more than the oblique references to either signaled above in the discussion of the tone of the debate.

With regard to education, both the SP and the LPF are opposed to founding any new Islamic schools, though only the SP states why.⁹⁷ According to the SP, which party is not only opposed to Islamic schools, but also to orthodox Protestant schools and all other forms of religious education, 'these schools do not contribute to co-education; they are segregation schools.'⁹⁸ Islamic education is also mentioned explicitly by the CDA and the ChristenUnie; by the first to point out that the content of such education should not be contrary to the 'central values of our society'; by the latter to point out that religiously inspired education is a constitutional right guaranteed to all, including, especially, Muslims.⁹⁹

⁹⁷ For the SP, see HTK 2003/04, No. 92: 5934; for the LPF, see HTK 2003/04, No. 92: 5978.

⁹⁸ '*deze scholen leveren geen bijdrage aan gemengd onderwijs; het zijn segregatiescholen*'; HTK 2003/04, No. 92: 5934.

⁹⁹ '*de kernwaarden van onze samenleving*'; HTK 2003/04, No. 92: 5975. For the ChristenUnie, see HTK 2003/04, No. 92: 5947.

In line with their previously expressed belief in the freedom of moral communities to manage their own affairs, both the ChristenUnie and the SGP voice grave reservations with regard to the Government's plans to found Imam-schools, especially, according to the ChristenUnie, if the Government aims to influence the curriculum of these schools.¹⁰⁰ According to the SGP, as far as the intention of founding a Dutch Imam-school is concerned, the Government is in violation of its own principles.¹⁰¹ It is emphatically 'a matter of religious communities themselves' to develop and maintain the education of their religious leaders.¹⁰² The CDA, to the contrary, believes that the development of a Dutch Imam-school is necessary in order to sever the link between newcomers and their countries of origin.¹⁰³ The party concurs with the two orthodox Protestant parties that the government should not found such schools itself, however, though it urges the Government to pursue their development aggressively, if need be with sanctions.¹⁰⁴ The Groep Lazrak, finally, states that the Government's emphasis on the necessity of Dutch Imam-schools betrays a deficient knowledge of the role and place of imams in Islamic religious organizations.¹⁰⁵

The Islam also figures in the debate as the object of more direct reflections concerning its compatibility with, or place in, Dutch society. The CDA and GroenLinks especially address this question. Though the Islam is involved in a process of secularization, according to the CDA 'there are by now more than a million Muslims in the Netherlands.'¹⁰⁶ It is essential, in that regard, that the connection between Muslim identity and Western culture, between Islam and 'the democratic *rechtsstaat*', be deepened.¹⁰⁷ Banning the Islam from public life will produce contrary effects.¹⁰⁸ Therefore dialogue is essential.¹⁰⁹ With regard to Islamic education it is necessary 'to verify the degree to which it is compatible with the central values of our society.'¹¹⁰ The CDA, finally, welcomes curbs to marriage migration

¹⁰⁰ HTK 2003/04, No. 92: 5947 (ChristenUnie, for the SGP see below).

¹⁰¹ HTK 2003/04, No. 92: 5969.

¹⁰² 'een zaak van de geloofsgemeenschappen zelf'; HTK 2003/04, No. 92: 5969.

¹⁰³ HTK 2003/04, No. 92: 5975.

¹⁰⁴ 'dat wanneer de opleiding niet van de grond komt, er sancties moeten komen'; HTK 2003/04, No. 92: 5975. This is in line with a motion submitted earlier in the year by CDA-MP Sterk (Kamerstukken II, 29 200 VI, nr. 155).

¹⁰⁵ HTK 2003/04, No. 92: 5967-5968.

¹⁰⁶ 'zijn er inmiddels meer dan een miljoen moslims in Nederland'; HTK 2003/04, No. 92: 5975.

¹⁰⁷ 'de democratische rechtsstaat'; HTK 2003/04, No. 92: 5975.

¹⁰⁸ HTK 2003/04, No. 92: 5975.

¹⁰⁹ HTK 2003/04, No. 92: 5975.

¹¹⁰ 'te toetsen op de mate waarin het zich verdraagt met de kernwaarden van onze samenleving';

from Turkey and Morocco especially. Many young Muslims, according to the party, prefer spouses from their native countries because they still endorse traditional Islamic values and norms, and haven't 'westernized'.¹¹¹

GroenLinks, to the contrary, reports rising levels of secularization among younger generations of Muslims and calls on the government to support this trend.¹¹² This development, according to GroenLinks, has not received the attention it should. It does not mean that Muslims are losing their religion, but entails that religion 'is becoming less of a guideline for behavior,' less of a rulebook and more spiritual.¹¹³ 'This is an important development for our society. It gives Muslims the space to keep and develop their religion, without other people having to be afraid.'¹¹⁴

The ChristenUnie and the SGP, once again, strike a different note. The ChristenUnie worries that the Government exhibits too much interest in the internal affairs of religions, especially those of the Islam. What, for instance, asks the ChristenUnie rhetorically, should be made of a cabinet-minister who admits to feeling joy about the reported secularization of Muslims and the modernization of Islam?¹¹⁵ Similarly, the SGP criticizes the Government's decision to engage Muslims in discussions concerning the headscarf.¹¹⁶ Whether or not Muslim girls and women wish to wear a headscarf is a private matter, as is, more generally, the value ethnic communities wish to attribute to emancipation, the party implies.¹¹⁷

These reflections on the place of Islam in and its compatibility with Dutch society show the same two extremes witnessed in the previous section: while the SGP and the ChristenUnie jealously guard the right of moral communities to develop and pursue their own beliefs and values, the CDA and GroenLinks argue that Muslims in the Netherlands should learn to experience their religion in a way that is compatible with a Western, secularized world view. While the latter parties, then, hope and urge that Muslims will come to endorse the partial comprehensive doctrine that

HTK 2003/04, No. 92: 5975.

¹¹¹ 'verwesterd'; HTK 2003/04, No. 92: 5973.

¹¹² Reported in *'Moslim in Nederland'* ('Moslim in the Netherlands'), Phalet & Van Praag 2004.

¹¹³ 'wordt veel minder een richtlijn voor het gedrag'; HTK 2003/04, No. 92: 5941.

¹¹⁴ 'Dat is een belangrijke ontwikkeling voor onze samenleving. Dat geeft moslims ruimte om hun godsdienst te kunnen behouden en te ontwikkelen, zonder dat anderen bang hoeven te zijn'; HTK 2003/04, No. 92: 5941.

¹¹⁵ HTK 2003/04, No. 92: 5947. Referring to minister Verdonk's reaction to the report *'Moslim in Nederland'* (Phalet & Praag 2004).

¹¹⁶ HTK 2003/04, No. 92: 5968.

¹¹⁷ HTK 2003/04, No. 92: 5968.

they see as characteristic of Dutch society, the small orthodox Protestant parties, in emphasizing moral communities' enduring right to subscribe to their own comprehensive doctrines, strongly suggest that the common norms and values they believe to be essential to living together in one society constitute a procedural morality especially, a way to get along in, and not a way to ascribe meaning to, the world.

The SP, finally, was shown to argue strongly against the liberty of religious education, explicitly for the reason that such education reinforces segregation. Given the party's earlier defense of the liberty of minorities to cherish their identity, history, and beliefs, this raises the question why the party takes such issue with segregation, for the party does not seem opposed to cultural or religious diversity *in se*. Its rejection of segregation and educational freedom should therefore not be taken as implying that the party is in favor of fostering a particularly Western worldview. Its concern is to teach students 'respect', we saw, presumably for each other and their distinct worldviews. Arguably, the party's opposition to segregated education is not only inspired by the positive reason that culturally diverse schools can help to instill respect and cultural sensitivity in students, but also by the negative reason that segregated education, and segregation more generally, has a detrimental effect on the socio-economic prospects of students in their later life. This in any case is suggested by many of the parties', including the SP's, reflections on educational and residential segregation.

Such segregation is the subject of the following sections. Significantly, these sections will demonstrate that parties' concern for the socio-economic prospects of newcomers strongly influences their attitudes towards integration, thus directly affecting their acceptance of religious and cultural difference.

Combating segregation

Two kinds of segregation are discussed explicitly in the debate: educational segregation and residential segregation. While the two are treated separately, both here and in the debate, they often go hand in hand, as the educational segregation which worries many parties most, the emergence of so-called 'black schools', which are characterized by a predominantly non-Caucasian student population, is manifest especially in poor, urban neighborhoods with high concentrations of newcomers,

oldcomers, and their offspring.¹¹⁸ In what follows, first the different party positions on educational segregation will be presented. These positions largely show the same pattern and divisions witnessed above, but with a few notable deviations. On the issue of residential segregation parties are much less divided, it will be shown in the following section.

Education

Most parties regard education to be of singular importance for integration. According to the VVD, the 'battle for integration, especially that of the next generations, will ultimately be won through education.'¹¹⁹ D66 similarly claims that 'the beginning of the solution to very many of the problems surrounding integration' lies in education.¹²⁰ The SP calls on the Government to invest in education in general and in teaching the Dutch language and values in particular for the sake of the integration of newcomers.¹²¹ GroenLinks laments that the debate is not more concerned with the quality of education, for that, according to the party, should be the central issue in a debate about integration.¹²² The PvdA also regards education as crucial for integration, next to work, housing, and civic integration.¹²³ The CDA regards education as necessary, though not sufficient, for integration.¹²⁴ The LPF, regards schools as prime loci of integration.¹²⁵ Though the SGP and ChristenUnie, finally, take a somewhat different view, as we will see below, these parties do agree with the other parties that 'concentration schools' are a barrier to the integration of their students.

Though most parties mention education explicitly as a means to integration, very few parties explain how exactly integration is stimulated through education, or state explicitly what kind of policies should be pursued. Only a few parties expressly mention, at varying intensity, the necessity

¹¹⁸ Also called 'concentration schools', these primary schools are generally regarded as falling behind in educational standards vis-à-vis 'white schools', i.e. schools with a student population that is predominantly drawn from the majority population of the Netherlands.

¹¹⁹ *'De slag om de integratie moet uiteindelijk, zeker voor de komende generaties, gewonnen worden in het onderwijs.'* HTK 2003/04, No. 92: 5958.

¹²⁰ *'het begin van de oplossing van heel veel problemen rondom integratie'*; HTK 2003/04, No. 92: 5962.

¹²¹ HTK 2003/04, No. 92: 5936.

¹²² HTK 2003/04, No. 92: 5943.

¹²³ HTK 2003/04, No. 92: 5954.

¹²⁴ HTK 2003/04, No. 92: 5971.

¹²⁵ *Idem.*

of imparting specifically Dutch values and norms through education (the SP, CDA, and D66).¹²⁶ This suggests that many parties, not excluding these three, understand education to be important for integration for the same reason that it is important in general, namely that it teaches children the basic skills necessary to function in society as adults. The presumption underlying much of the debate is that if the children of newcomers are given the same educational opportunities as the children of native born Dutch men and women, they will be able to enter into and function in Dutch society on an equal footing and so will be to that extent integrated.

A difficulty confronting the integration of the children of newcomers, however, is that the schools they attend are often 'concentration schools', reflecting the ethnic make-up of the neighborhood surrounding the school. Such schools generally struggle against tall odds to maintain educational standards that are met much more easily by schools in neighborhoods that are either less diverse, less poor, or both. As a consequence, the possibility for students attending concentration schools to take part in society as equals is compromised at an early age. Therefore a number of parties urge the Government not to discontinue standing educational policies, i.e. extra funding, aimed at helping concentration schools to beat the odds (the PvdA, CDA, SGP, and ChristenUnie).¹²⁷ The VVD is also worried about the high number of students falling under the mean in concentration schools, urging the Government to examine how it can use the financing mechanisms at its disposal to 'whiten' black schools, rather than allowing them to get blacker still.¹²⁸ The LPF is also for mixing student populations, though it is opposed to forced desegregation.¹²⁹ The SP repeatedly mentions the necessity of combating segregation in schools, and goes the farthest of the parties in arguing that this should entail limiting the freedom of

¹²⁶ The SP, as stated previously, argues that 'the emergence and existence of particular values and ensuing norms' in the Netherlands must be addressed explicitly in education (HTK 2003/04, No. 92: 5934-5935). D66 also argues for instilling 'Dutch values' such as equal treatment and sexual equality 'from an early age onward' in school (HTK 2003/04, No. 92: 5963). The CDA similarly states that common values and norms (taken together with history and solidarity as the three constituting elements of citizenship) must be addressed in education (HTK 2003/04, No. 92: 5971). The party, in line with its concern for imparting values and norms through education, also wishes to discourage parents from sending their children to secondary school in their countries of origin (HTK 2003/04, No. 92: 5974).

¹²⁷ HTK 2003/04, No. 92: 5947 (ChristenUnie); HTK 2003/04, No. 92: 5953 (PvdA); HTK 2003/04, No. 92: 5970 (SGP); HTK 2003/04, No. 92: 5977 (CDA). D66 also expresses its concern that the discontinuation of the policy is not sufficiently compensated by other measures; HTK 2003/04, No. 92: 5963-5964.

¹²⁸ HTK 2003/04, No. 92: 5958.

¹²⁹ *Idem*.

parents to choose the school of their children, a subject that we will return to below.¹³⁰ D66, while less worried about the 'blackness' or 'whiteness' of schools in itself, does express its concern that students in neighborhoods where a balanced distribution is impossible will fall behind in their education, and subsequently socio-economically and socially.¹³¹ The party also worries that the discontinuation of the educational arrears policy by the Government is not sufficiently compensated by other financial means, imploring the Government to safeguard the quality of education.¹³² GroenLinks similarly urges the Government to invest in the quality of education in concentration neighborhoods.¹³³ The party also calls on the Government to stimulate the desegregation of such neighborhoods.¹³⁴ In the next section, we will see that all parties support measures to that end.

The two orthodox Protestant parties take in a somewhat different position, though they too emphasize the close ties between education and integration. The ChristenUnie, echoing the 1980s minorities policy, contrary to most other parties argues that supporting distinct identities need not be harmful, but can actually benefit integration.¹³⁵ The party does however concur that it is necessary to address the problems faced by concentration schools, even though it warns against doing so as a covert attempt at frustrating the freedom of education of Muslims in particular.¹³⁶ The SGP, like the ChristenUnie a staunch defender of the freedom of education, also acknowledges 'the problem of black schools' and welcomes the Government's proposals to combat ethnic segregation in education, as long as it does so within the limits set by article 23 of the Dutch constitution.¹³⁷ Article 23 is the constitutional clause protecting the freedom of education. More specifically, it protects the right, originally especially of Catholics and orthodox Protestants, but now also of Muslims, to establish schools, to appoint teachers, and to determine, within certain set limits, the curriculum.¹³⁸ Also, it establishes the right of such 'special

¹³⁰ HTK 2003/04, No. 92: 5964-5965.

¹³¹ HTK 2003/04, No. 92: 5963.

¹³² HTK 2003/04, No. 92: 5963.

¹³³ HTK 2003/04, No. 92: 5943.

¹³⁴ *Idem*.

¹³⁵ HTK 2003/04, No. 92: 5946-5947.

¹³⁶ HTK 2003/04, No. 92: 5947.

¹³⁷ '*de problematiek van zwarte scholen*'; HTK 2003/04, No. 92: 5970.

¹³⁸ One should take care not to confuse concentration schools, or 'black schools', discussed above, with Islamic schools. Concentration schools are generally public schools in concentration neighborhoods. Islamic schools, to the contrary, are denominational schools that have been founded on the basis of article 23. See also *supra*, chapter 2, fn. 91.

schools' to receive government funding on a par with public schools.¹³⁹ Given its bearing on integration, it is no wonder that nearly every party addresses article 23 explicitly in the debate.

Establishing the right of moral communities to educate their children in community and with respect for their distinct comprehensive doctrines as it does, article 23 is seen by a number of parties as an impediment to integration. Besides allowing moral communities to isolate their children from outside influences in special schools, educational liberty can also have a negative impact on the concentration of newcomers at public schools, as it allows, for example, a 'white' Roman Catholic school in a concentration neighborhood to refuse Islamic students for the sake of preserving its own, Roman Catholic, identity.¹⁴⁰ It is testimony to the article's firm establishment in Dutch educational practice, however, that only the SP argues explicitly for its revocation.¹⁴¹ The party argues for education 'on the French model' instead:

'schools must be obliged to accept students. [...] I am for education on the French model. There children of all denominations and creeds go to school together and are taught respect.'¹⁴²

The SP is opposed to the establishment of all religious schools, regardless whether they are Islamic or orthodox Protestant in nature, because 'these schools do not contribute to co-education; they are segregation schools.'¹⁴³ Existing schools can remain, but should take society's wishes pertaining to the process of integration to heart:¹⁴⁴

'...the pillars are a thing of the past and modern society demands an adaptation of that system of pillarization in the direction of good, public education for all children, in community as far as

¹³⁹ Dalton and Montessori schools are also established under art. 23.

¹⁴⁰ See, e.g., the contribution of D66; HTK 2003/04, No. 92: 5964.

¹⁴¹ Note that art. 23 was the centerpiece of the Great Pacification of 1917; see *supra*, chapter 2, 59.

¹⁴² *'moeten scholen een acceptatieplicht krijgen. [...] Ik ben het met de heer Dijkstal en vele anderen eens dat dit artikel [(art. 23)] weg mag; ik ben voor onderwijs zoals in Frankrijk. Daar gaan kinderen van alle gezindten, van alle overtuigingen met elkaar naar school en wordt hun respect aangeleerd'*; HTK 2003/04, No. 92: 5933. See also HTK 2003/04, No. 92: 5934, where the SP calls on the Government to look for solutions within the framework of art. 23, because abolishing it is out of the question.

¹⁴³ *'deze scholen leveren geen bijdrage aan gemengd onderwijs; het zijn segregatiescholen'*; HTK 2003/04, No. 92: 5934.

¹⁴⁴ HTK 2003/04, No. 92: 5934.

possible and in mutual respect. [...] It is my conviction that society and individuals in this country stand to gain therefrom.¹⁴⁵

A few parties, most notably the VVD and the LPF, express their sympathy (the VVD) or support (the LPF) for the SP's position.¹⁴⁶ The VVD does not go so far as to argue for the revocation of the freedom of education, however, though it does express its grave concern that Islamic schools promote segregation, and supports the Government's proposal to make the Dutch nationality mandatory for members of all school boards.¹⁴⁷ At the other extreme from the SP, VVD, and LPF stand the two small orthodox Protestant parties, the ChristenUnie and the SGP, who are unequivocal in their support of article 23. While the SGP acknowledges that educational segregation is a problem, the party emphasizes that any solution to that problem must be found without compromising the principle of freedom of education.¹⁴⁸ The ChristenUnie is similarly committed to article 23.¹⁴⁹ The party emphasizes that this article guarantees religious liberty for all, including, especially, Muslims.¹⁵⁰

In between these two extremes, a number of parties attempt a compromise, arguing that any segregationist effects of article 23 should be mitigated by prohibiting schools from refusing students on the grounds of their religious identity, or by creating strong incentives for them not to do so.¹⁵¹ This is the chosen tack of GroenLinks, the PvdA, and D66, as well as the fallback option of the SP. Both GroenLinks and the PvdA argue that the liberty of education has become too much the liberty of schools to refuse students, instead of the liberty of parents to choose schools. Both parties therefore argue for mandatory acceptance of students by schools.¹⁵² D66, though sharing the sentiment of the two parties just mentioned, is loath to speak of mandatory or forced acceptance, preferring to speak of strongly urged acceptance instead.¹⁵³ The SP, finally, well aware that its call

¹⁴⁵ *'Ik denk dat de zuilen overleefd zijn en dat de moderne samenleving een aanpassing vraagt op dat zuilen- systeem in de richting van algemeen goed onderwijs voor alle kinderen, zo veel mogelijk gezamenlijk en in onderling respect. [...] Het is mijn overtuiging dat de samenleving en individuen in dit land daarmee zijn gebaat'*; HTK 2003/04, No. 92: 5934.

¹⁴⁶ VVD: HTK 2003/04, No. 92: 5960; LPF: HTK 2003/04, No. 92: 5978.

¹⁴⁷ HTK 2003/04, No. 92: 5957, 5960.

¹⁴⁸ HTK 2003/04, No. 92: 5970.

¹⁴⁹ HTK 2003/04, No. 92: 5947.

¹⁵⁰ HTK 2003/04, No. 92: 5947.

¹⁵¹ D66 for example suggests that schools that refuse prospective students on religious grounds be publicly called to account for that refusal. HTK 2003/04, No. 92: 5964.

¹⁵² GroenLinks: HTK 2003/04, No. 92: 5943; PvdA: HTK 2003/04, No. 92: 5952.

¹⁵³ HTK 2003/04, No. 92: 5963, 5964.

to revoke article 23 is futile at present, urges the Government to explore what is possible within the constraints set by that article.¹⁵⁴

The Christian democratic CDA does not make explicit mention of article 23 or the liberty of education. Instead, the party problematizes an issue not mentioned by any other party, namely that migrants send their children to their own countries of origin (e.g. Turkey and Morocco) for their high school education.¹⁵⁵ According to the CDA, this problem is the subject of debate in Germany and deserves to be so in the Netherlands as well. The party is in favor of denying the right of family reunification to families who choose to do so, and suggests fining these families as well, on the grounds of non-compliance with compulsory education statutes.¹⁵⁶ The CDA also, again without mentioning article 23 explicitly, argues in favor of determining whether Islamic education is compatible with the fundamental values of Dutch society.¹⁵⁷

Parties' contributions with regard to education show roughly the same pattern as witnessed in previous sections, with some notable deviations. The extreme positions are taken in by the small orthodox Protestant parties the ChristenUnie and the SGP on the one hand, whose position once again evidences a fundamental respect for the right of moral communities to develop and pursue their own comprehensive doctrines in relative isolation from society, and the SP especially on the other, which party argues forcefully against this right, with the partial support of the VVD and the LPF. It is interesting in itself that the SP stands directly opposite the parties expressing the framework liberal position, for as we saw earlier, the party in other respects takes in a position that is in some ways an intermediary between framework liberalism and liberal culturalism. One might have expected the SP's position to be held by a party such as GroenLinks, for example, which party, in this debate at least, is much more unsympathetic to moral communities than the SP, given its basic commitment to individual autonomy.

That the SP is nonetheless the most verbal opponent of article 23 in the debate, and argues the most forcefully of all parties for desegregationist measures in education, can be explained in two ways. First, the debate shows that article 23 is firmly entrenched in the Netherlands, and that few

¹⁵⁴ HTK 2003/04, No. 92: 5934.

¹⁵⁵ HTK 2003/04, No. 92: 5974.

¹⁵⁶ HTK 2003/04, No. 92: 5974-5975.

¹⁵⁷ HTK 2003/04, No. 92: 5975.

parties are prepared to compromise the freedom of education – not even the VVD, which party is otherwise highly sympathetic to the SP's position. Other parties similarly tending towards liberal culturalism in this debate, such as GroenLinks and the CDA, refrain from expressing strong criticism of the freedom of education. The latter party does not even mention article 23, presumably because to do so would necessitate delicate maneuvering on the part of the Christian democrats. By addressing the problem of educational migrants, however, the party demonstrates that it is critical of Islamic moral communities seeking isolation from society. Moreover, it does so without compromising its allegiance to article 23.

As the SP remarks during the debate, the freedom of education is deeply entrenched in Dutch society. Therefore it is interesting to see that a number of parties are nevertheless willing to compromise that liberty. Their reasons to do so bring us to the second explanation of why the SP is the most verbal opponent of the freedom of education. For though these parties respect the freedom of education, if that liberty is used by special schools in such a way as to compromise the educational prospects of students, for instance by refusing 'black' students at a 'white' school, they argue that the scope of that freedom should be limited in order to prohibit such behavior. For these parties, then, concern for the educational prospects of students, and presumably also their later socio-economic and social prospects, trumps the right of moral communities to promote their particular identities in relative isolation from society. The Socialist Party's position can be understood as a more forceful expression of the same concern. The party repeatedly states that it regards integration to consist in emancipation and participation, understanding the latter especially as economic participation, i.e. work.¹⁵⁸ Though the party generally respects the right of moral communities to develop and express their particular identities, going so far as to say that matters of conscience should not be the object of public deliberation,¹⁵⁹ the reason it rejects a right to non-public education is that such education, in the view of the party, compromises the integration potential, and therefore the socio-economic prospects, of students. Improving the prospects of members of minorities is imperative for the party, if necessary at the cost of maintaining their distinct identities.

¹⁵⁸ See, e.g., HTK 2003/04, No. 92: 5931, 5932, 5936.

¹⁵⁹ HTK 2003/04, No. 92: 5936.

The finding that concern for the educational and further socio-economic prospects of students of immigrant descent can thus inform parties' positions on fundamental liberties is significant and will be elaborated in the next chapter. Here we now turn to a related subject, the struggle against residential segregation.

"Concentration neighborhoods"

Similarly to segregation in education, residential segregation is regarded by many parties as a barrier to the integration of newcomers. Reviewing parties' contributions with regard to residential segregation, it is clear that parties assume a strong correlation between socio-economic deprivation and socio-cultural isolation. This suggests that, as with regard to education, parties' insistence on mixing communities and combating segregation need not be interpreted especially as hostility to socio-cultural difference, but may more readily point to a concern that socio-cultural isolation will hamper the socio-economic prospects of minorities.

Proposed measures to combat residential segregation almost all bear on housing. According to the SP most newcomers would prefer to live in non-segregated neighborhoods, and 40% would move, if possible, if that would enable their children to go to a non-segregated school.¹⁶⁰ Housing policy should therefore concentrate on facilitating the emergence of mixed neighborhoods by building more, more affordable housing in upscale neighborhoods, especially in suburban areas surrounding cities with highly segregated neighborhoods.¹⁶¹ GroenLinks holds housing corporations partially responsible for segregation, because since their privatization in the early nineties corporations have failed to build sufficient low-income housing, both in cities and in surrounding suburbs.¹⁶² To compensate, 30% of all new housing projects should be social housing, the party says.¹⁶³ The PvdA calls the Government to account for coming down hard on newcomers while refusing to address the problems with regard to housing and housing corporations signaled also by the SP and GroenLinks.¹⁶⁴ The VVD agrees with the PvdA that it is necessary to find ways of stimulating affordable housing in cities and

¹⁶⁰ HTK 2003/04, No. 92: 5933.

¹⁶¹ HTK 2003/04, No. 92: 5935.

¹⁶² HTK 2003/04, No. 92: 5939.

¹⁶³ HTK 2003/04, No. 92: 5942.

¹⁶⁴ HTK 2003/04, No. 92: 5954.

suburbs.¹⁶⁵ D66 argues that housing corporations must be stimulated to invest in old neighborhoods and that suburban communities must take responsibility for developing social housing.¹⁶⁶ The SGP similarly worries about the price range of available housing.¹⁶⁷ The CDA, finally, argues especially for accosting slum landlords and for preventing certain groups of newcomers from moving to inner city neighborhoods before having successfully completed a civic integration program.¹⁶⁸

It is notable that most parties do not explicate precisely why segregation is a problem, beyond stating that it stands in the way of or limits the chances for successful integration in similar fashion to the SP.¹⁶⁹ GroenLinks explicitly links segregation to socio-economic inequality, implying that segregation is a barrier to socio-economic equality.¹⁷⁰ Homogenous neighborhoods are bad for integration; therefore the Government should continue to subsidize lower income rents so that residents with lower incomes can live in more expensive neighborhoods, according to the party.¹⁷¹ The CDA fears the emergence of an 'incontrollable underclass like that in the suburbs of Paris', if segregation is not addressed.¹⁷²

One of the few parties to discuss the problems faced by segregated neighborhoods in some detail is D66. According to D66, the problem is not racial or ethnic segregation in itself, but the socio-economic deprivation that is its corollary:

“There is a concentration of socio-economic problems in certain old neighborhoods in the major cities. Many welfare recipients live there, in some cases spanning generations. Public space is deteriorating, anonymity abounds, shopkeepers are moving out and the remaining inhabitants feel left to their own devices. Many houses are sub-rented illegally and are inhabited by too many people. In these neighborhoods there is an accumulation of all sorts of problems, such as drug addiction and prostitution.”¹⁷³

¹⁶⁵ HTK 2003/04, No. 92: 5959.

¹⁶⁶ HTK 2003/04, No. 92: 5962.

¹⁶⁷ HTK 2003/04, No. 92: 5970.

¹⁶⁸ (asylum seekers who have been granted residency permits especially) HTK 2003/04, No. 92: 5976.

¹⁶⁹ HTK 2003/04, No. 92: 5933.

¹⁷⁰ HTK 2003/04, No. 92: 5942.

¹⁷¹ Idem.

¹⁷² 'een onbeheersbare onderklasse zoals in de voorsteden van Parijs'; HTK 2003/04, No. 92: 5975.

¹⁷³ 'Er is een concentratie van sociaal-economische problemen in sommige oude wijken in de

Such neighborhoods, according to D66, are caught in a 'ghetto spiral'.¹⁷⁴ While the party resents terms such as an '*allochthon-stop*' for these neighborhoods (as used with reference to Rotterdam, where the City Council was at the time experimenting with such policies¹⁷⁵), the party is in favor of limiting the influx of new, un-integrated newcomers in these neighborhoods, along with a host of other measures necessary to combat the problems faced by them.¹⁷⁶ These neighborhoods need to become more 'balanced', by demanding that new residents have a higher income than that of welfare recipients.¹⁷⁷ Such measures are the starting point for the economic reinvigoration of these neighborhoods.¹⁷⁸

For D66, then, the central problem is clearly socio-economic deprivation. Allowing more un-integrated newcomers to settle in economically deprived neighborhoods exacerbates both the problems of these neighborhoods and the problems of non-integrated newcomers. The non-integration of their inhabitants adds to the socio-economic deprivation of neighborhoods; socio-economically deprived neighborhoods undermine the successful integration of their inhabitants.

Parties are broadly agreed that concentration neighborhoods are an impediment to integration and that measures are necessary to stimulate mixed-income neighborhoods. This is emphasized, in the second term of the debate, by the submission by all parties minus the Groep Lazrak of a motion imploring the Government to ensure both that (rich) municipalities surrounding cities develop more low-income housing and that more middle and high-end housing is developed in concentration neighborhoods.¹⁷⁹ The parties are agreed also, in the words of the SGP, that 'housing policy and everything related' holds 'a key to change many

grote steden. Er wonen veel mensen met een uitkering, soms al generaties lang. De openbare ruimte is er aan het verloederen, er heerst anonimiteit, middenstanders trekken weg en achterblijvende bewoners voelen zich aan hun lot overgelaten. Vaak worden woningen illegaal onderverhuurd en door te veel mensen bewoond. In deze buurten is sprake van een cumulatie van allerlei problemen, zoals drugsverslaving en prostitutie'; HTK 2003/04, No. 92: 5962.

¹⁷⁴ HTK 2003/04, No. 92: 5962.

¹⁷⁵ The so-called 'Rotterdam-law' (*Rotterdamwet*), which is still in force at present (2015), allows designated areas to refuse newcomers who earn less than 120% of minimum wage. See "Kamer stemt in met uitgebreidere 'Rotterdamwet'". March 6, 2014. <http://www.rijksoverheid.nl/nieuws/2014/03/06/kamer-stemt-in-met-uitgebreidere-rotterdamwet.html> (visited February 5, 2015).

¹⁷⁶ '*allochtonenstop*'; HTK 2003/04, No. 92: 5962.

¹⁷⁷ '*een meer evenwichtige samenstelling*'; HTK 2003/04, No. 92: 5962.

¹⁷⁸ HTK 2003/04, No. 92: 5962.

¹⁷⁹ Kamerstukken II, 28689, nr. 24.

problems surrounding segregation in education, etc.’¹⁸⁰ The motion is adopted unanimously.¹⁸¹

As with education, the findings regarding residential segregation show that socio-economic concerns are strongly present in the debate. If one recalls that the target groups of integration policy have always been designated on the basis of socio-economic concerns, this is not surprising. The next section shows that this concern for the ability of newcomers to participate socio-economically is also borne out more directly in the debate.

Economic activation

A number of parties point out the general necessity of strengthening the socio-economic chances of newcomers to the Netherlands. GroenLinks, for instance, leaves no uncertainty that it regards closing the socio-economic gap as the key to addressing integration problems.¹⁸² Also, the party calls Parliament to task for its resistance to continuing one of the few laws aimed directly at stimulating employers to hire *allochthons*.¹⁸³ The ChristenUnie similarly regrets that specific measures stimulating *allochthons'* economic participation are being cut or will disappear completely.¹⁸⁴ D66 states also that deficiencies in integration often coincide with socio-economic deficiencies and subsequently that successfully addressing the integration problem necessitates ‘activating the bottom of the labor market’.¹⁸⁵ And though, as seen above, the CDA exhibits the tendency to stress the necessity of social cultural adaptation by newcomers, the party at the same time maintains that integration policy must bear the socio-economic deficiencies of newcomers in mind as well.¹⁸⁶ The PvdA, finally, voices its agreement with GroenLinks and the SP that measures are necessary with regard to employment, besides housing and education, in order to integrate newcomers.¹⁸⁷

A few parties propose to link economic participation and social integration

¹⁸⁰ ‘Op het gebied van huisvestings- beleid en alles erop en eraan’, ‘een sleutel ligt tot verandering van allerlei problemen rond segregatie in het onderwijs enzovoorts’; HTK 2003/04, No. 94: 6091.

¹⁸¹ See HTK 2003/04, No. 95: 6115.

¹⁸² HTK 2003/04, No. 92: 5939.

¹⁸³ HTK 2003/04, No. 92: 5943.

¹⁸⁴ HTK 2003/04, No. 92: 5947.

¹⁸⁵ ‘activering van de onderkant van de arbeidsmarkt’; HTK 2003/04, No. 92: 5966.

¹⁸⁶ HTK 2003/04, No. 92: 5971.

¹⁸⁷ HTK 2003/04, No. 92: 5950.

in a more direct, albeit negative way. These parties propose to actively discourage newcomers from remaining in Dutch society if they do not have employment by restricting their access to social security. This so-called 'de-coupling' of employment and social security for newcomers, or 'phased entry' into social security schemes, is suggested especially by the VVD and LPF. The LPF, we saw above, argues for a strict distinction between nationals and resident aliens. The right to social benefits should be restricted to the first category.¹⁸⁸ Also, following the alleged example of Switzerland, the LPF argues for revoking resident aliens' residency permits as soon as they become unemployed.¹⁸⁹ The VVD, somewhat less rigorously, and referring to a report by the Governmental Council for Governmental Policy (an authoritative and formally independent think tank and advisory body to the Government), argues for the phased entry of newcomers in social security schemes.¹⁹⁰ According to the party, support for such phased entry is growing within the CDA and the PvdA also.¹⁹¹ The PvdA, however, in this debate at least, is hesitant to take a stand on the issue, though the party is interested to know what we could learn from other countries with regard to such schemes.¹⁹² D66 voices a similar interest.¹⁹³ The SP is flatly opposed to any scheme which creates two different sets of labor conditions for newcomers and residents respectively.¹⁹⁴

It is unclear, by the way, whether the VVD and LPF view decoupling employment and social security for newcomers as an incentive for their socio-economic participation, whether the two parties understand the measure primarily as a deterrent to immigration, or whether they propose the measure for another reason, such as managing the costs of social security. What these two parties in any case do make clear is that they would not oppose any such measures if they were known to reduce immigration. According to both the VVD and the LPF, addressing integration without reducing immigration is akin to 'mopping up with the tap running'.¹⁹⁵

¹⁸⁸ HTK 2003/04, No. 92: 5978.

¹⁸⁹ HTK 2003/04, No. 92: 5978.

¹⁹⁰ HTK 2003/04, No. 92: 5960. The report referred to by the VVD could be *The Netherlands as Immigration Society ('Nederland als immigratiesamenleving')*; see Wetenschappelijke Raad voor het Regeringsbeleid 2001, 238 especially.

¹⁹¹ HTK 2003/04, No. 92: 5960.

¹⁹² HTK 2003/04, No. 92: 5954, 5955.

¹⁹³ HTK 2003/04, No. 92: 5954.

¹⁹⁴ HTK 2003/04, No. 92: 5936.

¹⁹⁵ 'dweilen met de kraan open'; HTK 2003/04, No. 92: 5957 (VVD); HTK 2003/04, No. 92:

What all these measures point to is parties' belief that it is impossible to address integration in Dutch society without taking account of the socio-economic structure of that society. This structure determines, at bottom, that members of society must be economically independent. This is evidenced also by Prime Minister Balkenende's contribution to the debate, in which he discusses the undesirability of a Muslim pillar in the Netherlands. Referring to a recent interview in which he had called such a pillar a potential 'prison of deprivation' the CDA-Prime Minister now takes the opportunity to explain his views.¹⁹⁶ The pillars as they existed in the context of Dutch Pillarization, according to the Prime Minister, were both internally heterogeneous and externally geared to national cooperation; 'everybody knew that we must shape the Netherlands together.'¹⁹⁷ A possible Islamic pillar differs from these pillars in that it would be much more homogenous and 'not nearly as socio-economically varied'.¹⁹⁸ Therefore, such a pillar carries the risk of 'social confinement'.¹⁹⁹ What this demonstrates is not only the desire for a certain degree of common purpose or identity in society, but also and especially that socio-economic concerns directly influence the assessment of the acceptability of socio-cultural differences.

Pointing to the degree to which socio-economic concerns inform the debate should not detract from the socio-cultural concerns explicitly present therein, though. These are expressed forcefully in the Minister of Integration's contribution to the debate, with which I would like to bring this chapter to a close. Minister Verdonk (VVD) had already achieved popularity and notoriety by taking a firm stance on issues of immigration and integration, earning her the nickname 'iron Rita'. Her contribution to the present debate is in that sense true to form. With regard to diversity, the Minister is willing to accept that it is a reality, but not that it is a reality which should be embraced, or against which resistance is uncalled for:²⁰⁰

'Were we not agreed that that diversity can also have a dark side, that not everything that comes from abroad is automatically good,

5977 (LPF).

¹⁹⁶ 'een gevangenis van achterstand'; HTK 2003/04, No. 94: 6049. Though the Prime Minister refers to an interview in the weekly magazine *Elsevier* on December 20, 2003, he initially made his remarks at the yearly congress of his party, on November 1, 2003. See "Premier tegen islamitische zuilvorming." 2003, 3 November 3. NRC Handelsblad.

¹⁹⁷ 'wist iedereen dat wij samen Nederland vorm moesten geven'; HTK 2003/04, No. 94: 6049.

¹⁹⁸ 'lang niet zo sociaal-economisch gevarieerd'; HTK 2003/04, No. 94: 6049.

¹⁹⁹ 'maatschappelijke opsluiting' HTK 2003/04, No. 94: 6049.

²⁰⁰ HTK 2003/04, No. 94: 6058.

pretty, and interesting, and that a surplus of diversity can ruin a society? Am I hearing correctly: isn't this just multiculturalism in new clothes? Old politics with new words.'²⁰¹

The Government takes a different approach: 'without a common culture, no society.'²⁰² This, of course, does not mean that people cannot have their own 'identity, lifestyle, or other idiosyncrasies.'²⁰³ It does mean however, 'that society is something you share, that you stand for something together.'²⁰⁴

With regard to the Islam the Minister states that she agrees with those parliamentarians who maintain that the Islam should be regarded as a normal religion, but adds that

'this is not made easy of late. The degree of suffering and misery that is poured out over innocent civilians world-wide in the name of Islam does not exactly encourage a positive attitude towards this religion.'²⁰⁵

Nevertheless, the Minister wishes to challenge 'the negative climate surrounding the Islam in the Netherlands.'²⁰⁶ Autochthonous attitudes must change, but also 'the attitudes of the Muslims themselves.'²⁰⁷ To that end 'contact, mutual acquaintance, and societal dialogue' are necessary.²⁰⁸

The contribution of the Minister of Integration is a forceful reminder of the strong current of liberal culturalism permeating the Government's response to *Building Bridges*, which is also evident in a number of parties'

²⁰¹ 'Waren wij het er niet over eens dat diversiteit ook een schaduwzijde kan hebben, dat niet alles dat van elders komt alleen daarom ook goed, mooi en interessant is en dat een teveel aan diversiteit een samenleving kapot kan maken. Hoor ik het goed: is dit niet gewoon multiculturalisme in een nieuw jasje? Oude politiek met nieuwe woorden'; HTK 2003/04, No. 94: 6058.

²⁰² 'zonder gemeenschappelijke cultuur geen samenleving'; HTK 2003/04, No. 94: 6058.

²⁰³ 'identiteit, levensstijl of welke eigenaardigheid dan ook'; HTK 2003/04, No. 94: 6058.

²⁰⁴ 'dat samenleven iets is dat je deelt, dat je samen ergens voor staat'; HTK 2003/04, No. 94: 6058.

²⁰⁵ 'dat het mij daarin de laatste tijd niet gemakkelijk wordt gemaakt. De hoeveelheid leed en ellende die uit naam van de islam over onschuldige burgers overal ter wereld wordt uitgestort, is niet direct een aanmoediging tot een positieve houding ten opzichte van deze godsdienst'; HTK 2003/04, No. 94: 6059.

²⁰⁶ 'het negatieve klimaat rond de islam in Nederland te doorbreken'; HTK 2003/04, No. 94: 6060.

²⁰⁷ 'de houding van de moslims zelf'; HTK 2003/04, No. 94: 6060.

²⁰⁸ 'aan contact, aan het elkaar leren kennen, aan de maatschappelijke dialoog'; HTK 2003/04, No. 94: 6060.

contributions to the debate. Note that besides emphasizing the necessity of a common culture the Minister also reduces diversity to differences in “identity, lifestyle, or other idiosyncrasies”, thereby playing down any categorical differences that might be assumed between religious- and other identities.

Conclusion

This chapter offers strong evidence of a commitment to liberal culturalism on the part of the Government and a number of parties in the Second Chamber in 2004, most notably GroenLinks, the CDA, and the VVD. All these parties and the Government each in their own way express a commitment to individual autonomy and welcome diversity only in so far as it is the result of the exercise of such autonomy. At the same time, the debate shows a persistent strain of framework liberalism, expressed most explicitly by the small orthodox Protestant parties the SGP and the ChristenUnie, which parties consistently emphasize the right of moral communities to develop and express their own comprehensive doctrines. Then there are parties like the PvdA and D66, who definitely do not exhibit the same respect for moral communities as the orthodox Protestant Parties, without, however, embracing as comprehensive a view of individual liberty as GroenLinks, the CDA, and the VVD.

A continuing respect for moral communities is also evident in the widespread endorsement of the freedom of education, which only one party, the SP, explicitly rejects. The strength of the commitment to the freedom of education in the Netherlands is evident in that even a party otherwise strongly committed to individual autonomy, GroenLinks, supports the freedom of education, though, like a number of other parties in the Second Chamber, the party would welcome measures limiting the right of schools to refuse students.

The discussion of the freedom of education and the proposed limitation of that freedom for the sake of educational de-segregation reveal a central feature of the integration debate, namely the impossibility of assessing parties’ positions on socio-cultural matters in isolation from their socio-economic concerns. As a party such as the SP’s position vis-à-vis educational freedom, for example, is strongly influenced by its concern for the socio-economic integration of the children of newcomers, it would not do this party justice to conclude from that position that the party

opposes socio-cultural diversity. It does not, but it regards socio-economic integration as more important, and so also the socio-cultural integration that is necessary to that end.

Bearing this conclusion in mind in the next chapter will help us to better interpret and understand parties' insistence on the necessity of civic integration for the integration of minorities. Though civic integration also figured in the debate presented in the present chapter, its discussion was postponed to the next, both because civic integration is so significant to integration as to warrant a chapter of its own, and because civic integration was debated much more extensively in two subsequent debates to the general integration debate. These debates provide a much better overview of parties' respective positions on the topic. As we will see shortly, for most of these parties civic integration is necessary especially in light of the need of all citizens to participate economically in Dutch society, i.e, to work.

Chapter 5

Earning Your Keep: The Debates on Civic Integration

Introduction

The previous chapter demonstrated that in 2004 a commitment to liberal culturalism was implicit in a number of parties' views on liberty and diversity in Dutch society. For parties such as GroenLinks and the VVD, but also the Christian Democratic CDA, diversity is welcomed especially if and in so far as it is the expression of the autonomous choice of citizens. To the extent that moral communities in Dutch society reject the individual autonomy of their members, these moral communities are themselves to be rejected. At the same time, there is a strong, if small, current of undiluted framework liberalism running through the debates, in the form of the contributions of the orthodox Protestant parties the SGP and the ChristenUnie especially.

Of the parties taking in a position between these two extremes, the SP proved to be of special interest. While the SP explicitly and forcefully rejected the freedom of education for its segregationist tendencies, it did not reject diversity *in se*, claiming that it is impossible to deny individuals their history and identity. The SP's position, it was suggested, can be explained by reference to its more fundamental commitment to socio-economic emancipation and participation; the party's paramount concern is that all members of society be able to participate as equals in that society. Equal participation is conditional upon the absence of economic domination. Domination can only be averted by acquiring a position of economic independence. Such a position can only be acquired if one has the skills necessary to do so. These skills are partly taught in school, and partly determined by society. To acquire these skills, one must therefore go to school, and interact in society. That the distinct identities of moral communities individuals belong to may suffer as a result of such participation is inconsequential in light of the higher goal of socio-economic emancipation.

As this chapter will establish, the rationale described in the previous paragraph, which gives clear precedence to socio-economic concerns above socio-cultural sensitivity, plays a marked role in most parties' position on civic integration. In so far as parties' view of moral communities is thus focused on the degree to which community membership hampers the economic prospects of their members, they take up an instrumental view of moral communities in the debates on civic integration, thereby tending, perhaps inadvertently, towards a liberal culturalist position with regard to the standing of such communities in Dutch society. For the most part,

however, moral communities will be shown to play a limited role in these debates. Parties' general concern is for society and its members, who are expected to be participating members in it. Though parliamentarians hardly flesh out participation beyond the economic sphere, they will be seen to treat Dutch society as consisting of more than that sphere alone. Society is implicitly treated as a moral community, its members as subscribing to distinct norms and values going beyond the public sphere or a mere procedural morality. In that important sense, also, this chapter offers more evidence of a tendency towards liberal culturalism in Dutch Parliament, be it in principle or by default.

This chapter, then, is a continuation of the previous chapter, using the debates on the Civic integration-bills as a means to further determine Parliament's views of the integrated society. In what follows, after a short historical introduction of civic integration policy and law, the debates on the two civic integration bills will be presented and analyzed in turn. Emphasis will be placed therein on the more substantial, and more recent, debates concerning the 'Civic integration bill'. The parliamentary discussion of the second bill (generally referred to as 'Civic integration abroad'), which took place a year prior to the debates on the Civic integration bill, will serve as a prolegomenon to the discussion and analysis of the Civic integration bill, introducing and structuring the arguments of the later debates.

Civic integration law and policy; a short introduction

Civic integration policy in the Netherlands dates from 1996.¹ *'Inburgering'*, the Dutch term for civic integration, was introduced as policy jargon around 1994, allegedly by the PvdA-politician, then minister for the Interior, Van Thijn.² As the term *'inburgering'* has undertones that are absent from its translation as 'civic integration', a short digression is warranted.

Commenting on the Dutch preoccupation with the civic integration (*'inburgering'*) of non-Western immigrants, the Belgian sociologist Jacobs remarks the following:

"Inburgering', by the way, is a term that is very difficult to translate

¹ Civic integration policy should not to be confused with (the broader) integration policy.

² As mentioned by the PvdA in debating the Civic integration bill in the First Chamber; see HEK 2006/07, No. 9: 383. Incidentally, Van Thijn also represented the PvdA in the First Chamber during the debate on the Framework Convention for the Protection of National Minorities, discussed in chapter 3.

into French (or English, for that matter). *Burgerschap*, [which translates as] *citoyenneté* or citizenship will be familiar, but it is impossible to explain ‘*inburgering*’ in the scope of one sentence to even the most charitable audience. It is, then, one of those typically Dutch terms [...] that Flemish speaking Belgians can still make an effort to understand, but that seem untranslatable - or worse - unintelligible outside the Dutch language area. How would one explain ‘*inburgering*’ to French or English colleagues? Inevitably one would begin with the term ‘*burgerschap*’.³

But starting from *burgerschap*, commonly translated as ‘citizenship’, may actually serve merely to confuse matters further, for ‘citizen’ is not the only meaning of the term ‘*burger*’, from which both ‘*inburgering*’ and ‘*burgerschap*’ are derived. Historically, ‘*burger*’ referred not to the citizen of the modern nation state, for the latter did not yet exist, but to the freemen of a town or city. This explains the connotation of the term with the self-satisfied parochialism of the middle classes, in similarity to the term *bourgeois*. In the vernacular, ‘*inburgering*’ draws more heavily on the connotations of conformity and belonging inherent in the term ‘*burger*’ than on its more modern meaning of citizen. To feel *ingeburgerd* is to feel comfortably at home, to be *ingeburgerd* is to be generally regarded as belonging as a result of exhibiting the behavior and opinions of those who already belong. That the term ‘*inburgering*’ has less to do with the rights and status of citizenship and more with identity and belonging can further be gleaned from the term’s usage with regard to language, which predates that with regard to citizenship. The *inburgering* of a term or phrase denotes the process of that term’s becoming incorporated in a language community. When it is fully *ingeburgerd*, it is no longer distinguishable as having once been alien to that community.

Much discussion of the *inburgering* of non-Western immigrants in the Netherlands, then, does not primarily concern their rights of citizenship, but rather the degree to which they are identified, and have come to identify themselves, as full and secure members of Dutch society. This explains also why these debates are not a continuation of the citizenship debates that occupied the Netherlands (and many other liberal democracies) in the eighties and nineties of the twentieth century.⁴ *Inburgering* is not only

³ Jacobs 2000: 3 (translation FMB).

⁴ See, e.g. Kymlicka 2002: chapter 7 and Van Gunsteren 1992: chapter 3, for an overview of political debates in Great Britain, Germany, France, and the Netherlands.

or even especially about civic virtue, or the duties of the good citizen. It is also and at least as often about identity and belonging. Given this characterization of civic integration, the passing into law of the two Civic integration bills discussed in this chapter is in itself testimony to a self-understanding of the Netherlands as a distinct moral community in which one can come to belong by adaptation to the reigning mores.

As stated, civic integration policy in the Netherlands dates from 1996. The first Civic integration law entered into force two years later, in 1998.⁵ Under this law certain categories of newcomers to the Netherlands were required to follow civic integration programs. These programs were prescribed and supervised by local municipalities, while a single, centralized educational institution was tendered to organize and offer the courses. The courses' main focus was on Dutch as a second language and on the characteristics of Dutch society and the labor market. In addition to teaching these subjects, assistance was offered in dealing with social and administrative institutions, pursuing further education, and, if possible, finding work. While the municipality had the authority to instill a fine for deliberate non-participation in civic integration courses, failing to achieve the legally required minimum levels set by the law had no legal consequences. Whereas newcomers were legally required to participate in civic integration courses, so-called 'oldcomers', i.e. legal resident aliens belonging to the target categories of integration policy, could participate in them on a voluntary basis.⁶

According to the second Cabinet Government headed by CDA Prime Minister Balkenende (consisting of members of the CDA, VVD, and D66, generally referred to as 'Balkenende II') the Civic integration law of 1998 had failed to achieve its stated objectives. Already in its coalition agreement, well before the Committee Blok concluded that the old Civic integration law of 1998 had had little effect, the Government emphasized the necessity of the civic integration of newcomers, and hinted at new measures.⁷ These measures were presented in more detail in its memorandum on the revision of civic integration policy in April, 2004.⁸ Two of the measures announced therein will occupy us in this chapter. The first, Civic integration abroad, dates from 2004 and acquired force of

⁵ See also *supra*, chapter 2, 76.

⁶ See Kamerstukken II, 30308, nr. 3: 3.

⁷ Kamerstukken II, 28637, nr. 19: 14. See, for the Blok-committee's conclusions on civic integration, Kamerstukken II, 28689, nrs. 8-9: 143-144.

⁸ See Kamerstukken II, 29543, nr. 2.

law in 2006. 'Civic integration abroad' actually was an amendment of the existing Aliens Act of 2000, which amendment introduced rudimentary knowledge of Dutch and Dutch society as an entry requirement for aspiring resident aliens from certain designated countries. The second measure dates from 2005, acquired force of law in 2007, and consisted in a new and 'more obligatory and more results-driven' Civic integration bill to replace the 1998-law described above.⁹ Below, the parliamentary debates of these two bills will be presented and analyzed in turn.

The debates in the Second Chamber: Civic Integration Abroad

The proposal to amend the Dutch Aliens Act so as to make it necessary for certain categories of applicants for residency in the Netherlands to pass a civic integration exam in their country of origin as a condition for obtaining a residency permit (henceforth: Civic integration abroad) was sent to the Second Chamber by Minister Verdonk (VVD) in the fall of 2004.¹⁰ The Second Chamber discussed the bill in plenary session in March 2005. The largest member of the opposition was the PvdA (occupying 42 of 150 seats in the Second Chamber). The bill was supported in the Second Chamber by all parties except GroenLinks and the SP, the latter of which was in favor of the bill in principle but had reservations about the legislative procedure followed.¹¹ GroenLinks was the only party to object to Civic integration abroad on principle, as will be demonstrated below.

Much of the debate on Civic integration abroad revolved around technical issues, such as the feasibility of examining applicants' knowledge of the Dutch language and society by way of speech recognition technology. The precise level of proficiency in Dutch desired (A1- or A1+, for example) was also much debated. Such issues will be ignored below. The focus will be on three issues with special bearing on the subject matter of this thesis, namely: (a) the justification of the bill; (b) the discussion of women

⁹ From the Explanatory Memorandum (*Memorie van Toelichting*), Kamerstukken II, 30308, nr. 3: 3.

¹⁰ Kamerstukken II, 29700, nr. 2.

¹¹ For the voting record, see HTK 2004/05, No. 68: 4284-4285. The SP's concern about the legislative procedure focused primarily on the minister's refusal to postpone voting until after more information had been obtained concerning how the computerized examinations (which relied fully on the use of speech recognition technology) functioned in practice; see HTK 2004/05, No. 67: 4263-4264.

and emancipation; and, relatedly, (c) the substance of Dutch culture and values.

The justification of civic integration abroad

The Civic integration abroad-bill makes 'knowledge on a basic level of the Dutch language and Dutch society' a condition of entry for individuals applying for a residency permit, if and in so far as they hail from outside the EU and are not nationals of Switzerland, Norway, Iceland, the United States, Canada, Australia, New Zealand, and Japan.¹² Though the bill therefore applies to a very broad range of individuals, the Government explicitly acknowledges that the bill is concerned especially with migrant brides and spouses from Turkey and Morocco.¹³ The Government regards family reunification and formation as a constant strain on the successful integration of Turkish and Moroccan residents, alien or otherwise, in Dutch society.¹⁴

The Government provides a three-tier justification of Civic integration abroad. The first tier is the same as the justification of integration policies in general: Civic integration abroad is necessary for the sake of the social cohesion of Dutch society and to forestall the social and economic marginalization of specific groups.¹⁵ The second tier consists in pointing out the negative impact of newcomers on the integration of those specific groups. Because every newcomer has to begin integrating in Dutch society afresh, every newcomer is a setback to the integration of the group to which he belongs as a whole. This is all the more so because many newcomers are women, whose chief responsibility it will be to raise children. As these children grow up to have families of their own, 'processes of marginalization' affecting the group are passed on 'from generation to generation.'¹⁶ The third tier consists in pointing out that many of these newcomers share individual characteristics that are not conducive to integration in Dutch society: they have little in the way of formal education beyond the elementary level, they show relatively

¹² *'kennis op basisniveau van de Nederlandse taal en de Nederlandse maatschappij'*; Kamerstukken II, 29700, nr. 2: 1 (art. I).

¹³ Kamerstukken II, 29700, nr. 3: 4.

¹⁴ Kamerstukken II, 29700, nr. 3: 5.

¹⁵ Kamerstukken II, 29700, nr. 3: 3-4.

¹⁶ *'processen die op den duur marginalisering van bepaalde bevolkingsgroepen tot gevolg hebben'*, *'van generatie op generatie'*; Kamerstukken II, 29700, nr. 3: 4.

high levels of unemployment, if they are employed it is relatively often as unskilled workers, they have low language skills and are generally lagging in socio-cultural integration, i.e. they have little contact with autochthonous Dutch, identify primarily with their own community, and are primarily oriented towards their native language and culture. Women especially are ill equipped to integrate in Dutch society.¹⁷

Civic integration abroad, according to the Government, is necessary to forestall the repetitive cycle of family reunification and formation and social and economic marginalization.¹⁸ It will do so by ensuring that prospective newcomers will appreciate the consequences of their migration beforehand; that they will realize that they are expected to learn Dutch and know about Dutch values and norms; and that they will have ‘actually and demonstrably’ focused on Dutch language and society before arrival.¹⁹

Working through the three tiers outlined above from the bottom up (individual, group, society), Civic integration abroad is expected to strengthen the weakest link in the integration process by giving Turkish and Moroccan migrant spouses especially a flying start in civic integration, thereby enlarging the chances for their successful integration and that of their children, subsequently facilitating the integration of their respective communities in Dutch society, forestalling their economic marginalization, and finally improving the social cohesion of the Netherlands as a whole. These last results are not expected to follow only from Civic integration abroad’s positive effects in strengthening the skills and knowledge of newcomers, but also from its negative effects. For the Government also expects Civic integration abroad to function as a filter, barring the entry of migrants who fail to pass the entry exam.²⁰ Selection is not the bill’s stated goal, however, but an expected side effect.²¹

This side effect is reason for GroenLinks to oppose the bill. Indeed, the party maintains that contrary to the bill’s explanatory memorandum, selection is the principally intended effect of the bill. Though the party does not dispute the importance of knowledge of Dutch language and culture, it believes such knowledge is much more effectively acquired

¹⁷ Kamerstukken II, 29700, nr. 3: 4-5.

¹⁸ Kamerstukken II, 29700, nr. 3: 5.

¹⁹ ‘*daadwerkelijk en aantoonbaar*’; Kamerstukken II, 29700, nr. 3: 6.

²⁰ Kamerstukken II, 29700, nr. 3: 6.

²¹ Kamerstukken II, 29700, nr. 3: 14-16.

in the Netherlands. The bill allegedly does not serve the purpose of civic integration, but of selection, and as the bill impedes upon the fundamental right to freely choose one's partner in life it does so at the cost of deeply intervening in the personal lives of Dutch citizens.²²

The VVD, to the contrary, explicitly welcomes the bill as a means to reduce immigration, claiming that it would not consider the failure of individuals to pass the exam as a negative result.²³ The other parties are for the most part less outspoken on the subject of selection, though some are worried that the bill may be struck down in court if it selects too harshly or on unjustified grounds, and/or dispute the criteria on which selection takes place. The PvdA, for instance, states that selection should be made on the grounds of literacy; applicants who cannot read and write in their native tongue should be barred from entry.²⁴ The SP, on the other hand, wishes to select not on skills but on motivation. The proposed level, the party believes, is adequate to that end.²⁵

Returning to the three tiers of the Government's justification outlined above, no parties dispute the first tier, i.e. that societal integration is necessary. The VVD is the only party that explicitly places the bill in the context of improving social cohesion.²⁶ Most parties concur explicitly or implicitly with the implicit target groups of the bill, namely the Turkish and Moroccan community, thereby underwriting the Government's second and third tiers of justification, namely that marriage migration weighs down on the integration of these communities and that it does so through the combination of the role women play in these communities with the factor that they, especially, are ill-equipped to integrate.²⁷ Again, GroenLinks stands alone, both in addressing the one-dimensional view that the Government has of marital migration and its impact on integration, and in questioning the proportionality of the Government's proposed measure.²⁸ This does not mean that GroenLinks is not concerned about the emancipation of these women, however. This will become clear

²² HTK 2004/05, No. 60: 3895; GroenLinks is represented in this debate by Azough.

²³ HTK 2004/05, No. 60: 3904-3905. The VVD is represented in this debate by Visser.

²⁴ HTK 2004/05, No. 60: 3886-3887. The PvdA is represented in this debate by Dijsselbloem.

²⁵ HTK 2004/05, No. 60: 3901. The SP is represented in this debate by Vergeer.

²⁶ HTK 2004/05, No. 60: 3902.

²⁷ The CDA for instance emphasize the necessity of including Turkish women in the scope of the bill (which is problematic due to the EU-accession treaty with Turkey) (HTK 2004/05, No. 60: 3893); see further HTK 2004/05, No. 62: 4023 (PvdA); HTK 2004/05, No. 60: 3904 (VVD); HTK 2004/05, No. 60: 3899 (SGP); HTK 2004/05, No. 60: 3885 (D66).

²⁸ HTK 2004/05, No. 60: 3895.

in the next section, in which we focus more closely on the treatment of the subject of women in the debate.

Women and emancipation

The civic integration of migrant women especially is a concern voiced explicitly both by the Government and by a number of parties participating in the debate. The emphasis placed by the Government on the role of especially Turkish and Moroccan women in the integration process was already mentioned above. During the debate the minister, in defending the proposal, goes a step further, claiming that the original reason underlying Civic integration abroad was 'precisely to strengthen the emancipation of women.'²⁹

The largest coalition and opposition parties, the CDA and PvdA respectively, also regard Civic integration abroad as having special bearing on the necessary emancipation of migrant women. Of these two the CDA is the most explicit as to why emancipation is necessary and how Civic integration abroad is conducive to that aim; the PvdA merely makes positive mention of the broad consensus concerning the bill's purpose, namely 'a better integration and emancipation of marriage migrants'.³⁰

Civic integration abroad is necessary, according to the CDA, so that the subsequent civic integration in the Netherlands can take place faster and more efficiently.³¹ This is especially the case for 'certain groups of migrant women in vulnerable positions'.³² The CDA sees two main reasons why the integration and emancipation of these women is necessary. One is that it will strengthen the position of migrant women within their families and communities. Knowing their rights, 'for instance concerning honor vengeance', will strengthen that position, and having proficiency in Dutch will enable them to participate in society and will increase their chances at eventually finding a job or pursuing an education.³³ At the same time the emancipation and integration of these women is necessary for their children's sake. Women should be able to 'read a school form',

²⁹ *'juist om de emancipatie van vrouwen te versterken'*; HTK 2004/05, No. 62: 4039.

³⁰ *'een betere integratie en emancipatie van huwelijksmigranten'*; HTK 2004/05, No. 62: 4023.

³¹ HTK 2004/05, No. 60: 3888. The CDA is represented in this debate by Sterk.

³² *'bepaalde groepen vrouwen onder de migranten in een kwetsbare positie'*; HTK 2004/05, No. 60: 3888.

³³ *'bijvoorbeeld ten aanzien van eerwraak'*; HTK 2004/05, No. 60: 3893; HTK 2004/05, No. 60: 3890.

‘we want them to be able to raise their children well’, they should have some knowledge of Dutch and Dutch society before arrival because ‘there are girls who come to the Netherlands and become pregnant’ and subsequently have ‘to raise their child, while they cannot speak Dutch.’³⁴

The minister argues for the integration and emancipation of mothers in similar terms, referring explicitly to the challenges faced by Turkish and Moroccan women:

“They come to the Netherlands, aren’t prepared for Dutch society, don’t speak the language, do not know how we behave towards each other in the Netherlands, and know nothing about Dutch values. Yet they are the mothers of children. The continuing integration process is therefore set back again and again by these new entrants. They have to start from zero.”³⁵

GroenLinks, again, strikes a different tone. Firstly the party stands alone in treating emancipation as an issue that must be addressed to men also and not just to women.³⁶ Secondly, while strongly endorsing emancipation and ‘a liberal attitude towards sexuality and the equality of man and woman’ in general, the party feels that emancipation can be more effectively addressed in the Netherlands than through Civic integration abroad.³⁷ Instead of reflecting such attitudes and equality, however, Civic integration abroad amounts to a ‘fencing in’, or ‘reduction’, of the Netherlands and of its ‘liberal character’, according to the party.³⁸

The referral to the liberal character of the Netherlands by GroenLinks constitutes one of the few times during the debate that an attempt is made to define the content of the Dutch culture and values that newcomers, in the words of the minister, ‘know nothing about’, though they are

³⁴ *‘een formulier van school’*; *‘Ook willen wij dat zij hun kinderen goed kunnen opvoeden’*; HTK 2004/05, No. 60: 3890; *‘dat er meiden zijn die naar Nederland komen en dan zwanger raken, uit de inburgeringscursus vallen en te maken krijgen met de opvoeding van hun kind, terwijl zij geen Nederlands spreken’*; HTK 2004/05, No. 60: 3896.

³⁵ *‘Die komen naar Nederland, zijn niet voorbereid op de Nederlandse samenleving, spreken de taal niet, weten niet hoe wij met elkaar omgaan in Nederland en weten niets van de Nederlandse waarden. Het zijn echter wel de moeders van kinderen. Het voortschrijdende integratieproces wordt dus iedere keer teruggedet door deze nieuwe binnenkomers. Zij moeten op het nulpunt beginnen’*; HTK 2004/05, No. 62: 4005.

³⁶ HTK 2004/05, No. 60: 3895.

³⁷ *‘een vrije kijk op seksualiteit en een gelijke positie van man en vrouw’*; HTK 2004/05, No. 60: 3895.

³⁸ HTK 2004/05, No. 60: 3895. The Dutch word in the original is *‘inkapselen’*, which means ‘fencing in’, but also has connotations of ‘making smaller’.

crucial for their (civic) integration. This scarcity of explicit discussion of Dutch culture and values is a third notable aspect of the debate on Civic integration. It will be discussed in the following section.

Dutch culture and values

Though the Government and parties alike repeatedly stress that it is necessary that newcomers know of and respect Dutch cultural norms and values, these norms and values receive surprisingly little explicit attention, either in the Government's memorandum or during the debate. According to the memorandum, the bill in part fulfills Parliament's desire that 'the importance of the essential Dutch values, norms, and fundamental rights' already be brought to the attention of applicants for residency permits during the application procedure.³⁹ The memorandum, however, instead of norms and values, speaks chiefly of knowledge of the 'basic tenets of Dutch society' or 'knowledge, at a basic level, of Dutch society'.⁴⁰ What that knowledge should amount to, or what those basic tenets are, is not made explicit in the memorandum, however, though it is stated that testing applicants' knowledge of Dutch society aims to test whether they have become 'aware of Dutch values and norms'.⁴¹

The Government's own 'Advice committee standardization civic integration requirements', by the way, had advised the Government to differentiate between practical knowledge and skills on the one hand and more abstract knowledge about Dutch society on the other.⁴² Practicalities are better learnt, according to the committee, in the Netherlands, while more abstract knowledge can be acquired in the countries of origin. Furthermore the committee had recommended making this abstract knowledge, consisting in facts about the Netherlands, facts about Dutch society and culture, and the preparation for the arrival in the Netherlands, available in applicants' native language so as to increase family-migrants' knowledge of what to expect in the Netherlands. Also, the committee had advised against examining this knowledge, because such examination in

³⁹ This desire had been expressed in a motion submitted in the Second Chamber by the VVD-MP Blok in 2002 (Kamerstukken II, 28600 VI, nr. 60). '*het belang van de essentiële Nederlandse waarden, normen en grondrechten*'; Kamerstukken II, 29700, nr. 3: 1.

⁴⁰ '*basisbegrippen van de Nederlandse samenleving, 'basiskennis van de Nederlandse samenleving*'; Kamerstukken II 29700, nr. 3: 1,2. See also 3, 6.

⁴¹ '*een voorafgaande bewustwording van de Nederlandse waarden en normen*'; Kamerstukken II, 29700, nr. 3: 6.

⁴² '*Adviescommissie Normering Inburgeringseisen*'; Kamerstukken II, 29700, nr. 3: 13.

Dutch would be too rudimentary to be of any value, whereas examination in the applicants' native languages would be too cumbersome to be practical.⁴³

The Government chose to disregard the committee's advice, however, at least with respect to the examination of applicants' knowledge of Dutch society. It is unclear whether the Government chose to follow the differentiation between practical skills and abstract facts and to examine only the latter, though the Government's choice, also contrary to the committee's advice, to test this knowledge in Dutch strongly limits the possible scope and depth of that examination, as applicants' vocabulary is not required to exceed 500 basic Dutch words.⁴⁴

The debate in the Second Chamber shows that both the content of the expected knowledge and the means of its examination are unclear to the participating parliamentarians as well. For example, during the debate, as an example of a possible exam-question the minister suggests 'what is the color of the top stripe of the Dutch flag?'.⁴⁵ This prompts D66 to express its concern, for the party had assumed that 'testing knowledge of Dutch society concerned knowledge of Dutch society'.⁴⁶ D66 had expected 'a bit of culture, a bit of history, and a bit of customs'.⁴⁷ The color of the flag is considered by the party to be a mere fact, and an irrelevant one at that.⁴⁸

As with D66, many parties seem to project their own wishes and expectations on the content of Civic integration abroad. D66 mentions culture, language, and customs.⁴⁹ The CDA stresses the necessity of conveying respect for rights 'with regard to honor vengeance', and the right to work or pursue an education.⁵⁰ The PvdA-MP states that Civic integration abroad is meant to foster awareness of 'that strange Dutch society, which I personally like so much'.⁵¹ It is a chance to confront

⁴³ Kamerstukken II, 29700, nr. 3: 13.

⁴⁴ See Kamerstukken II, 29700, nr. 3: 13.

⁴⁵ *Een van die vragen is wat de bovenste band van de Nederlandse vlag is*; HTK 2004/05, No. 62: 4007.

⁴⁶ HTK 2004/05, No. 62: 4008. D66 is represented in this debate by Lambrechts.

⁴⁷ *'een stukje cultuur, een stukje geschiedenis en een stukje gewoontes'*; HTK 2004/05, No. 62: 4008.

⁴⁸ HTK 2004/05, No. 62: 4008. The answer to the minister's question, for what it's worth, is 'red'.

⁴⁹ HTK 2004/05, No. 60: 3883.

⁵⁰ *'ten aanzien van eerwraak'*; HTK 2004/05, No. 60: 3889.

⁵¹ *'die rare Nederlandse samenleving, die ik persoonlijk zo leuk vind'*; HTK 2004/05, No. 62: 4010.

(elsewhere, the word 'shock' is used)⁵² newcomers with some of the 'more characteristic aspects of the Netherlands and of Western society', such as, it can be inferred from the debate, homosexuality and topless bathing.⁵³ The SGP expects knowledge of Dutch history and society to be instilled and examined.⁵⁴ According to the SP this should be knowledge of 'Western society'.⁵⁵ The VVD hopes that Civic integration abroad, which involves imparting knowledge of what is 'customary' or 'common' in the Netherlands, be extended to include a 'kind of declaration of loyalty', so that 'people not only show what they know, but also declare that they will abide by the Dutch rules and customs.'⁵⁶ GroenLinks, finally, while objecting to Civic integration abroad in principle, hopes that if the Government is to project an image of the Netherlands abroad, this image will in any case include 'a liberal view of sexuality'.⁵⁷

The debate, then, shows little clarity and much assumption as to the content of at least that part of the exam dealing with general knowledge of Dutch society and culture, and with the content of the norms and values that are regarded as necessary for all. The level of generality at which the demands made of potential newcomers are discussed, at least with regard to such issues, and the failure to further address differences of opinion such as those outlined in the previous paragraph, suggest that parties' expectations of Civic integration abroad with regard to such cultural issues are limited, so nothing is to be gained from pursuing the differences between them. Of more importance, to most parties, it seems, is language, for language facilitates participation, and participation, as demonstrated in the previous chapter, is regarded as essential to integration. At the same

⁵² *'Ik dacht dat het oogmerk van in ieder geval dit deel van het examen was dat de mensen van tevoren schrokken van waar zij naartoe gingen'*; HTK 2004/05, No. 62: 4026.

⁵³ *'meer typische dingen van Nederland of de westerse samenleving'*; HTK 2004/05, No. 62: 4010. These statements are made by the PvdA during an exchange with the minister about an informational film produced by the Government for viewing by applicants. This film can be viewed at embassies prior to the Civic integration abroad examination, but because certain scenes in the film are illegal in a few of the countries where the examination is to be taken, the Government has chosen to provide those countries with a censored version. The censored scenes (three in total) concern archive images of a music festival in 1970, a scene involving homosexuality, and a beach scene including topless women. See HTK 2004/05, No. 62: 4009.

⁵⁴ HTK 2004/05, No. 60: 3900. The SGP is represented in this debate by Van der Staaij.

⁵⁵ *'de westerse samenleving'*; HTK 2004/05, No. 60: 3902.

⁵⁶ *'de mensen voordat zij naar Nederland komen een soort loyaliteitsverklaring te laten ondertekenen. Als zij weten naar welk land zij gaan en wat daar gebruikelijk is, moeten zij als zij zich er duurzaam willen vestigen ervoor tekenen dat zij zich aan een aantal gebruiken en regels zullen houden'*; HTK 2004/05, No. 60: 3905.

⁵⁷ *'een vrije kijk op seksualiteit'*; HTK 2004/05, No. 62: 4010.

time, however, that the language requirements of Civic integration abroad will in practice only have to be met by newcomers from Turkey and Morocco, and not from newcomers from a host of other nations, who also can be reasonably be expected to lack fluency in Dutch as well, shows that Civic integration abroad is not, actually, only about language deficiencies, but also about culture, and perhaps also, as suggested by GroenLinks, about limiting immigration from Turkey and Morocco especially.

The most significant conclusions to be drawn from the debates in the Second Chamber on Civic integration abroad is that the bill is generally regarded to be necessary in that Chamber, and that nearly all parties concur with the government that the non-integration of newcomers from Turkey and Morocco especially is such a pressing issue that the bill is justified (the exception being GroenLinks). All parties agree on the abstract point that Dutch society is characterized by certain cultural norms and values, on a distinct way of 'doing things here', and that acquaintance therewith is necessary if one wishes to live and participate in Dutch society. To the extent that parliamentarians thus conceive of Dutch society as consisting of individuals sharing a (partial) comprehensive doctrine, they show a marked tendency towards liberal culturalism. That being said, the debate offers little clarity on precisely how things are done here, nor on the precise norms and values involved therein.

This brings the discussion of the debates on Civic integration abroad in the Second Chamber to a close. We will return to Civic integration abroad when discussing the debates on the civic integration bills in the First Chamber. First, however, in the following section, using the arguments and conclusions presented above as focal points, the parliamentary debate on the Civic integration bill of 2005 will be presented and analyzed.

The Civic integration bill

After having successfully completed their Civic integration abroad, newcomers to the Netherlands must pursue civic integration in the Netherlands. The means thereto and conditions thereof are laid down in the new Civic integration bill of 2007.⁵⁸ Under the new civic integration regime '*all* aliens *not* having resided in the Netherlands for at least eight years at the compulsory school age' are required to successfully pass a civic

⁵⁸ Kamerstukken II, 30308, nr. 2.

integration exam.⁵⁹ For newcomers, failure to pass the civic integration exam can result in the denial of a permanent residency permit (though not of temporary residency permits).⁶⁰ Responsible municipalities can administer administrative fines for failure to pass the examination.⁶¹ Keywords of the new bill are 'individual responsibility' and 'the market'; it is each individual's own responsibility that he find a civic integration course in order to prepare for the civic integration exam.⁶² The development of courses is no longer in the hands of a single provider supervised by the government, but is also left to the market.⁶³

Originally, the bill included three categories of Dutch nationals as well, namely naturalized oldcomers receiving unemployment benefits, raising underage children, or engaging in clerical activity.⁶⁴ The explanatory memorandum points out that many of these oldcomers had become Dutch nationals before 2003, the year in which a naturalization test was included in the naturalization procedure. After 2003 there was a 75% decrease in applications for naturalization by adult aliens, ascribed in the memorandum in part to the new naturalization test, the suggestion being that many of those naturalized before 2003 were not, in fact, 'sufficiently equipped for societal participation' and hence not true nationals.⁶⁵ In a similar, but more explicit vein, during its debate by the Second Chamber's 'general committee for integration policy'⁶⁶ the Civic integration bill is referred to a number of times as an instance of 'legislative repair' made necessary by the shortcomings of the old, pre-2003 naturalization act.⁶⁷ According to the Government the specific circumstances of these naturalized oldcomers make their civic integration necessary.⁶⁸

The Civic integration bill that entered into force in 2007, however, contains

⁵⁹ *'er komt een algemene inburgeringsplicht voor in beginsel alle vreemdelingen die niet gedurende minstens acht jaar van de leerplichtige leeftijd in Nederland hebben gewoond'* (emphasis in the original); Kamerstukken II, 30308, nr. 3: 2-3, 27-28.

⁶⁰ Kamerstukken II, 30308, nr. 3: 27.

⁶¹ Kamerstukken II, 30308, nr. 3: 27-28.

⁶² Kamerstukken II, 30308, nr. 3: 18.

⁶³ Kamerstukken II, 30308, nr. 3: 8.

⁶⁴ Kamerstukken II, 30308, nr. 3: 15-16. 'Old-comers' are those individuals falling within the scope of the bill, but already residing in the Netherlands at the moment that the Civic integration bill enters into force. See Kamerstukken II, 30308, nr. 3: 12.

⁶⁵ *'voldoende is toegerust voor maatschappelijke participatie'*; Kamerstukken II, 30308, nr. 3: 15.

⁶⁶ *'algemene commissie voor Integratiebeleid'*.

⁶⁷ *'reparatiewetgeving'*; Kamerstukken II, 30308, nr. 63: 28, 30, 33; HTK 2005/06, No. 95: 5851.

⁶⁸ Kamerstukken II, 30308, nr. 3: 15.

no references to naturalized oldcomers. After criticism in the Second Chamber, where the bill was discussed in June, 2006, and especially in the Council of State, the Government submitted a heavily revised bill to the First Chamber.⁶⁹ According to the Council of State the Government's determination that certain categories of nationals are in need of civic integration is 'arbitrary' and therefore discriminatory.⁷⁰ A number of parties in the Second Chamber agree (the PvdA, VVD, GroenLinks, and D66 especially).⁷¹ It is noteworthy, however, that even while voicing their principled concerns with regard to this aspect of the law, some of these same parties do not, in fact, reject mandatory civic integration for naturalized oldcomers, and are committed to finding other ways to secure their civic integration (the PvdA and D66 especially).⁷² More in general, it is notable that these parties are prone to voice their concern not merely as a matter of principle, but as a matter of principle which is bound to affect the bill's standing in court.⁷³ Parties otherwise harboring no principled objections to the law share the worry that its inclusion of naturalized oldcomers will cause courts to strike it down (the CDA, ChristenUnie, and SGP).⁷⁴

On the whole, however, the Second Chamber is in favor of the bill and is anxious to see it passed. The divisions witnessed in the previous chapter, between parties taking a liberal culturalist view and those prone to framework liberalism, are not reflected in parties' commitment to civic integration. This is shared by all. Several suggestions are helpfully put forward by parties in the Second Chamber in order to circumvent the Council of State's principled objections, while still extending the bill's reach to those categories falling foul of equal treatment statutes, for example by amending welfare laws so as to include mandatory civic integration, or by extending mandatory education to the parents of children with demonstrable difficulties with the Dutch language.⁷⁵ And after assurances

⁶⁹ The Council of State ('*Raad van State*') is in some ways reminiscent of the French *Conseil constitutionnel*, pre-viewing statutes, though its decisions are only advisory.

⁷⁰ '*De keus wordt dan in juridische zin "willekeurig"*'; Kamerstukken II, 30308, nr. 106: 3.

⁷¹ See Kamerstukken II, 30308, nr. 63: 4 (PvdA); Kamerstukken II, 30308, nr. 63: 18 (VVD); Kamerstukken II, 30308, nr. 63: 18 (GroenLinks); Kamerstukken II, 30308, nr. 63: 22 (D66).

⁷² See Kamerstukken II, 30308, nr. 63: 4 (PvdA) and Kamerstukken II, 30308, nr. 63: 22 (D66).

⁷³ For though in the Netherlands courts are not allowed to exercise constitutional review, they may hold up a law against European legislation and international treaties. See especially Kamerstukken II, 30308, nr. 63: 4 (PvdA); Kamerstukken II, 30308, nr. 63: 19 (GroenLinks); Kamerstukken II, 30308, nr. 63: 22 (D66).

⁷⁴ See Kamerstukken II, 30308, nr. 63: 10 (CDA), Kamerstukken II, 30308, nr. 63: 26 (ChristenUnie), and Kamerstukken II, 30308, nr. 63: 28 (SGP).

⁷⁵ See especially the PvdA's contribution (Kamerstukken II, 30308, nr. 63: 4), which

from minister Verdonk that the bill will be amended so as not to fall foul of the equal-treatment clause, all members of the Second Chamber bar one vote in favor of the bill.⁷⁶

Below, the debate of the Civic integration bill in the Second Chamber will be presented and analyzed. As with previous debates, the goal is not to present the parliamentary debates in their entirety, but only in so far as relevant to the subject matter of this thesis. This generally means that much more is left out than included, and this is definitely also the case with the Civic integration bill. Much to do with, for example, technicalities of government financing or specifics of EU-association treaties is passed over. This still leaves a substantial amount of material, though. In what follows this material will be organized along the lines set out above in the presentation of Civic integration abroad: the justification of the bill, the issue of women and emancipation, and the content of culture and values.

The justification of the Civic integration bill

The justification of the Civic integration bill is similar to that of Civic integration abroad. According to the explanatory memorandum, the measures proposed by the Civic integration bill

‘serve the legitimate purpose of bridging deficiencies in the integration of minorities, forestalling the emergence of new deficiencies, and improving the social cohesion of society.’⁷⁷

In order to achieve these aims, consensus is necessary on ‘fundamental values and prevailing norms’, as is proficiency in the Dutch language.⁷⁸

suggestions are supported by D66 (Kamerstukken II, 30308, nr. 63: 22). The Council of State reviewed these suggestions as well. The suggestion to use social security legislation to enforce the civic integration of designated groups was criticized as *détournement de pouvoir*, i.e. as the use of a law for a different end than provided for by its legal justification, and also as contrary to the equal treatment clause, as was a similar suggestion to modify existing welfare law to make civic integration mandatory for parents exercising parental authority over minors. The Council also rejected ‘broadened mandatory education’. According to the Council this initiative was ill conceived, as children only become subject to mandatory education at the age of five, by which time it is too late to improve their language skills by improving the language skills of their parents. See Kamerstukken II, 30308, nr. 106: 3-6.

⁷⁶ Only Koser Kaya of D66 opposed the bill; see HTK, 2005/06, No. 98: 6084.

⁷⁷ ‘dienen het legitieme doel om achterstanden bij de integratie van minderheden te overbruggen, te voorkomen dat nieuwe achterstanden ontstaan, en de sociale cohesie van de samenleving te bevorderen’; Kamerstukken II, 30308, nr. 3: 40.

⁷⁸ ‘basiswaarden en de vigerende normen’; Kamerstukken II, 30308, nr. 3: 40.

Such proficiency is ‘not merely the expression of integration, but also and especially an instrument and means to integration.’⁷⁹

Finally, the Government emphasizes that lagging integration is a ‘serious and pressing problem’, and that

‘the continuity of society is at stake, if societal groups come to stand in opposition to each other, public services for ethnic groups are insufficiently effective, and large parts of society do not take active part in society and the economy.’⁸⁰

As with the Civic integration abroad-bill, the Government demonstrates its apprehension of moral communities, or at least of ‘ethnic groups’, and makes a distinction between these moral communities and society proper, in which everyone should participate, besides participating economically. Note also that the same three-tier approach is taken in the justification of the Civic integration bill as applied to the justification of Civic integration abroad. The first tier concerns the continuity of society; the second forestalling the opposition of societal groups; the third promoting individual participation in society. Going the other way, that individuals speak Dutch and endorse Dutch values increases their chances at successful participation in society, diminishes the threat of the rejection of any groups they might belong to by society or vice versa, and therefore is beneficial to the continuity of society as a whole. Foregrounding shared values as a basis of integration and social cohesion as it does, thus implicitly treating Dutch society as a moral community in itself, and marking other moral communities as possible threats to that society, the Civic integration bill shows signs of a liberal culturalist understanding of Dutch society on the part of the Government.

During the parliamentary debate, in light of the Council of State’s objections to the unequal treatment of naturalized nationals versus nationals by birth, the PvdA points out that the Government’s repeated emphasis that the effects of the bill on individuals are proportional given the societal urgency of integration misses a crucial point: the issue is not that there is no societal urgency – on that point, according to the PvdA, all parties

⁷⁹ *‘niet slechts expressie van integratie, maar ook en vooral een instrument en een middel tot integratie’*; Kamerstukken II, 30308, nr. 3: 40.

⁸⁰ *‘ernstig en dringend probleem’*; *‘de continuïteit van de samenleving in het geding is, indien bevolkingsgroepen tegenover elkaar komen te staan, maatschappelijke instellingen voor etnische groepen onvoldoende effectief zijn en grote delen van de bevolking niet actief deelnemen aan maatschappij en economie’*; Kamerstukken II, 30308, nr. 3: 40.

are agreed – but that it is disproportional to treat nationals unequally as a consequence.⁸¹ GroenLinks similarly explains that the Civic integration bill would be proportional only if there were no other way to achieve the intended results than unequal treatment.⁸² Both parties thereby point out a weakness in the three-tier justification of the Civic integration bill: though the societal urgency of integration can justify integration policies in general, if and in so far as those policies explicitly and directly target individuals, for example by penalizing individual failures in civic integration, societal urgency is insufficient justification. For in such cases it is necessary to show that the interference in individuals' lives is both effective and proportional, i.e. that it promises to solve the problem at hand and that the interference does not go farther than necessary in order to do so. Though the (dis-)proportionality of the measures is never explicitly discussed in these terms, it is raised a number of times, by the PvdA, GroenLinks, the ChristenUnie, and the SP, especially in relation to the individual costs and consequences of the bill.⁸³

Relatedly, the PvdA and GroenLinks both imply that lagging civic integration at the individual level (the third tier) can only be part of what causes the problems at the second and first levels, and that addressing the problems at those levels necessitates more measures than civic integration alone. According to the PvdA, therefore, civic integration 'should be embedded in initiatives to promote participation broadly understood'.⁸⁴ Discrimination should be addressed, and efforts made to ensure that society as a whole is open to anyone 'who makes an effort to be part of society'.⁸⁵ GroenLinks calls for measures addressing the related issues of education, segregation, and the job market.⁸⁶

It is noteworthy that during the parliamentary debates in the Second Chamber most parties make hardly a mention of social cohesion or the necessity of civic integration for society, justifying the bill almost exclusively in terms of individuals' ability to function and participate

⁸¹ Kamerstukken II, 30308, nr. 63: 31, 32. The PvdA is represented in this debate by Dijs-selbloem.

⁸² Kamerstukken II, 30308, nr. 63: 32, see also 34. GroenLinks is represented in this debate by Azough.

⁸³ See, e.g., Kamerstukken II, 30308, nr. 63: 21, 25, 26, 27, 34, 38, 41; Kamerstukken II, 30308, nr. 100: 6, 12, 20; HTK, 2005/06, No. 95: 5864. The ChristenUnie is represented in this debate by Huizinga-Heringa; the SP is represented by Vergeer.

⁸⁴ *'initiatieven om participatie in brede zin te bevorderen'*; Kamerstukken II, 30308, nr. 63: 3.

⁸⁵ *'zich inspant om deel te maken van de samenleving'*; Kamerstukken II, 30308, nr. 63: 3.

⁸⁶ HTK, 2005/06, No. 95: 5855.

in society.⁸⁷ The VVD, while referring to a ‘societal problem’ without specifying what the problem is, goes on to say that ‘it is also especially an individual problem if one cannot keep up in society.’⁸⁸ Besides the bill’s positive effect on the wellbeing of individual new- and oldcomers, many parties point to its beneficial effects for the wellbeing of children, as does the Minister.⁸⁹ The Minister’s justification of the bill varies, by the way; when confronted with the high costs of civic integration for individuals, the bill is justified especially as a matter of their wellbeing, but when the issue is the strong penalties for the failure to integrate, the justification is the societal urgency of integration in general.

Only a few parties mention the first and second tiers (society and groups respectively), either implicitly or explicitly. The LPF does, welcoming the bill for it promise to better the prospects of individuals committed to civic integration, but also because it is good for society itself, as it finally addresses the problem of the emergence of a foreign-born underclass without a chance of social advancement.⁹⁰ The ChristenUnie also states that civic integration is necessary not only for the sake of individuals but also for society as a whole because deficiencies in integration cause mutual problems of misunderstanding and incomprehension.⁹¹ The PvdA mentions the ‘great societal urgency’ of the bill, and the CDA claims that the societal urgency is ‘as great as ever’, but both parties refrain from making that urgency explicit.⁹² It is notable, in that regard, that none of the parties echo the urgency emphasized by the Government concerning the ‘continuity of society’. When parties do mention the societal urgency

⁸⁷ An exception is the SGP, who make no such explicit mention of the bill’s benefits for individuals (though the party does repeatedly refer to the bill as an instance of ‘legislative repair’, see *supra*, note 64). See for the PvdA Kamerstukken II, 30308, nr. 63: 4; the CDA Kamerstukken II, 30308, nr. 63: 9; the SP Kamerstukken II, 30308, nr. 63: 13; the VVD Kamerstukken II, 30308, nr. 63: 18; GroenLinks Kamerstukken II, 30308, nr. 63: 21; D66 HTK 2005/06, No. 95: 5848; LPF HTK 2005/06, No. 95: 5863; ChristenUnie Kamerstukken II, 30308, nr. 63: 25.

⁸⁸ ‘*maatschappelijk probleem*’; ‘*het is ook vooral een individueel probleem als je niet kunt meekomen in een samenleving*’; Kamerstukken II, 30308, nr. 63: 18. The VVD is represented in this debate by Visser.

⁸⁹ See, e.g., Kamerstukken II, 30308, nr. 63: 4 (PvdA); Kamerstukken II, 30308, nr. 63: 5 (SP); Kamerstukken II, 30308, nr. 63: 9-10 (CDA); Kamerstukken II, 30308, nr. 63: 28-29 (SGP); HTK 2005/06, No. 95: 5847 (ChristenUnie); HTK 2005/06, No. 95: 5864 (LPF); the Cabinet minister (Verdonk); Kamerstukken II 30308, nr. 63: 30, 33, 34, 41; Kamerstukken II 30308, nr. 101: 23; HTK 2005/06, No. 95: 5865.

⁹⁰ HTK 2005/06, No. 95: 5863. The LPF is represented in this debate by Varela.

⁹¹ HTK 2005/06, No. 95: 5847.

⁹² ‘*grote maatschappelijke urgentie*’; HTK 2005/06, No. 95: 5857 (PvdA); ‘*onverminderd groot*’; HTK 2005/06, No. 95: 5846 (CDA). The CDA is represented in this debate by Sterk.

of the bill, as with the PvdA and CDA, the nature and force of that urgency is generally left implicit.

Finally, there is the issue of the justification of the special concern for clerics. The civic integration of clerics, according to the Cabinet minister, is 'of great societal concern in order to prevent the passing on of existing deficiencies to the members of the religious communities that they serve.'⁹³ This is one of the few instances in the debate where the socio-cultural integration of members of minorities is addressed directly:

'Clerics are also confronted by societal questions that have bearing on the socio-economic and socio-cultural integration process of minorities. It is also often expected of clerics that they offer support in determining the position that their followers hold vis-à-vis society.'⁹⁴

That, according to the minister, makes it necessary that clerics master the Dutch language and are acquainted with Dutch norms and values.⁹⁵ Presumably, if clerics are knowledgeable of Dutch norms and values they will advise their followers to abide by them, not to oppose them.

Though here, as elsewhere in the debate, it is not specified wherein the 'existing deficiencies' lie that clerics are in the opportunity to pass on to their members, it follows from the minister's choice of words that these are at least in part socio-cultural in nature. A probable reading confers that these deficiencies consist in norms and values that differ from Dutch norms and values – though the content of both the Dutch and the differing norms and values remains unspecified, as we will see below. Note also that in singling out clerics as in need of civic integration for the sake of their members, the Government assumes that the individuals whose (civic) integration it is trying to effect are members of a moral community that can be addressed through its religious leadership. Finally, it should be clear that the estimation of moral communities evidenced by this approach is

⁹³ *van groot maatschappelijke belang om te voorkomen dat bestaande achterstanden worden overgedragen op leden van de geloofsgemeenschap die zij bedienen*'; Kamerstukken II 30308, nr. 63: 31.

⁹⁴ *Geestelijk bedienaren worden ook geconfronteerd met maatschappelijke vragen die verband houden met het sociaal-economische en sociaal-culturele integratieproces van minderheden. Van geestelijk bedienaren wordt ook vaak verwacht dat zij steun bieden bij het bepalen van de houding die de achterban ten aanzien van de samenleving inneemt*'; Kamerstukken II 30308, nr. 63: 31. See also the explanatory memorandum, Kamerstukken II, 30308, nr. 3: 38.

⁹⁵ Kamerstukken II, 30308, nr. 63: 31.

highly instrumental, positing as it does the use of their religious leadership to nudge the flock in the approved direction. This, also, is a tell-tale sign of the liberal-culturalist leanings inherent in the Government's approach.

The only party to comment on the special mention of clerics in the Civic integration bill is the ChristenUnie. According to the party the inclusion of clerics in the bill is a 'question involving principles' (though which principles is left a matter of conjecture).⁹⁶ Though the party is in favor of mandatory civic integration for clerics, it asks of the minister in what way clerics differ from other professionals who have a strong influence on public opinion, such as 'teachers, writers, musicians, and philosophers'.⁹⁷ Later, 'rappers' are added to the list.⁹⁸ Ultimately, however, it seems the party is concerned especially with the legal validity of the distinction, and not its underlying principle.⁹⁹

In conclusion, with regard to the bill's justification it is notable that all parties bar one (the SGP) view civic integration especially as bearing on individuals' ability to participate in society. On the whole parties show less overt concern for matters of social cohesion than the government, though no party denies its relevance either. While the position of cultural or religious groups in society is hardly discussed, it is interesting to see that almost all parties seem to concur with the government that clerics warrant special attention. This suggests that Dutch Moroccans and Turks, who arguably are the bill's implicit targets, are largely regarded to be Muslims, that they are implicitly treated as moral communities congregating in religious communities, and that they are therefore thought to be addressable through their religious leadership. Finally, many parties emphasize the importance of the bill for the sake of future generations especially; this brings us to the topic of the treatment of women and emancipation in the debate.

Women and emancipation

Against the background of the debates concerning Civic integration abroad, it is notable that women do not play a prominent or even explicit role in the new Civic integration bill, either in the Government's explanatory

⁹⁶ *'Dit is een heel principieel vraagstuk'*; Kamerstukken II, 30308, nr. 63: 27.

⁹⁷ *'leraren, schrijvers, musici en filosofen'*; Kamerstukken II, 30308, nr. 63: 27.

⁹⁸ Kamerstukken II, 30308, nr. 63: 38.

⁹⁹ 'We wonder whether there are sufficient legal grounds for this.' (*'Wij vragen ons af of hiervoor voldoende rechtsgrondslag bestaat.'*); Kamerstukken II, 30308, nr. 63: 27.

memorandum or in the debate. As we saw above, during the debates on Civic integration abroad the necessity of civic integration for the sake of women especially was repeatedly stressed, for the purpose both of their emancipation and the integration of their children. In the Civic integration bill and the subsequent debates, however, women are barely mentioned as in need of special attention, nor is emancipation as an explicit goal of the bill, though the minister does state at one point that civic integration offers extra opportunities for emancipation.¹⁰⁰ The necessity of civic integration for the sake of childrearing, however, is still strongly present in both memorandum and debate, and is mentioned explicitly in nearly every party's contribution.¹⁰¹ The term of choice in this debate, however, is not 'women', but the more general 'parents', 'nurturing parents', or 'parents/caretakers'.¹⁰² It is only as 'parents of children', then, that women and their desired emancipation figure in this debate, if at all.

There is one notable exception. The PvdA, GroenLinks, and the ChristenUnie point out that making permanent residency conditional upon successfully passing the civic integration exam increases the dependency of women who are dependent on their partner for a residency permit.¹⁰³ The PvdA and the ChristenUnie hint that men may deliberately prevent their wives from following civic integration courses in order to maintain that dependency.¹⁰⁴ In response the minister states that civic integration is a primary condition for improving the position of these women, and that while the minister 'cannot end the inequality of women at once,' knowledge of Dutch and of how people treat one another in the Netherlands is a big step towards independence for these women.¹⁰⁵ Implicitly, one of the crucial ways in which people treat each other in the

¹⁰⁰ HTK 2005/06, No. 95: 5865.

¹⁰¹ See Kamerstukken II, 30308, nr. 63: 5 (PvdA: learning Dutch by parents is in the interest of their children); Kamerstukken II, 30308, nr. 63: 9, 10 (CDA: the necessity of being able to read letters from school); HTK 2005/06, No. 95: 5846 (CDA: hopefully the bill will continue to apply to 'the important group of child-raising parents' (*'de belangrijke groep van de opvoeders'*)); HTK 2005/06, No. 95: 5871 (SP: parents should integrate because they raise children); Kamerstukken II, 30308, nr. 63: 22 (D66 wishes to uphold the priority of civic integration for (e.g.) child-rearing parents); HTK 2005/06, No. 95: 5864 (LPF, in order to forestall the next hopeless generation); Kamerstukken II, 30308, nr. 63: 25, 26 (ChristenUnie: in order to give children a good starting position); Kamerstukken II, 30308, nr. 63: 28, 29 (SGP: parents and custodians are the most important special category covered by the bill).

¹⁰² 'ouders'; 'verzorgende ouders'; 'ouders/verzorgers'.

¹⁰³ Kamerstukken II, 30308, nr. 63: 7 (PvdA), 19 (GroenLinks), and 27 (ChristenUnie).

¹⁰⁴ Kamerstukken II, 30308, nr. 63: 7, 27.

¹⁰⁵ *'Ik kan de achterstelling van vrouwen niet ineens oplossen'*; Kamerstukken II, 30308, nr. 63: 39.

Netherlands, suggested here as well as at various other points during the debate, is as independent, and in that sense as emancipated.

Why is civic integration indispensable for child rearing? How will children benefit from the civic integration of their parents? The explanatory memorandum puts the answer to these questions as follows:

‘He who does not master the skills necessary to participate in Dutch society, also will not be able to pass such skills on to the underage children whom he has a duty to raise.’¹⁰⁶

What these skills are is not made entirely clear in the memorandum. In any case they include language skills: ‘A better mastery of the Dutch language will better enable parents raising children to prepare their underage children for a genuine place in Dutch society.’¹⁰⁷ They also include the skills necessary to answer ‘questions that have bearing on the socio-cultural integration process of their children,’ though neither the precise nature of these questions, nor of their answers, is specified.¹⁰⁸ Even so it is clear, once again, that integration is treated by the Government as a process of cultural adaptation to the mores of Dutch society, through which one becomes a full member of the Dutch moral community.

Full membership, it can be inferred from the Cabinet minister’s contribution to the debate, is conferred, or confirmed, by employment. ‘Participation of minorities in work is an important measure of integration. Participation in work promotes integration and integration promotes participation in work.’¹⁰⁹ The minister illustrates this by reference to 260.000 naturalized aliens who generally ‘are in a bad socio-economic state, are not integrated in Dutch society, do not participate in Dutch society, and pass on their deficiencies.’¹¹⁰ That is why ‘[c]ivic integration is so very important,’

¹⁰⁶ *‘Wie zelf niet beschikt over de vaardigheden om aan de Nederlandse samenleving te kunnen deelnemen, zal dergelijke vaardigheden ook niet kunnen overbrengen op de minderjarige kinderen ten aanzien van wie hij een opvoedende taak heeft’*; Kamerstukken II, 30308, nr. 3: 16.

¹⁰⁷ *‘Met een betere beheersing van de Nederlandse taal zullen verzorgende ouders beter in staat zijn hun minderjarige kinderen voor te bereiden op een volwaardige positie in de Nederlandse samenleving’*; Kamerstukken II, 30308, nr. 3: 16.

¹⁰⁸ *‘vraagstukken die verband houden met het sociaal-cultureel integratieproces van hun kinderen’*; Kamerstukken II, 30308, nr. 3: 16.

¹⁰⁹ *‘Arbeidsdeelname door minderheden is een belangrijke graadmeter voor integratie. Arbeidsdeelname bevordert integratie en integratie bevordert arbeidsdeelname’*; Kamerstukken II, 30308, nr. 63: 30.

¹¹⁰ *‘over het algemeen een slechte sociaal-economische positie bekleden, niet geïntegreerd zijn in de Nederlandse samenleving, niet participeren in de Nederlandse samenleving en hun*

according to the minister: 'in order to learn the Dutch language and to be able to acquire a place in the work force.'¹¹¹

The debate in the Second Chamber confirms the close relationship, apparent also in previously examined debates, between integration, participation, and work. While some parties hint that more is necessary for integration, the general emphasis is on participation through work. The PvdA, for instance, suggests replacing art. 3 of the Civic integration bill, the article making civic integration mandatory for the three categories of naturalized aliens mentioned above, with mandatory courses in Dutch and 'other social skills necessary to gain entry to the labor market' for anyone, Dutch or otherwise, who depends on unemployment benefits.¹¹² The party regrets, however, that tying civic integration to working skills alone would stand in the way of imparting 'the broader knowledge of Dutch society which is nonetheless important for civic integration.'¹¹³ The CDA also, despite placing civic integration in the broader context of what is necessary for 'good citizenship' and 'participation', especially stresses that every citizen should be capable of participating in the labor market.¹¹⁴ The Netherlands, according to the CDA, is a 'participation country'.¹¹⁵ Like the PvdA, the CDA simultaneously implies that there is more to citizenship than having a job; it also necessitates knowledge of Dutch history and of Dutch norms and values (a subject we will return to below).¹¹⁶

GroenLinks and the SP also, though harboring a number of complaints against the bill, treat civic integration especially in light of participation in Dutch society, and take work to be the chief means towards participation, as does D66.¹¹⁷ The LPF and the ChristenUnie similarly see the bill as particularly relevant to increasing the chances of newcomers (and old) on the labor market.¹¹⁸ The SGP is the only party not to put separate emphasis

achterstanden overbrengen'; Kamerstukken II, 30308, nr. 63: 34. The numbers are provided without reference to a source.

¹¹¹ *'dat inburgering zo ontzettend belangrijk is, om de Nederlandse taal te leren en een plek te kunnen krijgen op de arbeidsmarkt'*; Kamerstukken II, 30308, nr. 63: 41.

¹¹² *'andere sociale vaardigheden die nodig zijn om de arbeidsmarkt op te komen zijn'*; HTK 2005/06, No. 95: 5858.

¹¹³ *'de bredere kennis van de Nederlandse samenleving die in de inburgering wel belangrijk is'*; HTK 2005/06, No. 95: 5858.

¹¹⁴ *'om een goed burger te zijn'*; *'meedoen'*; Kamerstukken II, 30308. Nr. 63: 9, 11.

¹¹⁵ *'een participatieland'*; Kamerstukken II, 30308. Nr. 63: 9.

¹¹⁶ HTK 2005/06, No. 95: 5846.

¹¹⁷ HTK 2005/06, No. 95: 5855 (GroenLinks); Kamerstukken II, 30308, nr. 63: 14 (SP); HTK 2005/06, No. 95: 5848 (D66). D66 is represented in this debate by Lambrechts.

¹¹⁸ HTK 2005/06, No. 95: 5864 (LPF); Kamerstukken II, 30308, nr. 63: 25 (ChristenUnie).

on the labor market, though it does make specific mention of the necessity of civic integration for the parents of underage children.¹¹⁹

The VVD finally, in a way similar to the CDA, places the Civic integration bill in a broader context, which includes Civic integration abroad and naturalization, which is the end-goal of civic integration, according to the party.¹²⁰ Like most parties the VVD stresses the necessity of newcomers to become self-reliant and independent, and also to participate.¹²¹ While most parties suffice to mention participation in society or the economy as a goal of civic integration, however, the VVD choose to elaborate:

‘The bill essentially comes down to participation after mutual investment. The *inburgeraar* is expected to invest in the Netherlands, in its language and culture. And the Netherlands invests in newcomers: loans [for civic integration courses], certified suppliers [of civic integration courses], offers for priority groups. Subsequently it is the case that he who settles down in the Netherlands finds himself in a society where a ticket for public transport does not reflect its cost, where healthcare is provided on the basis of solidarity, where the building and letting of houses is subsidized, where there is social security, good education to be had, etc. In other words, an investment in the Netherlands is a good investment.’¹²²

This citation is included *in extenso* because the VVD here unambiguously makes a point that is rarely made so explicitly yet underlies much of the debate, namely that newcomers to the Netherlands automatically and involuntarily become member of a regime of social solidarity. The LPF puts a similar point somewhat more directly when reflecting on the alleged disproportionality of penalizing the failure to integrate by cutting

¹¹⁹ Kamerstukken II, 30308, nr. 63: 28,29. The SGP is represented in this debate by Van der Staaij.

¹²⁰ Kamerstukken II, 30308, nr. 63: 15.

¹²¹ Kamerstukken II, 30308, nr. 63: 18.

¹²² ‘Het wetsvoorstel komt in essentie neer op participatie na investering van twee kanten. Van een inburgeraar wordt een investering verwacht in Nederland, in de taal en de cultuur. En Nederland investeert in nieuwkomers: leningen, gecertificeerde aanbieders, aanbod voor prioritaire groepen. Vervolgens geldt dat degene die zich in Nederland vestigt, terechtkomt in een samenleving waar een kaartje voor het openbaar vervoer de prijs daarvan niet weerspiegelt, waar sprake is van een solidair ziektekostenstelsel, waar huizen met subsidie worden gebouwd en verhuurd, waar sociale zekerheid geldt, waar goed onderwijs kan worden genoten, etc. Met andere woorden, een investering in Nederland is een goede investering’; Kamerstukken II, 30308, nr. 63: 15.

unemployment benefits:

‘Looking at the limited height of [unemployment] benefits, this [disproportionality] is of course the case, but philosophizing from the rationale of unemployment benefits you can also claim that having no, or insufficient, mastery of the Dutch language essentially means that you are not available for the labor market and consequently should have no right to benefits.’¹²³

Other parties also suggest that there is reciprocity involved in civic integration, that society can demand civic integration in return for participation in its solidarity schemes. Above, for example, the PvdA was shown to suggest bringing civic integration more directly under the ambit of social security. More generally, the emphasis placed by all parties on the necessity of employment in Dutch society, and civic integration for the sake of employment, make clear that the Netherlands is regarded to be a society of jobholders, and that to gain admittance to that society and its benefits necessitates acquiring the skills of a jobholder.

Returning, in conclusion, to the outset of this section, namely the treatment of women in the debate, it has become clear that in the debate on the Civic integration bill the specific goal of emancipation is subordinate to the general goal of social-economic independence. Newcomers, like all members of society, are required to participate in society. If they themselves miss the capabilities to do so, they should at least not prevent their children from becoming participating citizens. Participation, in line with the findings of the previous chapter, is treated first and foremost as contributing, as self-reliant individuals, to economic society. To do so requires mastery of the language especially, but also of certain social skills. Some parties, we saw, imply that economic participation is not enough for full participation, however, and that more skills, or a different kind of knowledge of Dutch society, are required to that end. This brings us, finally, to the issue of Dutch culture and values.

¹²³ *‘Gelet op de beperkte hoogte van een uitkering, is dat natuurlijk zo, maar gefilosofeerd vanuit de gedachte van de bijstandsuitkering kun je ook stellen dat het niet of onvoldoende spreken van de Nederlandse taal in wezen betekent dat men feitelijk niet beschikbaar is voor de arbeidsmarkt en uit dien hoofde dan ook geen recht zou hebben op een uitkering’*; Kamerstukken II, 30308, nr. 63: 25. The party emphasis that this is not its position, though it would welcome a ‘penalty policy’ (*‘boetebeleid’*).

Dutch culture and values

Commenting on the explanatory memorandum early on during the legislative process the ChristenUnie, noting that the Civic integration exam was to include various ‘sensitive subjects’ such as behavioral norms, the values of the *rechtsstaat*, history, and parenting, asked the Government to provide the Second Chamber with more precise details of the examination.¹²⁴ The explanatory memorandum only mentions the respective freedoms of expression and religion explicitly.¹²⁵ The Government deferred its answer to the request, however. As in the debates concerning Civic integration abroad, the failure of the Government to explicate which aspects of Dutch culture and which norms and values are of concern for civic integration leaves ample space in the debate for assumption and projection. In contrast to the earlier debates on Civic integration abroad, however, relatively few speakers are concerned explicitly with either Dutch culture or values.

he CDA, we saw above, places the bill in the context of ‘good citizenship’.¹²⁶ Civic integration, according to the party, is more than learning the language; it also involves knowledge of Dutch history and knowledge of, and respect for, Dutch norms and values.¹²⁷ The content of these norms and values, or of Dutch history, for that matter, is nowhere made explicit, however, beyond the party’s repeated emphasis on ‘self-sufficiency’ and ‘participation’ (recall the CDA’s description of the Netherlands as a ‘participation country’).¹²⁸

The ChristenUnie makes an interesting comment that has bearing on the issue of shared norms and values, namely that they welcome the bill for its promotion of equality, ‘not because we do not want maladjusted compatriots.’¹²⁹ The LPF, to the contrary, paints a rather bleak picture of the negative effects of having even one parent from a different culture on the prospects of children, in claiming that civic integration should

¹²⁴ ‘*meer gevoelige onderdelen*’; Kamerstukken II, 30308, nr. 12: 13. See, for the explanatory memorandum’s mention of the subjects of the civic integration exam, Kamerstukken II, 30308, nr. 3: 80.

¹²⁵ Kamerstukken II, 30308, nr. 3: 20, 80.

¹²⁶ *Supra*, note 111.

¹²⁷ HTK 2005/06, No. 95: 5846.

¹²⁸ ‘*zelfredzaamheid*’; ‘*meedoen*’; see, e.g., Kamerstukken II, 30308, nr. 63: 9, 40. See also *supra*, note 112.

¹²⁹ ‘*niet omdat wij geen onaangepaste medeburgers zouden willen*’; Kamerstukken II, 30308, nr. 63: 25.

be mandatory for child-raising families with such mixed parentage, if children are to be prevented from ‘growing up without any prospects with parents of whom at least one comes from a different culture.’¹³⁰ Given this statement of the LPF, and remembering that LPF stands for the ‘List Pim Fortuyn’, it is interesting that GroenLinks condemns the Civic integration bill as an overblown reaction to the ‘Fortuyn revolt’ of 2002:

‘in a certain sense this bill is one of the answers to the frustrations of the Fortuyn revolt. Integration was a failure and from now on migrants had to be treated with a firm hand.’¹³¹

Though GroenLinks does not deny that civic integration is necessary, the party does object to what it calls the ‘ideological approach’ of the bill, and worries that this bill will only generate more anger and frustration among autochthonous and allochthonous Dutch alike.¹³² According to the party, much more is to be learnt by actually participating in Dutch society than by studying for civic integration exams.¹³³

The Minister sheds little extra light on the cultural aspects of civic integration in the debate. Similarly to the CDA, the minister mentions that civic integration’s end goal is that new- and oldcomers become ‘full-fledged citizens’ with independent positions in society.¹³⁴ This necessitates ‘knowledge of the Dutch language and of Dutch society’.¹³⁵ While independence is generally described in socio-economic terms, the minister does state at one point that civic integration is necessary for participation in society more broadly understood; this is ‘one of the most important goals’ of the bill.¹³⁶ At this point also the minister states that it is absolutely necessary to that end that Dutch norms and fundamental values be shared – though, once again, what these norms and values entail is left a matter of conjecture.¹³⁷

¹³⁰ ‘kansloos opgroeien bij ouders van wie er ten minste één uit een andere cultuur komt’; HTK 2005/06, No. 95: 5864.

¹³¹ ‘in zekere zin is dit wetsvoorstel een van de antwoorden op de frustraties van de Fortuynrevolte. De integratie was mislukt en vanaf nu moesten migranten bij de lurven worden gegrepen’; Kamerstukken II, 30308, nr. 63: 18. See also *supra*, chapter 2, 69-70.

¹³² ‘ideologische benadering’; Kamerstukken II, 30308, nr. 63: 18, 22.

¹³³ Kamerstukken II, 30308, nr. 63: 21, 22.

¹³⁴ ‘volwaardige burgers’; Kamerstukken II, 30308, nr. 63: 30.

¹³⁵ ‘kennis van de Nederlandse taal en de Nederlandse samenleving’; Kamerstukken II, 30308, nr. 63: 30.

¹³⁶ ‘Inburgering is niet alleen gericht op arbeidsparticipatie, maar leidt ertoe dat men veel beter kan deelnemen aan de Nederlandse samenleving. Dat is een van de belangrijkste doelstellingen van de Wet inburgering’; Kamerstukken II, 30308, nr. 101: 19.

¹³⁷ Kamerstukken II, 30308, nr. 101: 19.

The explanatory memorandum may shed some extra light on this question, albeit in a roundabout way.¹³⁸ In explaining why it is not problematic that the bill exempts residents from EU-countries from mandatory civic integration, which exemption is necessary as a matter of European law and the freedoms of movement and settlement of EU citizens, the memorandum states that, firstly, as the freedom of settlement is conditional upon work, education, or financial independence, this group consists primarily of individuals who have little trouble in securing a place in the labor market or in education and therefore have little trouble in participating in society; and secondly, and more importantly in light of the question of the assumed content of fundamental values, 'it is to be expected that this will predominantly concern individuals who were born and raised in the Western democratic society of the other European member-states.'¹³⁹ As they are 'Western allochthones' they do not belong to the target categories of integration policy.¹⁴⁰ From this it can be inferred that, at least as far as the Government is concerned, the values that are essential for participation in Dutch society are not any specifically *Dutch* values, but are the shared values of Western, democratic society, i.e. the principles of the *rechtsstaat* referred to in previous chapters, the value of economic self-reliance, and the value of social independence, i.e. the ability to participate in society on equal terms with the other members of society.

In conclusion, the debates as presented so far in this chapter suggest that parties, regardless of their particular position on the accommodation of moral communities and of their implicit commitment to liberal culturalism or framework liberalism, all agree that participation in society is desirable and even necessary. No party rejects the understanding, implicit in the Civic integration bills under deliberation as well as in the Government's defense thereof, of the Netherlands as a moral community in itself, in which there can be place for other moral communities, but only in so far as their members are also full members of the Dutch moral community and participate in the overarching Dutch society. Despite this tendency towards a liberal-culturalist portrayal of Dutch society in the debate, in justifying their position parties treat participation predominantly in economic terms, however. If cultural integration is necessary, it is because

¹³⁸ Brought to my attention by Spijkerboer (see Spijkerboer 2007, 39,40).

¹³⁹ 'kan worden aangenomen dat het hier overwegend gaat om personen die in de westerse democratische samenleving van de andere Europese lidstaten zijn geboren en getogen'; Kamerstukken II, 30308, nr. 3: 39.

¹⁴⁰ 'westerse allochtonen'; Kamerstukken II, 30308, nr. 3: 39.

such integration is necessary for the sake of economic participation. And while parties are seldom explicit with regard to the shared values or culture that are necessary for participation most parties, either explicitly or by default, treat economic independence as such a value.

This ends the discussion of the civic integration debates in the Second Chamber. Below, before presenting the conclusions of this chapter, the discussion of the two Civic integration bills in the First Chamber will briefly be presented in turn. These debates, while largely corroborating the conclusions drawn above and of varying interest in their own light, are of additional significance for the retrospective light in which they cast the preceding debates in the Second Chamber. This is especially the case with regard to the debates concerning the Civic integration bill.

The debates in the First Chamber:

Civic integration abroad

On the whole, the debates in the First Chamber breach no new subjects with regard to Civic integration abroad, though there are subtle differences in the positions of parties in the Second- and First Chambers respectively. The PvdA in the First Chamber, for example, is more critical of the bill's tendency to function as an immigration law, instead of as a vehicle of integration, than the PvdA in the Second Chamber.¹⁴¹ Also, the party in the First Chamber is more worried, for principled, not legal-technical reasons, about the bill's possible infringement of the right to family reunification.¹⁴² Similarly, the PvdA objects to the bill's differentiation between countries, which makes Civic integration abroad mandatory for applicants from some, but not from all non-EU countries, and regards this as a matter of unlawful discrimination.¹⁴³

GroenLinks points out that the bill misses proportionality, both concerning the actual problem confronted by Dutch society (the number of marriage migrants entering the Netherlands each year does not warrant the bill, the party implies), and concerning the number of marriage migrants that will fall under the bill while not belonging to the group that the bill purports to

¹⁴¹ HEK 2005/06, No. 12: 598. The PvdA is represented in this debate by Middel.

¹⁴² HEK 2005/06, No. 12: 598.

¹⁴³ HEK 2005/06, No. 12: 598.

reach (the party claims that half of those migrating for marital reasons are marrying with autochthonous Dutch, while the majority of the other half has completed secondary or higher education), while immigration on the whole is waning.¹⁴⁴ Regardless of the truth of these claims, it is remarkable that the actual numbers of marriage migrants to the Netherlands hardly played a role in the debate in the Second Chamber. GroenLinks also raises the question, in response to the CDA's claim that the Civic integration abroad-exam should be made more difficult if it is to be effective, of the proportionality of the examination itself; if it is so easy, then what is its value, and why should people be required to pay 350 euros to take the test?¹⁴⁵ Finally the party rejects the bill on the grounds of incoherence: civic integration can be pursued in the country in which one is to become civically integrated, not somewhere else.¹⁴⁶

The SP, while supporting Civic integration abroad in principle, like the PvdA feels that the bill's exclusive focus on applicants from certain designated countries infringes principles of equality and non-discrimination.¹⁴⁷ Similarly to GroenLinks the party questions the proportionality of the bill, especially in light of the relatively low number of marital migrants from the countries that principally concern the Government, Turkey and Morocco.¹⁴⁸ Finally, the SP also rejects the categorical approach because it takes no account of the enormous differences between individuals belonging to a single category; as many applicants will pass the exam without much trouble it would be more useful to focus on those who really need help.¹⁴⁹ For GroenLinks and the SP this is reason to oppose the bill. The PvdA somewhat reluctantly supports the bill, for the principle reason that it concurs with the Government's justification of the bill and believes that civic integration should commence before immigrants arrive in the Netherlands.¹⁵⁰ The party does emphasize, however, that civic integration

¹⁴⁴ HEK 2005/06, No. 12: 601. GroenLinks is represented in this debate by Thissen.

¹⁴⁵ HEK 2005/06, No. 12: 601. For the CDA's contention that the test should be more difficult, see HEK 2005/06, No. 12: 599.

¹⁴⁶ HEK 2005/06, No. 12: 602. On a conceptual note there is indeed something strange about civic integration abroad. As pointed out in the introduction to this chapter, civic integration, or *inburgering*, concerns a mutual process of adjustment of a person or thing and its environment, to the point of that person or thing's being regarded, and, in the case of persons, regarding itself, as belonging in and to that environment. Civic integration, analytically, cannot take place *in absentia*.

¹⁴⁷ HEK 2005/06, No. 12: 605. The SP is represented in this debate by Kox.

¹⁴⁸ 16.000 in 2002, according to the SP; HEK 2005/06, No. 12: 607.

¹⁴⁹ *Idem*.

¹⁵⁰ HEK 2005/06, No. 13: 706-707.

must be a two-sided process, involving not only the immigrants, but also society as a whole.¹⁵¹

The CDA welcomes the bill, especially as a means to improving the language skills necessary for newcomers' general participation in society. Better command of the language is indispensable for the exercise of civil rights, including the freedom of expression, and for the participation in local elections and in the democratic process more generally.¹⁵² Furthermore, the CDA strongly denies the suggestion that the measures proposed by the bill could fall foul of article 8 of the European Convention on Human Rights, which protects family life, arguing that the very point of the proposed measures is to enable individuals to exercise the fundamental rights and freedoms protected by the European Convention.¹⁵³ In the debates on the Civic integration bill we will see the party making a similar point.

Other parties see the bill as jointly beneficial to individuals and to society as a whole.¹⁵⁴ The VVD, for example, claims that while the bill will promote individual participation in society and the labor market as well as individual emancipation, on the societal level it will help to prevent segregation, discrimination, and societal tensions in general.¹⁵⁵ Similarly, the SGP, representing the ChristenUnie also, states that the bill is in the interest of individuals and in the interest of society.¹⁵⁶

The Minister's contribution to the debate in the First Chamber, finally, also adds few new insights. Civic integration especially concerns language, but also concerns norms and values.¹⁵⁷ Civic integration abroad aims to make it clear to migrants that they are expected to apply themselves to civic integration.¹⁵⁸ It is important for children, especially with regard to their language skills.¹⁵⁹ It is not in breach of article 8 ECHR, and the reason that the bill does not apply to immigrants from Western countries is that they are much less numerous and that they have no negative effect on

¹⁵¹ HEK 2005/06, No. 12: 597.

¹⁵² HEK 2005/06, No. 12: 599. The CDA is represented in this debate by Van de Beeten.

¹⁵³ HEK 2005/06, No. 12: 599-600. For examples of parties' worry that the bill may be in breach of art. 8 ECHR in the Second Chamber, see, e.g., HTK 2004/05, No. 60: 3888 (PvdA), 3889 (CDA), 3896 (GroenLinks), and 3904 (VVD).

¹⁵⁴ D66, for unknown reasons, does not participate in this debate.

¹⁵⁵ HEK 2005/06, No. 12: 603. The VVD is represented in this debate by Broekers-Knol.

¹⁵⁶ HEK 2005/06, No. 12: 602. The SGP is represented in this debate by Holdijk.

¹⁵⁷ HEK 2005/06, No. 13: 653, 654.

¹⁵⁸ HEK 2005/06, No. 13: 657.

¹⁵⁹ HEK 2005/06, No. 13: 659.

deficiencies in integration at the societal level. In their case, therefore, Civic integration abroad would be disproportional.¹⁶⁰

The Civic integration bill

The debates on the Civic integration bill in the First Chamber are more than a mere recapitulation of the discussion of the bill in the Second Chamber. While there is of course attention for the legal ramifications and for the linguistic technicalities that were debated in the Second Chamber (Does it violate European and international law? What level of proficiency in Dutch is necessary, A1 or A2?), a number of parties also place civic integration in a broader historical or a somewhat deeper cultural or sociological context. Also, there is more explicit attention for the political and social climate in the Netherlands since 'Fortuyn', as well as for the merits and drawbacks of multiculturalism. Finally, after receiving barely a mention in the Second Chamber, the emancipation of women re-emerges here as one of the goals pursued through civic integration.

Because of the relative scarcity of such direct discussions of identity and integration in Dutch society during the debates discussed in this chapter, the contributions of parties choosing to do so will be presented in some detail.

The CDA is the first party to indulge in such reflections in the First Chamber. Integration, according to the CDA, is not a zero-sum game of substituting new values for the old 'as if yielding to revelation', but a 'process of development, in which nation building, community formation, and emancipation take place in lurches and leaps.'¹⁶¹ In this light the CDA resists the idea that integration equals assimilation, but it also resists the term 'multicultural society'. For both assume

'a rather limited and static understanding of culture, wherein the external manifestations [of cultures] that exist side by side are emphasized, without taking into consideration the immanent developmental process of every culture and the consequences of interaction.'¹⁶²

¹⁶⁰ HEK 2005/06, No. 13: 659, 661.

¹⁶¹ *'als ware het de aanvaarding van een openbaring', 'een ontwikkelingsgang, waarin natievorming, gemeenschapsvorming en emancipatie met horten en stoten plaatsvonden'*; HEK 2006/07, No. 8: 341.

¹⁶² *'multiculturele samenleving'; 'een tamelijk beperkte en statische opvatting van cultuur,*

These consequences include both cultural adaptation and cultural reinvigoration. As an example of the latter the CDA points to ‘the Dutch canon’, i.e. the development, for educational purposes, of a canon of episodes in Dutch history that allegedly were crucial to nation- and identity formation in the Netherlands.¹⁶³ According to the CDA ‘ten years ago one would have been ridiculed for the idea, today its chief purpose seems to be to make autochthonous Dutch conscious of their identity.’¹⁶⁴

The CDA also opposes the idea that integration would mean joining ‘some kind of majority culture’, for the cultural diversity in the Netherlands is so great that it is difficult to speak of any majority culture – a conclusion that applies to most democratic states, according to the party.¹⁶⁵ What is imperative is that all members of society, through education, have the capacity to exercise their civil rights and to participate in political, civil, economic, and cultural society.¹⁶⁶ In light of this appeal the party expresses bafflement at the idea, expressed by two professors commenting on the bill, that the Civic integration bill infringes certain rights.¹⁶⁷ The CDA maintains that such analysis completely neglects the ‘legal-political question’ whether it is acceptable to deny large groups of citizens the exercise of rights that are protected both by international conventions and the Dutch constitution, by denying the Government the right to compel them to acquire the minimal skills necessary for that exercise.¹⁶⁸ In this light the CDA regrets that the bill does not set its sights on a higher level of mandatory education.¹⁶⁹ Also, and relatedly, the party would welcome the introduction of mandatory education for certain adults, especially for allochthonous women without work.¹⁷⁰

As the previous paragraph makes clear, the CDA regards what it calls the ‘legal-political question’ as the fundamental question underlying the

waarbij het accent ligt op uiterlijke verschijningsvormen die naast elkaar bestaan, zonder rekening te houden met de immanente ontwikkelingsgang van iedere cultuur en de consequenties van interactie’; HEK 2006/07, No. 8: 341.

¹⁶³ See *infra*, chapter 2, [fn. 126].

¹⁶⁴ ‘Tien jaar geleden was men om het idee uitgelachen, vandaag lijkt het vooral een middel voor autochtone Nederlanders om zich van hun identiteit bewust te worden’; HEK 2006/07, No. 8: 341.

¹⁶⁵ ‘een soort meerderheidscultuur’; HEK 2006/07, No. 8: 341.

¹⁶⁶ HEK 2006/07, No. 8: 342. The CDA refers to art. 13 of the International Covenant on Economic, Social, and Cultural Rights (Ecosoc 1966).

¹⁶⁷ One of these professors is Entzinger, who figures prominently in chapter 2 of this thesis (the other is Groenendijk). See, for their analysis, Entzinger & Groenendijk 2006. HEK 2006/07, No. 8: 342.

¹⁶⁸ ‘de rechtspolitieke vraag’; HEK 2006/07, No. 8: 342.

¹⁶⁹ HEK 2006/07, No. 8: 342.

¹⁷⁰ HEK 2006/07, No. 8: 342.

debate. The word the CDA uses is '*rechtspolitiek*', in order to heighten the contrast with a merely legal appreciation of the problem at hand. A legal analysis, focusing on the content of civil and human rights conventions, ignores the political reality that rights do not secure membership of the polity, but vice versa. Rights are secured by membership, membership is secured by belonging, belonging by participation, participation by the ability to participate, that ability by education. Before the question of the acceptance or accommodation of cultural differences can be addressed, the prior question of political membership must be answered, according to the CDA.

D66, representing the OSF also, is the second party to place the bill in a broader context. In light of the nature of societal developments the party questions whether the general climate surrounding immigration and integration is best served by tougher legislation.¹⁷¹ 'Isn't it time,' the party asks, 'for a somewhat more relaxed approach to cultural diversity?'¹⁷² According to D66 such an approach would be becoming for a country that claims to be 'a democratic *rechtsstaat* and an open and civilized society, where fundamental rights and liberties and the equality of individuals take in an important place.'¹⁷³ The party rhetorically asks whether the current approach to integration, with its stress on duties and sanctions, fits well with such credentials. Subsequently it raises the question, also, of how much emphasis should be placed on Dutch customs and traditions, especially in light of the intrinsic diversity of Dutch culture and of its historical development through centuries of interaction with other cultures.¹⁷⁴ While the party is still in favor of civic integration – the party was one of the chief architects of the original Civic integration law of 1998¹⁷⁵ – it feels that such integration can be better effected through stimulation than through punishment.¹⁷⁶

The PvdA, the SP, and GroenLinks share D66's contention that the Civic integration bill errs on the side of strictness and sanctions. According to the PvdA civic integration should be regarded as a right and not as a

¹⁷¹ HEK 2006/07, No. 8: 344. D66 is represented in this debate by Engels.

¹⁷² '*Is het niet tijd voor een iets meer ontspannen omgang met de culturele diversiteit*'; HEK 2006/07, No. 8: 345.

¹⁷³ '*een democratische rechtsstaat en een open en beschaafde samenleving te zijn, waarin fundamentele rechten en vrijheden en de gelijkwaardigheid van mensen een belangrijke plaats innemen*'; HEK 2006/07, No. 8: 345.

¹⁷⁴ HEK 2006/07, No. 8: 345.

¹⁷⁵ Entzinger, one of the chief architects of civic integration, was a member of D66; see *supra*, chapter 2, 67, fn. 92.

¹⁷⁶ HEK 2006/07, No. 8: 345.

duty.¹⁷⁷ The SP, while similarly stressing the desirability of civic integration courses, regrets the bill's emphasis on coercion and force, and accuses the minister of using the bill to 'show her muscles'.¹⁷⁸ It would be better, the party urges, to view civic integration as an extension of general education. In normal education failing to pass exams is not penalized; neither should it be in civic integration.¹⁷⁹ GroenLinks similarly laments the minister's zeal, claiming that in her eagerness to exact civic integration under punishment by law, the minister has in effect placed many individuals who are in need of civic integration beyond the scope of the bill.¹⁸⁰

GroenLinks, like the CDA and D66, also reflects on the bill more extensively. After sketching its social and political background in familiar terms (the rise of Fortuyn, the fall of multiculturalism) the party takes issue with 'the analysis of the failure of multicultural society and the solutions that were subsequently sought in mandatory civic integration as laid down in this bill'.¹⁸¹ According to GroenLinks there is nothing wrong in principle with emphasizing individuals' responsibility for the society they live in. But the government also has a duty to ensure that individuals are able to find jobs and homes, and are able to participate socially and culturally. Civic integration, then, necessitates a mutual effort on the part of society and newcomer, and according to GroenLinks this mutuality is absent from the Civic integration bill.¹⁸²

Similarly to the SP, GroenLinks would like to see civic integration treated as a species of education: education is mandatory, but it is first and foremost a right. Passing exams cannot be a matter of obligation.¹⁸³ As in education also, individuals should be able to follow courses that match their ambitions and talents; the skill level envisioned by the civic integration bill does not exceed that necessary for manual labor.¹⁸⁴ GroenLinks explicitly expresses the desire to invest in multicultural society; this means especially bettering newcomers' socio-economic prospects, through investment in the related spheres of housing and education, and in social, cultural, and recreational

¹⁷⁷ HEK 2006/07, No. 8: 337. The PvdA is represented in this debate by Middel.

¹⁷⁸ *'om hier weer haar spierballen te kunnen tonen'*; HEK 2006/07, No. 8: 347. The SP is represented in this debate by Kox.

¹⁷⁹ HEK 2006/07, No. 9: 388.

¹⁸⁰ HEK 2006/07, No. 8: 349. GroenLinks is represented in this debate by Thissen.

¹⁸¹ *'de analyse van het failliet van de multiculturele samenleving en de oplossingen die daarvoor zijn gezocht in de verplichting tot inburgering in dit wetsvoorstel'*; HEK 2006/07, No. 8: 349.

¹⁸² HEK 2006/07, No. 8: 349.

¹⁸³ HEK 2006/07, No. 8: 349.

¹⁸⁴ HEK 2006/07, No. 8: 349.

participation.¹⁸⁵

Similarly to the CDA, GroenLinks also refers to the dynamics of identity formation in recent history, especially in light of the attacks on the Twin Towers in 2001 and the murder of Theo van Gogh in 2004.¹⁸⁶ Describing how these events gave rise to the emergence of a 'non-Muslim' identity in the Netherlands, GroenLinks asks how we might shed that identity.¹⁸⁷ To that end it is necessary, according to the party, to develop multicultural society in such a way to encourage interaction, so that a better society can emerge, 'based on civility and culture'.¹⁸⁸ Civic integration is not incumbent only on specific individuals, but on us all. If society does not succeed in this collective task, GroenLinks implies, referring to Sartre's play *Huis Clos*, 'hell' will come to be seen in 'the other'.¹⁸⁹ If that is to be avoided a decent society must be the goal, in which all are treated with civility. Above all it is necessary to avoid humiliation, both by governmental institutions and by individuals. Such an attitude is imperative for both individuals and the government. It is an attitude, GroenLinks concludes, that this Government fails to project.¹⁹⁰

The VVD, by contrast, views both the bill and Minister Verdonk, a fellow VVD-politician, in a much more favorable light. The demands made of newcomers by the bill are not so different than those made of our children: to succeed in this society you need an education and if possible a degree.¹⁹¹ The reason that in the case of newcomers it is sometimes necessary to use coercion instead of encouragement, the VVD implies, is that not all newcomers wish to pursue civic integration.¹⁹² Secondly, there are impediments to civic integration that are the result of 'the traditions and customs that exist in the cultures of those aliens'.¹⁹³ Individuals facing such

¹⁸⁵ HEK 2006/07, No. 8: 350.

¹⁸⁶ GroenLinks is referring especially to Brandsma 2006 (a book titled '*The hell, that is the other*'; investigating the differences between Islamic and secular thought and thinking).

¹⁸⁷ 'de identiteit van de niet-moslim'; HEK 2006/07, No. 8: 350.

¹⁸⁸ '*gebaseerd op fatsoen en beschaving*'; HEK 2006/07, No. 8: 350. The original Dutch word translated here as 'culture' is '*beschaving*'; while '*beschaving*' is generally translated as 'civilization', in the context civilization it is too general; what is meant is not the emergence of a society based on any civilization, but on a particular and particularly refined civilization; hence the translation as 'culture' (which word has approximately the same duality as the Dutch '*beschaving*').

¹⁸⁹ '*Dan is de ander de hel*'; HEK 2006/07, No. 8: 350.

¹⁹⁰ HEK 2006/07, No. 8: 350. GroenLinks makes no mention of *The decent society*, though the allusion seems obvious. See Margalit 1996.

¹⁹¹ HEK 2006/07, No. 8: 351. The VVD is represented in this debate by De Graaf.

¹⁹² HEK 2006/07, No. 8: 351, 352.

¹⁹³ '*de tradities en gewoonten die in de cultuur van die vreemdelingen bestaan*'; HEK 2006/07,

impediments can benefit from the obligation not just to follow courses but to successfully pass civic integration exams.¹⁹⁴ This is especially the case concerning allochthonous women who, for whatever reason, are not free to follow civic integration courses.¹⁹⁵

The Minister, finally, repeats many points in the First Chamber previously made in the Second. The bill is a matter of great urgency, both for individuals and for social cohesion.¹⁹⁶ The bill's foundation is shared citizenship.¹⁹⁷ Everyone who wishes to participate deserves a chance.¹⁹⁸ The bill's focus is on basic knowledge and skills.¹⁹⁹ With regard to cultures and 'the problems of multicultural society' there is room for diversity ('We should enjoy all those cultures...'), but there must be a common foundation and a shared language ('... but let's make sure that we can communicate about them in *one* language').²⁰⁰ The minister leaves no uncertainty that this language is Dutch.²⁰¹ Besides a shared language and certain social skills, it is necessary also that Dutch norms and values are endorsed and Dutch rules are followed.²⁰² Social security legislation offers possibilities for requiring residents to learn the language, and the minister plans to investigate how the possibilities offered by social security legislation can be used to their maximal advantage.²⁰³

The minister addresses some new points in the First Chamber as well. It is here, for instance, that the minister states for the first time during this debate that the emancipation of allochthonous women is one of the goals pursued by the bill.²⁰⁴ Also, the minister emphasizes the successes of

No. 9: 389.

¹⁹⁴ HEK 2006/07, No. 9: 389.

¹⁹⁵ HEK 2006/07, No. 9: 389.

¹⁹⁶ HEK 2006/07, No. 9: 353-355. See also 361.

¹⁹⁷ HEK 2006/07, No. 9: 393.

¹⁹⁸ HEK 2006/07, No. 9: 394.

¹⁹⁹ HEK 2006/07, No. 9: 355.

²⁰⁰ '*Laten wij genieten van al die culturen, maar laten wij er wel voor zorgen dat wij daarover met elkaar in één taal kunnen communiceren*'; HEK 2006/07, No. 9: 393. See also 394.

²⁰¹ HEK 2006/07, No. 9: 393.

²⁰² HEK 2006/07, No. 9: 393.

²⁰³ HEK 2006/07, No. 9: 358.

²⁰⁴ HEK 2006/07, No. 9: 358. Emancipation is mentioned (twice) in the explanatory memorandum, but not as an explicit goal of the bill (unemployed allochthonous women not receiving benefits should be approached by municipalities to take part in civic integration programs for the sake of their emancipation (see Kamerstukken II, 30308, nr. 3: 24); and while prolonged dependent residency permits are not good for the emancipation of marriage migrants, granting them permanent residency may have the adverse effect of removing an incentive for civic integration; therefore the Government sees it as necessary, in certain cases, to make such permanent residency status conditional upon successfully completing a

integration policy (the naturalization ceremony, the shared commitment to civic integration, placing taboo-subjects such as vengeance killings and domestic violence on the agenda, the Imam-school, increased vigilance against radicalization, integration through education and sports), states that migration can also have positive effects for the Netherlands, and speaks out against discrimination by employers.²⁰⁵ Towards the very end of the debate, finally, perhaps goaded thereto by the representative of GroenLinks, perhaps because national elections were scheduled for the following day,²⁰⁶ the minister also briefly exhibits the kind of rhetoric that earned her both praise and notoriety. After voicing her commitment to ‘everyone who wishes to participate’ in this society, the minister continues:

‘But I am not going to cry out that we have a fantastic multicultural society in the Netherlands, for we don’t. There are still a number of problems that we need to solve. There must be a shared foundation. Why don’t we start by speaking the Dutch language with each other. Then we can finally discuss different cultures. Then people will once again understand each other. Then I won’t hear that woman from a bad neighborhood in Amsterdam tell me that she can’t talk to her next-door neighbor and that she cannot buy her own products at the market anymore. She will no longer tell me that she asks herself where she is living, whether this is still the Netherlands. Every coin has two sides.’²⁰⁷

civic integration exam (see Kamerstukken II, 30308, nr. 3: 112-113).

²⁰⁵ HEK 2006/07, No. 9: 363, 393-394.

²⁰⁶ Minister Verdonk, incidentally, played no small part in the developments that necessitated these elections. In the preceding June, a day after the Second Chamber had debated the Civic integration bill on the 27th, the fall of the Government coalition had been precipitated by a nocturnal parliamentary session during which Minister Verdonk was taken to task by the Second Chamber over an incident concerning her fellow VVD-party member and MP Ayaan Hirsi Ali. Earlier in the year Hirsi Ali, who originally came to the Netherlands as an asylum seeker at the age of 23, had admitted to lying about her name during her asylum process (during the television program *Zembla*, which aired May 11 2006). Confronted with this information, Immigration & Integration Minister Verdonk first concluded that Hirsi Ali must retroactively be stripped of her citizenship, but later rescinded this position. Though a motion of no-confidence in the early morning of June 29th failed to garner the support of the Second Chamber, coalition member D66, having pledged its support to this motion, subsequently withdrew from the coalition, thereby causing its fall and the subsequent elections, to be held the day after the debate on the Civic integration bill’s final term, November 21, 2006

²⁰⁷ *‘om ervoor te zorgen dat iedereen die een kans verdient in deze samenleving, dus iedereen die mee wil doen, die ook kan krijgen. Daar sta ik keihard voor. Ik ga echter niet roepen dat wij een geweldige multiculturele samenleving hebben in Nederland, want die hebben wij niet. Er is nog een aantal problemen dat wij moeten oplossen. Er moet een gemeenschappelijke basis zijn. Laten wij eerst eens met elkaar de Nederlandse taal leren spreken. Dan kunnen wij eindelijk praten over de verschillende culturen. Dan begrijpen mensen elkaar weer. Dan hoor ik niet*

The debates in the First Chamber, in conclusion, are both broader-ranging and more concerned with fundamental objections to the bills under consideration than was the case in the Second Chamber. Despite such objections, it is notable that all parties are in favor of civic integration in principle. As in the Second Chamber, no party takes issue with the depiction of the Netherlands, implicit in the bills and the Government's defense, as a moral community in its own right, of which newcomers can become full members through participation and cultural integration. Though D66, GroenLinks, the OSF, and the SP all vote against the bill, they do so not because they oppose civic integration, but because they are concerned about the proportionality of the bill, or fear possible adverse effects of the bill on the process of integration it professes to stimulate.²⁰⁸ Of special note, finally, is the absence of the orthodox Protestant parties, the ChristenUnie and the SGP, in the debate on the Civic integration bill in the First Chamber. This absence is notable because the previous chapters demonstrated that these parties especially were prone to take a different view on matters of diversity and (civic) integration, often inspired by their implicit commitment to framework liberalism. In any case, no evidence of any such commitment to or appreciation of framework liberalism was apparent in the debates discussed in this chapter.

Conclusion

What this chapter brings home, more than anything, is that the economic structure of Dutch society and of the economic conditions of membership must be taken into account when considering Parliament's position on identity and belonging in the Netherlands. No party is unaffected by what the CDA calls, in the First Chamber, the legal-political question of what is involved in membership of Dutch society. For most parties, this at minimum seems to include economic participation in society. That is 'how we do things here'. It is clear, furthermore, that no party opposes the depiction of the Netherlands as a moral community, consisting of individuals who share distinct norms and values that can be acquired through processes of cultural integration. To the extent that other moral communities are the object of explicit discussion, they are treated

meer van die Amsterdamse vrouw uit een achterstandswijk dat zij niet kan spreken met haar buurvrouw en dat zij op de markt haar eigen producten niet meer kan kopen. Zij vertelt mij dan niet meer dat zij zich afvraagt waar zij leeft, of dit nog Nederland is. Iedere medaille heeft twee kanten'; HEK 2006/07, No. 9: 394.

²⁰⁸ See, for the voting record in the First Chamber, HEK 2006/07, No. 10: 407.

instrumentally, as either a barrier to or a possible conduit of integration. This instrumental estimation of moral communities, coupled to the depiction of the Netherlands as moral community in itself outlined above, both fit well with the findings of the previous chapters, that a majority of Parliament takes an implicitly liberal cultural view of Dutch society and the place of minority moral communities in it.

The more specific conclusions can usefully be divided into conclusions having bearing on the individual, group, and societal levels respectively.

With regard to individuals and their role in society, the image that emerges from these debates is that there is a widespread tendency to prioritize the economic independence or self-reliance of individuals in Dutch society. What is repeatedly stressed is the necessity of work, of having a job, and of being in that sense independent. Individuals are responsible for themselves and therefore must be self-supporting. Similarly, citizenship is often described as consisting in participation in society, which participation is predominantly interpreted as working. The overriding importance of economic participation is also borne out by the observed shift in emphasis from emancipation in the debates on Civic integration abroad, to the desirability of the civic integration of parents for the sake of their children's education and later prospects in life during the debates on the Civic integration bill.

On the level of groups it is firstly notable that groups, on the whole, play a relatively small role in the debates on civic integration. There is society and there is the individual, and there is little in between. If groups do receive mention it is generally because they are problematic: groups as a whole fail to integrate in society, religious groups don't share society's values, groups stand in the way of their member's integration in society. Even so the significance attributed to the civic integration of clerics is testimony to an implicit understanding of immigrants hailing from Islamic countries and their offspring as belonging to moral communities that are addressable through their religious leadership. At the same time, this evidences a particularly instrumental evaluation of such moral communities. In general, finally, it is of note that the Islam, a much-discussed topic in the debates on the Blok-report, hardly receives mention here.

On the societal level, finally, this chapter evidences a close connection between socio-cultural and socio-economic concerns. Besides being treated as a moral community in itself, the Netherlands is also widely,

if implicitly, viewed as an economic association, of which one becomes a member through work. It is clear that many parties are concerned that a failure to become a member of the moral community will impede on newcomers' ability to participate in the economic association, and therefore push for measures to speed up the process of acquiring the skills and disposition necessary for membership. This finding qualifies, to a certain extent, the degree to which an intentionally liberal-culturalist position can be attributed to parties supporting civic integration on the basis of their respective contributions to these debates.

Chapter 6

The Ritual Slaughter Debate: Tolerance Put to the Test

Introduction

The previous chapters evidenced a fairly broad and steady commitment to liberal culturalism in Dutch Parliament since 2000. At the same time, they showed an equally steady but less broadly shared commitment to framework liberalism. The basis of this second commitment is decidedly more narrow however, as framework liberalism is endorsed especially by the small orthodox Protestant parties, even though most other parties subscribe to certain of its tenets incidentally.

In the previous chapters, the question of the standing of moral communities in Dutch liberal democracy as evidenced in parliamentary debates since 2000 has been addressed predominantly through analysis of debates bearing on the integration in or the place of moral communities or their members in Dutch society. While the question of toleration has generally been implicit in these debates, it has generally been addressed in the abstract. The present chapter presents and analyzes a debate in which toleration is addressed directly. This debate concerns the bill, submitted to the Second Chamber in 2008 by a representative of the 'Party for the Animals' (*Partij voor de Dieren*; PvdD), proposing a ban on ritual slaughter in the Netherlands. The bill's explanatory memorandum makes no secret of its concern for the treatment of animals in two groups of moral communities in particular, stating as it does that 'scientific research shows that un-stunned ritual slaughter according to Jewish and Islamic tradition causes animal welfare problems such as stress, pain, and suffering prior and during slaughter.'¹ Many parties in the Second Chamber agree with the PvdD that, in so far as Jewish and Islamic ritual slaughter causes more suffering than mainstream slaughtering practices, a ban is in order.

The Ritual Slaughter debate, then, is unambiguously about the toleration of minority practices that are rejected by the majority. The question of the permissibility of ritual slaughter therefore can be regarded as a test piece of toleration in the Netherlands. As will become evident in the pages to come, the Ritual Slaughter debate also highlights a fundamental contrast between liberal culturalism and framework liberalism that has been less prominent in the debates analyzed so far, namely their opposite direction of constraint.

¹ See Documents of the Second Chamber (*Kamerstukken van de Tweede Kamer*; hereinafter *Kamerstukken II*), 31571, nr. 3: 1.

The Ritual Slaughter Bill

The Dutch Animal Health and Welfare Act of 1992 states, in art. 44, that animals must be stunned prior to slaughter.² The article allows for exemptions to the rule under governmental decree. One such exemption is the Ritual Slaughter Decree of 1996, which permits the unstunned slaughter of animals in accordance with Jewish and Islamic rites.³ These rites generally involve the slitting of the throat, after which the animal bleeds to death.⁴ The ritual slaughter bill aims to amend art. 44 of the Animal Health and Welfare act so as to prohibit all manner of unstunned slaughter.⁵ Contrary to the bills discussed previously in this dissertation, this bill is not submitted to Parliament by the Government, but by one of its own members, on the basis of the parliamentary right of legislative initiative. The legislative procedure concerning such bills is largely the same as that of regular bills, with the difference that the bill is defended by its parliamentary sponsor instead of by a representative of the Government. However, because the Government ultimately is free to reject or ratify the bill as it chooses, it is common for a representative of the Government to participate in the legislative debates so as to keep Parliament informed of its position vis-à-vis the bill.

According to the explanatory memorandum accompanying the bill, scientific research shows that unstunned ritual slaughter in accordance with Jewish and Islamic tradition causes harm to animals in the form of stress, pain, and suffering prior to and during slaughter.⁶ The memorandum argues that repealing the exception made for religious slaughter is not contrary to the freedom of religion (art. 6 Constitution), because art. 6 explicitly does not dismiss individuals from their duty to obey the law. As unstunned ritual slaughter is only allowed as an exception to the general legal prohibition of unstunned slaughter, its repeal does not infringe art. 6 Constitution.⁷

² *Gezondheids- en welzijnswet voor dieren (Wet van 24 september 1992, houdende vaststelling van de Gezondheids- en welzijnswet voor dieren)*. Art. 44 was repealed as of July 1, 2014.

³ *Besluit ritueel slachten (Besluit van 6 november 1996, houdende uitvoering van artikel 44, negende lid, van de Gezondheids- en welzijnswet voor dieren)*. The Ritual Slaughter Decree was repealed as of July 1, 2014.

⁴ See the Explanatory Memorandum (*Memorie van toelichting*), Kamerstukken II, 31571, nr. 3: 9.

⁵ MvT, Kamerstukken II, 31571, nr. 3: 1.

⁶ *Idem*. See especially MvT, Kamerstukken II, 31571, nr. 3: 4-5.

⁷ Kamerstukken II, 31571, nr. 3: 1.

The explanatory memorandum discusses the purpose and practice of Jewish and Islamic slaughter rites in some detail, stating that both rites prescribe the slaughter only of healthy and living animals and prohibit their suffering.⁸ It is emphasized that both religions prioritize the humane treatment of animals.⁹ Of the two, the Islam is said to be less clear both on the reasons against and the impermissibility of stunning.¹⁰ The kosher rite is said to prohibit pre-slaughter stunning because it can cause injury to the animal. According to the memorandum this objection has become redundant in the face of ‘recently developed methods such as reversible electric stunning’.¹¹ With regard to halal slaughtering rites it is less evident what is or is not permissible. The memorandum distinguishes two distinct interpretations; according to the first Muslims are permitted to eat meat slaughtered in Jewish or Christian countries, because Jews and Christians are seen as ‘peoples of the Book’.¹² According to the second interpretation the inhabitants of European industrialized nations do not deserve the status of ‘peoples of the Book’, and therefore their meat is not suitable for Muslims.¹³

The memorandum further states that it is impossible to say exactly how many animals are slaughtered ritually on a yearly basis, because, contrary to practice before 2006, slaughterhouses are no longer required to give that information. There are, however, circa 65 slaughterhouses where animals are slaughtered, without stunning, in accordance to Islamic and Jewish rites.¹⁴ Extrapolating from pre-2006 figures, the explanatory memorandum estimates that yearly around two million animals are slaughtered ritually without stunning.¹⁵ The memorandum also notes that ritually slaughtered meat has become a Dutch export (a development at odds with the original intentions of the exception, according to the memorandum).¹⁶ Finally, the memorandum points out that ritually slaughtered meat is consumed unwittingly by non-religious consumers because those parts of the animal that are deemed un-kosher are sold, free from any labeling restrictions, via the regular channels. This is said to be an infringement of consumers’ rights, because consumers are

⁸ Kamerstukken II, 31571, nr. 3: 2.

⁹ Kamerstukken II, 31571, nr. 3: 6.

¹⁰ Kamerstukken II, 31571, nr. 3: 7.

¹¹ Idem.

¹² Kamerstukken II, 31571, nr. 3: 3, referring to Bergeaud-Blackler 2007.

¹³ Idem.

¹⁴ Kamerstukken II, 31571, nr. 3: 9.

¹⁵ Kamerstukken II, 31571, nr. 3: 1, 9-10.

¹⁶ Kamerstukken II, 31571, nr. 3: 10.

denied knowledge of how the animals whose meat they eat have been slaughtered.¹⁷

Debating the amended Ritual Slaughter bill in the Second Chamber

A short review of the arguments in the Second Chamber

The Ritual Slaughter bill was debated in the Second Chamber in February, April, and June of 2011.¹⁸ It was put to the vote on June 28, 2011 and adopted, though in amended form.¹⁹ The general argument presented by parties during the debate in the Second Chamber broadly follows, and in any case can be rearranged along, the following lines:

1. Parties acknowledge the importance of animal welfare;
2. Parties maintain that animal welfare is also of religious concern;
3. Parties address the state of scientific research concerning animal welfare and slaughtering practices;
4. Parties address religious liberty;
5. Parties address the proportionality of revoking the exclusion granted for religious slaughtering rites;
6. Parties draw their respective conclusions with respect to the bill and/or propose or pledge support to amendments;
7. Parties call for dialogue with religious groups.

In what follows, each of these steps in the argument will be briefly presented in turn.

¹⁷ Idem.

¹⁸ HTK 2010/11, No. 54(4); HTK 2010/11, No. 73(2); HTK 2010/11, No. 96(16).

¹⁹ HTK 2010/11, No. 98(25).

The importance of animal welfare

No party in the Second Chamber denies that animal welfare should be taken into account. Even the SGP, the party voicing the gravest reservations vis-à-vis the bill, admits that animal suffering must be minimized, and also that it is not justifiable that an animal be made to suffer extra for the sake of a religion, though the party does go on to question the precise meaning of 'extra'.²⁰ Indeed, each party confronted with this last question in the first term of the debate by the representative for the PvdD, denied that animals should be made to suffer extra for religious purposes.²¹

While all parties support animal welfare, then, this support comes in different degrees. The orthodox Protestant parties the ChristenUnie and the SGP as well as the CDA each qualify their support for animal welfare by stating that minimizing animal suffering must take place with respect for religious liberty.²² Most other parties argue implicitly or explicitly that animal welfare should trump religious liberty, or at least that religious slaughtering rites be no more hurtful to animals than stunned slaughter. Only the VVD refrains from prioritizing one value over the other, though the party does regard animal welfare as 'a very important aspect' and one of the 'most important components' of the bill.²³ The State Secretary representing the Government in the debate on the bill, finally, takes a position very similar to the representative of the VVD, expressing general commitment to mandatory pre-slaughter stunning for the sake of animal welfare, yet refusing to commit the Government to a principled position for or against the bill.²⁴

Addressing religious attitudes to animal welfare

In the Second Chamber many parties address religious attitudes to animal welfare. According to all these parties the two religions whose

²⁰ HTK 2010/11, No. 54(4): 22, 23 (represented by Dijkgraaf).

²¹ In the first term of the debate, PvdD-MP Ouwehand asks the SGP, the CDA, the ChristenUnie, and the VVD if they believe if animals should be allowed to suffer extra for the sake of religion; see HTK 2010/11, No. 54(4): 22, 23 (SGP); HTK 2010/11, No. 54(4): 4 (CDA; represented by Ormel); HTK 2010/11, No. 54(4): 14 (ChristenUnie; represented by Wiegman-van Meppelen Scheppink), HTK 2010/11, No. 54(4): 26 (VVD; represented by Snijder-Hazelhoff).

²² HTK 2010/11, No. 96(16): 122 (ChristenUnie); HTK 2010/11, No. 54(4): 4 (CDA); for the position of the SGP, see above, supra note 20.

²³ *'Dierenwelzijn is voor ons [...] een heel belangrijk aspect, dat wij als en van de belangrijkste onderdelen in dit wetsvoorstel echt goed moeten wegen.'* HTK 2010/11, No. 54(4): 26; see also HTK 2010/11, No. 54(4): 24.

²⁴ HTK 2010/11, No. 73(2): 16, 18.

slaughtering practices are under consideration are committed to animal welfare as well. Parties draw diametrically opposed conclusions from that assumption however. According to the religious parties (the CDA, the ChristenUnie, and the SGP), that respect for animal welfare is allegedly manifest in Israelite (and to a lesser degree, Islamic) slaughtering rites is reason to abstain from interfering with those rites.²⁵ According to the CDA, for instance, animal welfare is central to the Jewish and Islamic religions, and their slaughtering practices are actually more humane than conventional practices in the Netherlands.²⁶

While most non-religious parties in the Second Chamber concur with the religious parties that Jewish and Islamic believers are not insensitive to animal welfare considerations, these parties draw a different conclusion from this premise. If animal welfare is indeed paramount in these religious traditions, these parties ask, why should their adherents oppose measures increasing that welfare?²⁷ The PvdD, for example, implies that animal welfare is actually not at the heart of religious' protests against the bill, or at least that the argument from animal welfare is employed instrumentally. For according to this party, most animals slaughtered in the Netherlands, including those slaughtered ritually, are born and bred under the same conditions, namely those of the mainstream meat industry.²⁸

The VVD, finally, is the only party not to offer an interpretation of religious views or purposes concerning ritual slaughter, beyond the implicit affirmation that religious slaughtering rites are a matter pertaining to religious conviction.²⁹

²⁵ HTK 2010/11, No. 54(4): 4, 6, and 7 (CDA); HTK 2010/11, No. 54(4): 20 (ChristenUnie); HTK 2010/11, No. 54(4): 22 (SGP).

²⁶ HTK 2010/11, No. 54(4): 4, 6. In the words of the CDA-MP, we should not forget that '[w]hen we were walking around in bear hides, at least when our forefathers were, animals were already treated with the utmost care in accordance with the Jewish rites' (*'Toen wij hier in berenvellen rondliepen, althans onze voorvaders, werd volgens de joodse rites al zeer zorgvuldig met dieren omgegaan.'*) HTK 2010/11, No. 54(4): 6).

²⁷ HTK 2010/11, No. 54(4): 8 (SP; represented by Van Gerven), HTK 2010/11, No. 96(16): 115, 116, 117 (GroenLinks; represented by Dibi), HTK 2010/11, No. 54(4): 27; HTK 2010/11, No. 96(16): 124, 126 (D66; represented by Van Veldhoven), HTK 2010/11, No. 96(16): 128, 129, 132 (PvdA; represented by Van Dam), HTK 2010/11, No. 73(2): 12; HTK 2010/11, No. 96(16): 137, HTK 2010/11, No. 96(16): 137 (PvdD; Thieme).

²⁸ HTK 2010/11, No. 96(16): 113 (Ouwehand).

²⁹ HTK 2010/11, No. 54(4): 26.

Science and scientific evidence

The next step in the argument is either to draw on scientific evidence to argue that unstunned slaughter violates animal welfare, or to point out that science is inconclusive or irrelevant, often while simultaneously presenting reports corroborating one's own point of view. Either way, no party regards science to be irrelevant to the subject and subsequently a very large proportion of the debate revolves around its findings. Generally, the parties supporting the bill regard the scientific evidence as conclusive, claiming that there exists consensus among researchers that unstunned slaughter causes greater suffering than pre-stunned slaughter.³⁰ The religious parties on the other hand refuse to acknowledge such alleged consensus, sometimes discrediting the authority of science itself.³¹

The grounds of religious liberty

Interestingly, few parties in the Second Chamber offer fundamental reflections on the grounds of religious liberty. The only parties to do so are the religious parties. According to the CDA, in a true democracy justice is done to minorities and to their religious experience.³² This entails that it is sometimes necessary to tolerate things that we find difficult to understand.³³ It is precisely because people have views that others have difficulty understanding that religious liberty is necessary.³⁴ Unstunned slaughter is a form of religious confession that falls within the scope of religious liberty.³⁵ If we ask why this is so, we fail to see the essence of religious liberty, which is to give people the right to hold that point of

³⁰ During the debate in the House, the sponsor of the bill expands upon the scientific evidence in favor of the bill; see HTK 2010/11, No. 54(4): 3, 5; HTK 2010/11, No. 73(2): 3, 4, 5; HTK 2010/11, No. 96(16): 138. Other parties, as well as the State Secretary (Bleker; CDA), support her arguments; see HTK 2010/11, No. 54(4): 8 (SP); HTK 2010/11, No. 54(4): 27 (D66); HTK 2010/11, No. 96(16): 128 (PvdA); HTK 2010/11, No. 54(4): 18; see also HTK 2010/11, No. 73(2): 5 and HTK 2010/11, No. 96(16): 117 (GroenLinks); HTK 2010/11, No. 96(16): 121 (VVD); HTK 2010/11, No. 73(2): 16, 18, 21 and HTK 2010/11, No. 96(16): 144 (Government).

³¹ HTK 2010/11, No. 54(4): 4 and HTK 2010/11, No. 96(16): 104, 105 (CDA); HTK 2010/11, No. 96(16): 112, 113 (ChristenUnie); HTK 2010/11, No. 54(4): 22 and HTK 2010/11, No. 96(16): 118, 120 (SGP). The ChristenUnie-MP describes science as a continuous debate on controversial hypotheses; HTK 2010/11, No. 96(16): 140.

³² HTK 2010/11, No. 54(4): 5, 6.

³³ HTK 2010/11, No. 96(16): 109.

³⁴ HTK 2010/11, No. 96(16): 102, 108.

³⁵ HTK 2010/11, No. 96(16): 102.

view.³⁶ The ChristenUnie, viewing religious liberty similarly to the CDA from the perspective of the religious group or individual, states that religious liberty essentially aims to make room for religious experience.³⁷ Slaughter is central to that experience (an ‘essential expression’) and a ‘core religious right’, according to the ChristenUnie.³⁸ It is not up to the State to determine the scope of religious liberty by holding up religious prescriptions to scientific scrutiny.³⁹ The SGP employs the same spatial metaphor as the ChristenUnie, stating that religious liberty offers groups the room to think differently. Toleration, according to the SGP, entails granting liberty ‘for things you absolutely disagree with, otherwise you would not need any toleration.’⁴⁰

The scope of religious liberty

While no party denies that religious liberty is a basic constitutional principle, most non-religious parties in the Second Chamber are more concerned to determine its limits than to present arguments for its protection. Broadly, the arguments for limitation fall into two categories: the first consisting of variations on the harm principle, which is extended to include animals; the second consisting of various arguments that religious liberty may be limited on the basis of general laws or societal norms or broadly shared values.

The bill’s sponsor, Thieme, employs arguments from both categories, stating first that religious liberty can be limited on the grounds of the harm principle: religious freedom does not include any right to cause harm to others.⁴¹ Presumably this is meant to include animals. Thieme also presents an argument for limitation in terms of the separation of Church and State, however: while the Government, in determining societal norms, must take notice of the principle of toleration, she argues, it should also be guided by the principles of state neutrality and equal treatment.⁴² The Government should therefore emphasize that it does not aim to engage in

³⁶ HTK 2010/11, No. 96(16): 106.

³⁷ HTK 2010/11, No. 73(2): 13.

³⁸ *‘dat ook slachten een erkend kernrecht is en dat dit ook een van de “essential expressions” is van godsdienstvrijheid.’* HTK 2010/11, No. 73(2): 14. See also HTK 2010/11, No. 96(16): 140: religious liberty entails the freedom to live by religious commands accepted in conscience.

³⁹ HTK 2010/11, No. 96(16): 140.

⁴⁰ *‘Tolerantie is vrijheid bieden voor dingen waar je het absoluut niet mee eens bent, anders heb je geen tolerantie nodig.’* HTK 2010/11, No. 73(2): 8.

⁴¹ HTK 2010/11, No. 73(2): 12.

⁴² HTK 2010/11, No. 96(16): 140.

internal religious interpretation, and should aspire to a neutral stance in balancing the interests of believers and animals.⁴³ Religious liberty may thus be limited on the grounds of societal norms or laws if these laws or norms are publicly justifiable.

Many parties make shorter shrift of the question of the permissibility of limiting religious liberty, claiming outright that religious liberty does not include a right to cause animals to suffer and/or that the availability of reversible stunning methods can help to ensure that religious liberty is not impaired by mandatory stunning (the SP, the PVV, GroenLinks, the PvdA).⁴⁴ For those parties additionally invoking the law, societal norms, or broadly shared values as a ground for limitation (the SP, GroenLinks, D66, and the PvdA) the justificatory principle similarly seems to be the harm principle as applied to animals.⁴⁵ The VVD merely states that ‘religious liberty and the denial of a rite’ are two different things, which in the particular context of the debate seems to mean that denying a rite need not entail a denial of religious liberty.⁴⁶

While the religious parties acknowledge that there can be grounds for the limitation of religious liberty, these parties dismiss the grounds proffered by the other parties. The CDA, for example, argues that unstunned slaughter should be allowed if it is central to religious experience.⁴⁷ The ChristenUnie maintains that the government may draw up rules for the whole of society, but that the government must respect constitutional rights while doing so, and such laws may not affect the core of religious liberty.⁴⁸ The SGP implies that limitations of religious freedom may not affect the private domain.⁴⁹

⁴³ HTK 2010/11, No. 73(2): 7, 11.

⁴⁴ The SP and the PvdA make both points; see HTK 2010/11, No. 54(4): 8, 9; HTK 2010/11, No. 96(16): 111 (SP); HTK 2010/11, No. 54(4): 29; HTK 2010/11, No. 96(16): 128, 129 (PvdA). The PVV and GroenLinks argue especially the first point; see HTK 2010/11, No. 54(4): 12, HTK 2010/11, No. 96(16): 135 (PVV; represented by Graus); HTK 2010/11, No. 96(16): 116 (GroenLinks).

⁴⁵ HTK 2010/11, No. 54(4): 8 (the SP); HTK 2010/11, No. 96(16): 117 (GroenLinks); HTK 2010/11, No. 54(4): 27 (D66); HTK 2010/11, No. 96(16): 128 (PvdA).

⁴⁶ ‘Wij zijn ervan overtuigd [...] dat godsdienstvrijheid en het onthouden van een rite twee verschillende zaken zijn.’ HTK 2010/11, No. 96(16): 122.

⁴⁷ HTK 2010/11, No. 54(4): 7.

⁴⁸ HTK 2010/11, No. 54(4): 12, 14.

⁴⁹ HTK 2010/11, No. 54(4): 21.

Proportionality

The proportionality of the consequences of the bill is much debated in the Second Chamber. Three different kinds of argument are invoked with respect to the law's (dis-) proportionality. The first kind pits the foreseen consequences of the law for religious practitioners against its consequences for animal welfare. This kind of argument is the most frequent. It will be referred to as 'religious wellbeing vs. animal welfare'. The second group of arguments pits the alleged welfare-gains for ritually slaughtered animals against the level of animal welfare in the mainstream meat processing industry ('animal welfare vs. animal welfare'). The third, and by far the smallest, group of arguments pits the bill's consequences for religious liberty against its consequences for animal welfare ('religious liberty vs. animal welfare').

Religious wellbeing vs. animal welfare

The effect of the bill on individual believers is invoked in a number of different ways to argue for the disproportionality and in some cases the proportionality of the law. The importance of ritual slaughter is deeply felt among believers, according to the CDA.⁵⁰ Eating ritually slaughtered meat is an essential part of the religious experience for certain believers, and alternatives are unmentionable.⁵¹ The ChristenUnie and the SGP make similar points.⁵² The bill is deeply painful to members of religious communities, the ChristenUnie states.⁵³ For the party the observation that religious believers experience the bill as an infringement of their religious liberty is essential to the bill's permissibility, not scientific facts about animal suffering.⁵⁴ The SGP similarly invokes individuals' experience of the proposed measures as curtailing their religious freedom; '[t]hat is how they experience it and therefore it is the truth.'⁵⁵

The inverse of this argument is made by the PvdA and the PvdD, which parties claim that most of the halal meat eaten in the Islamic community is the product of pre-stunned slaughter anyway, thereby implying a degree of

⁵⁰ HTK 2010/11, No. 54(4): 6; see also HTK 2010/11, No. 96(16): 102.

⁵¹ HTK 2010/11, No. 54(4): 6; HTK 2010/11, No. 96(16): 102.

⁵² HTK 2010/11, No. 54(4): 13 (the ChristenUnie on the importance, to believers, of eating kosher and halal meat) and HTK 2010/11, No. 73(2): 14 (the SGP on how believers experience the bill as an enormous infringement of their religious liberty).

⁵³ HTK 2010/11, No. 96(16): 111.

⁵⁴ HTK 2010/11, No. 96(16): 113.

⁵⁵ 'Zo beleven de mensen het en dus is het de waarheid.' HTK 2010/11, No. 73(2): 14.

hypocrisy on the part of believers.⁵⁶ In a similar vein the PvdD attempts to raise doubts about religious concerns for animal welfare by pointing out that most ritually slaughtered animals are born and bred in the regular meat industry.⁵⁷ Interestingly, the SGP levels a similar accusation at the Islamic community, which according to the party cannot present good reasons for unstunned slaughter.⁵⁸ Doing so the party emphasizes that the Jewish religion, by contrast, does provide good reasons.

The SP and the VVD, finally, bring the availability of reversible forms of stunning as substitutes for unstunned slaughter to bear on the proportionality of the law. Because there are good alternatives for unstunned slaughter, these parties argue, the law is not disproportional.⁵⁹

Animal welfare vs. animal welfare

A number of arguments having bearing on the bill's proportionality revolve around comparisons between animal welfare in religious and mainstream slaughtering practices respectively. The CDA, for example, calculates that if errors in 1% of all mainstream slaughter result in extra animal suffering, this affects 5 million animals, whereas only around a million animals are estimated to be slaughtered ritually yearly, and these animals are treated with more consideration generally than in the regular slaughtering process, implying that therefore the law is disproportional.⁶⁰ The ChristenUnie concurs, pointing out besides that stunning generally does not even serve the purpose of animal welfare but of increased production.⁶¹ In general the Christian parties, it was demonstrated above, raise doubts about the scientific evidence that stunning is an improvement over non-stunning in terms of animal welfare. All these arguments explicitly or implicitly posit that the bill is disproportional.⁶²

Two final ways of pitting animal welfare against animal welfare as a means of addressing the proportionality of the bill are first the SGP's argument that the law is disproportional because it does not forbid imports of religiously slaughtered meat, and therefore does not improve animal

⁵⁶ HTK 2010/11, No. 54(4): 29 (PvdA); HTK 2010/11, No. 73(2): 7 (PvdD; Thieme).

⁵⁷ HTK 2010/11, No. 96(16): 113.

⁵⁸ HTK 2010/11, No. 54(4): 22.

⁵⁹ HTK 2010/11, No. 96(16): 112 (SP); HTK 2010/11, No. 54(4): 25 (VVD).

⁶⁰ HTK 2010/11, No. 96(16): 104.

⁶¹ HTK 2010/11, No. 54(4): 15; HTK 2010/11, No. 96(16): 129.

⁶² See, for an explicit example, HTK 2010/11, No. 96(16): 140 (ChristenUnie).

welfare all around; and second the VVD's worry that the bill will result in the illegal practice of religious slaughter, so that rather than alleviating animal suffering the law will merely cause it to drop from view.⁶³

Religious liberty vs. animal welfare

Compared to the number of arguments along the lines of either 'religious wellbeing vs. animal welfare' or 'animal welfare vs. animal welfare', there are but a few instances where the proportionality of the bill is treated as a function of its compared effects on animal welfare and religious liberty respectively. Again, it is especially the religious parties that address the law's proportionality in terms of its effects on religious liberty itself. The CDA claims that as a fundamental constitutional principle, religious liberty takes priority over animal welfare.⁶⁴ The other religious parties also, invoking the Council of State or the ECHR, claim that the bill's justification is insufficient to limit religious liberty.⁶⁵

A final way in which religious liberty is directly invoked in the question of the bill's proportionality is by stating that the subject of ritual slaughter has long been subject to political taboo (the PvdD), and is now the object of heavy lobbying on the part of religious organizations (GroenLinks and the PvdD).⁶⁶ Thus it is suggested that, rather than being disproportional, the proposed measures entail a return to a normal and hence proportional relationship between religious liberty and animal welfare.

⁶³ HTK 2010/11, No. 96(16): 118 (SGP); HTK 2010/11, No. 54(4): 26 (VVD).

⁶⁴ HTK 2010/11, No. 96(16): 102.

⁶⁵ HTK 2010/11, No. 54(4): 14 (ChristenUnie); HTK 2010/11, No. 96(16): 118, 119 (SGP). In its Advice the Council of State, drawing on both EU-law and the case law of the European Court of Human Rights, states that a prohibition of unstunned ritual slaughter forms a limitation of the freedom of religion (*Advies Raad van State en reactie indiener*, Kamerstukken II, 31571, nr. 4: 2). Such a limitation may be justified if it is sufficiently specific and proportional, and if the core of the protected right is left intact. These criteria can only be met through careful deliberation, in which weight must be accorded to the protection of the constitutional liberty (3-4). The Council of State is of the opinion that the sponsor of the bill takes too little account of the constitutional right to religious liberty in simply claiming that the harm done to animals during ritual slaughter is sufficient grounds to limit that right (4). As a consequence, according to the Council of State, the bill is in breach of both art. 6 Constitution and art. 9 of the European Convention on Human Rights (4, 5).

⁶⁶ HTK 2010/11, No. 96(16): 115 (GroenLinks); HTK 2010/11, No. 54(4): 16, 17 (PvdD; Ouwehand). The taboo on limiting religious rights to ritual slaughter is connected to the Nazi occupation of the Netherlands during the Second World War, and the repeal by the occupation government of existing exemptions for Jewish butchers. This historical precedent is also referred to, as such, during the debate of the current bill. See, e.g., HTK 2010/11, No. 54(4): 4 (CDA).

Proposed amendments and the appeal to dialogue

The considerations outlined above lead to two proposed series of amendments, one supported by the three religious parties CDA, ChristenUnie, and SGP, the amendments-Ormel, and one supported by all the other parties barring the PvdD the PVV, and the SP, the amendments-Van Veldhoven. The amendments-Ormel amount to a position compromising between animal welfare and religious liberty, allowing unstunned slaughter if and in so far as unconsciousness results within 45 seconds of the slaughtered animal's throat being slit. The amendments-Van Veldhoven create space for unstunned ritual slaughter, but only in so far as scientific evidence is provided supporting the claim that such slaughter causes no more suffering than slaughtering practices in the regular meat industry. While evidencing an unwillingness to ostracize religious practitioners, then, the amendments-Van Veldhoven demonstrate an equally strong unwillingness to compromise animal welfare.

The discussion of the bill does not end with the proposal of amendments, however, for there is one additional issue commented upon by almost all parties, namely the wish to engage the religious communities affected by the bill in debate. In fact, the only party expressing no interest in or desire for dialogue is the PVV, the party which is also against all ritual slaughter whatsoever, regardless whether it proceeds with or without stunning.⁶⁷ All the other parties would welcome dialogue with religious groups, some in addition to, some as a substitute for, the bill. The Christian parties obviously desire dialogue instead of prohibition. The CDA, for example, argues that the Government should open discussions with the Jewish and Islamic communities to reach agreement about reversible stunning methods.⁶⁸ An intermediary solution to the problem addressed by the bill may be found, the party suggests, for instance by electrical stunning directly after the throat has been cut, so that the animal can still take the four steps required by the shechita.⁶⁹ The ChristenUnie similarly calls for discussion with the purpose of drawing up a covenant with the religious communities as a better means of increasing animal welfare.⁷⁰ The SGP also stresses that discussion and agreement is a more proportional way of meeting the bill's stated goals than prohibition.⁷¹

⁶⁷ HTK 2010/11, No. 96(16): 134.

⁶⁸ HTK 2010/11, No. 54(4): 4, 6.

⁶⁹ HTK 2010/11, No. 54(4): 8.

⁷⁰ HTK 2010/11, No. 96(16): 112, 117, 128.

⁷¹ HTK 2010/11, No. 96(16): 118.

But it is not only the Christian parties that call for dialogue with religious communities. The SP asks whether religious organizations have already been approached in order to ensure that the law will be well received in the religious community.⁷² GroenLinks, similarly to the SGP, wonders whether animal welfare may not be increased without limiting religious liberty, by entering into dialogue with the religious community in search of serious alternatives.⁷³ The VVD also regards dialogue both as necessary and preferable, if possible.⁷⁴ D66 explains that its proposed amendments have the purpose of opening dialogue with religious communities and enabling them to explore the margins offered by their religious prescriptions.⁷⁵ The PvdA welcomes the amendments-Van Veldhoven for similar reasons.⁷⁶ The bill's sponsor, of the PvdD, also claims that an open dialogue with the religious community is necessary, even while adding that this dialogue must be based on scientific fact.⁷⁷ The State Secretary representing the Government, finally, compliments both Ormel (CDA) and Van Veldhoven (D66) with their proposed amendments, because both MP's, according to the minister, correctly perceive and wish to stimulate a willingness on the part of religious communities to actively contribute to the discussion of how their religious principles can be accommodated while also increasing animal welfare.⁷⁸

Discussion, many parties clearly believe, is the most desirable route to take. Nevertheless, perhaps because not all parties trust discussion to lead to reasonable results, the amendments-Ormel (allowing unstunned slaughter for 45 seconds) are not supported by the Second Chamber, while the bill is passed, as amended along the lines-Van Veldhoven, by all parties barring the CDA, SGP, and ChristenUnie.⁷⁹

The debate in the Second Chamber: the public constraint of conceptions of the good

In chapter 1, a crucial distinction between liberal culturalism and framework liberalism was shown to lie in their opposing directions of

⁷² HTK 2010/11, No. 54(4): 9.

⁷³ HTK 2010/11, No. 96(16): 115.

⁷⁴ HTK 2010/11, No. 54(4): 25, 26.

⁷⁵ HTK 2010/11, No. 96(16): 134.

⁷⁶ HTK 2010/11, No. 96(16): 131.

⁷⁷ HTK 2010/11, No. 73(2): 13.

⁷⁸ HTK 2010/11, No. 96(16): 147.

⁷⁹ HTK 2010/11, No. 98(25): 43.

constraint. While under liberal culturalism the public commitment to individual autonomy generates both institutional and social pressures to limit the scope of diversity in liberal-culturalist society, under framework liberalism it is precisely the other way around: privately endorsed conceptions of the good limit the scope for legitimate public action the moment that such action is opposed by member of moral communities endorsing said conceptions of the good. Under framework liberalism, society at large can only force its opinions on dissenting minorities given an overriding public concern such as public safety or national security. The Ritual Slaughter debate provides a good illustration of both how public attitudes can constrain private liberty and how a respect for privately endorsed conceptions of the good can work to constrain public policy. While the latter dynamic is evidenced in the First Chamber, and will be evidenced in the next section, the debate in the Second Chamber demonstrates how the scope of liberty can be constrained by the public endorsement of autonomy.

The debate in the Second Chamber especially exemplifies the vulnerability of minority moral communities when called to publicly justify their beliefs by a majority that rejects their conception of the good. The debate also illustrates how difficult it is, when a majority in parliament confronts parties representing minority moral communities, to distinguish the majority's shared view of 'how we do things here' from what is justifiably of public concern. These difficulties are most apparent in the accusation of hypocrisy, leveled at the religious groups by a number of parties during the debate. In this section, this accusation and its implications will be investigated further.

In the Second Chamber, a number of parties supporting the bill imply that the Jewish and Islamic communities affected by it are disingenuous in their rejection of the bill.⁸⁰ These communities, their argument runs, claim that animal welfare is at the heart of the religious prescriptions they wish to uphold, and persist in denying that those prescriptions cause unnecessary suffering to animals. In the face of the scientific evidence available this allegedly is hard to maintain. Therefore, the religious communities are engaging in hypocrisy. (A variation on this argument is that the animals singled out for ritual slaughter are generally born and

⁸⁰ See HTK 2010/11, No. 96(16): 115, 116, 117 (GroenLinks); HTK 2010/11, No. 54(4): 27, HTK 2010/11, No. 96(16): 124, 126 (D66); HTK 2010/11, No. 96(16): 128, 129, 132 (PvdA); HTK 2010/11, No. 73(2): 12, HTK 2010/11, No. 96(16): 137 (PvdD; Thieme); HTK 2010/11, No. 96(16): 133, 135 (PVV).

bred in the mainstream meet industry, and that therefore their welfare is compromised as it is.⁸¹) The upshot of the accusation of hypocrisy is that the religious communities should recognize the scientific evidence and modify their position accordingly. Confronted with this implicit accusation, parties opposing the bill in the Second Chamber call into question the scientific evidence, claiming that this is hardly as conclusive as the bill's supporters maintain.⁸²

There are a number of reasons why the accusation of hypocrisy outlined above is interesting. First, as often is the case when accusations of hypocrisy are leveled, the question can be raised what the accusation is aimed at achieving. For the argument works on two levels: on one level it is a straightforward accusation of inconsistency; you cannot endorse both animal welfare and actions demonstrably compromising that welfare simultaneously. Therefore you must either admit that you are not interested in animal welfare, or you must reject the practices compromising that welfare. Given that proponents of the bill do not question the science in its favor, the consistency they demand of its opponents is to reject those practices as well.

On another level, however, the accusation of hypocrisy does not aim to modify the preferences of the opponents of the bill, but merely seeks to demonstrate that those opponents are not being truthful; they are, in fact, not concerned primarily with the welfare of animals, so it is implied, but with the maintenance of their religious rites. Given the premise that religious rites are no reason to compromise animal welfare, the proponents of the bill thus seek to disqualify its opponents from further participation in the debate.

On both levels, the accusation of hypocrisy evidences the public to private direction of constraint of liberal culturalism. As a straightforward accusation of inconsistency, the accusation is premised both on a shared commitment to animal welfare and a basic respect for science as a supplier of reliable evidence concerning that welfare. For those who level the accusation of hypocrisy, if you support animal welfare and accept the scientific evidence, *there is no good reason* to oppose the bill. Reasons

⁸¹ HTK 2010/11, No. 54(4): 29 (PvdA; represented here by Van Dekken); HTK 2010/11, No. 73(2): 7 (PvdD; Thieme); HTK 2010/11, No. 96(16): 113 (PvdD; Ouwehand).

⁸² See HTK 2010/11, No. 54(4): 4 and HTK 2010/11, No. 96(16): 104, 105 (CDA); HTK 2010/11, No. 96(16): 112, 113 (ChristenUnie); HTK 2010/11, No. 54(4): 22 and HTK 2010/11, No. 96(16): 118, 120 (SGP).

provided by the particular comprehensive doctrine of minority moral communities, i.e. their beliefs, are disqualified out of hand. To the extent that such reasons are acknowledged, they should be rejected on the basis of the evidence available. This is a straightforward application of liberal culturalism's commitment to autonomy, involving as it does a propensity for critical reflection and the ability to rationally revise one's conception of the good on the basis of that reflection.

On the second level, the accusation of hypocrisy demonstrates the difficulties inherent in engaging processes of public justification when a clear majority opposes a religious minority. For under such conditions the minority can be forced to argue its case in terms that are acceptable to the majority – in this case, animal welfare and scientific fact. The majority, on the other hand, has hardly any incentives to argue its own case publicly, i.e. to justify its position in terms acceptable to the minority. As a result, the majority can foist its own substantive morality on the minority.

The fundamental question this raises is that of the viability of a commitment to a procedural morality of public justification under conditions of increasing societal homogenization. This is a question that will be returned to in the final chapter of this dissertation. For now, it is apparent that the debate in the Second Chamber shows a marked absence of any commitment to such a procedural morality. While parties representing religious groups are called upon to justify their position in terms set by the majority, the majority of parties are less concerned to justify their treatment of religious groups in terms acceptable to those groups. Rather, these latter parties treat their own beliefs about animal welfare as self-evidently true.

The inability of the bill's opponents to discuss its merits in terms other than those suggested by its proponents, finally, strongly suggests that those terms, i.e. science and animal welfare, are part and parcel of the dominant way of understanding the world to be and making decisions about what to do in Dutch society at the beginning of the 21st century. It is 'how we do things here'.

If the opponents of the bill are forced to play by rules determined by its proponents, if they must discuss the bill in the terms of the dominant comprehensive doctrine in Dutch society, this implies that the debate on its merits cannot be taken entirely at face value. The quibbling about science, for instance, is arguably not at the heart of the matter for the opponents of

the bill. This quibbling, which intensifies during the debate in Parliament's First Chamber, where a number of parties originally supportive of the law withdraw that support on the grounds (in part) of the shaky claims of science, must largely be understood as a kind of shadow play, in which the shadows are cast by an issue on which a number of parties are hesitant to compromise, regardless of any scientific closure on offer. This issue, central to both religious liberty and framework liberalism, is the freedom of conscience.

Debating the amended Ritual Slaughter bill in the First Chamber

The bill debated in the First Chamber is a different bill than that discussed in the Second. As amended along the lines of the amendments-Van Veldhoven, the new bill (henceforth 'the amended bill') does not entail a blanket prohibition of unstunned slaughter, but states that art. 44 paragraph 3 of the Animal health and welfare act will be amended so as to read as follows:

“The slaughter of animals according to the Israelite or Islamic rite is only permitted, if the animals are stunned beforehand. Our Minister grants, on application, and for a period of no longer than five years, on the grounds of rules to be laid down by Governmental Decree, dispensation for that ordained in the previous sentence, under condition that it has been demonstrated on the grounds of independently established evidence that the welfare of the animals subjected to slaughter according to one of the rites mentioned in the previous sentence is not impaired in greater measure than the degree of impairment which results from slaughter according to or on the grounds of the first and second paragraphs [(i.e. regular slaughter)].”⁸³

⁸³ *Het slachten van dieren volgens de israëlitische of de islamitische ritus is slechts toegestaan, indien de slachtdieren voorafgaand zijn bedwelmd. Onze Minister verleent, op grond van bij algemene maatregel van bestuur te stellen regels, op aanvraag, en voor een periode van niet meer dan vijf jaar, ontheffing van het bepaalde in de vorige volzin, mits op basis van onafhankelijk vastgesteld bewijs is aangetoond dat het welzijn van de slachtdieren bij de slacht volgens één van de in de vorige volzin genoemde ritussen niet in grotere mate wordt benadeeld dan de mate van benadeling waarvan sprake is bij het slachten volgens het bepaalde bij of krachtens het eerste en tweede lid.* See the Amended bill ('Gewijzigd voorstel van wet'), Kamerstukken I, 31571 A.

Ultimately, the amended bill is defeated in the First Chamber. According to the bill's sponsor, PvdD-MP Thieme, this defeat is due to the First Chamber's choice to engage in a principally political appraisal of the amended bill instead of merely debating its legal-technical merits.⁸⁴ Be that as it may, the argumentative strategies pursued by most parties in the First Chamber are largely similar to those in the Second.

There are also notable differences between the First and Second Chambers' treatment of the bill, however. Interestingly, a number of arguments resonating only among the Christian parties in the House are shared more broadly in the Senate. These are first the arguments concerning the law's proportionality, and second those having bearing on what was called, by one party in the Second Chamber, 'scientific fundamentalism'.⁸⁵ The result is that three parties that supported the bill in the Second Chamber oppose the amended bill in the First. Ironically perhaps, these three parties constitute three of the four parties that supported the amendments-Van Veldhoven in the Second Chamber as a means to increase the bill's chances of success in the first place (D66, the PvdA, and the VVD). The other parties take up similar positions in both Chambers of Parliament (with the exception of GroenLinks, which party is divided on the issue in the First Chamber). Two parties in the First Chamber were not represented in the Second, 50PLUS and the OSF (1 seat each). Both these parties are in favor of the amended bill. In what follows, the debate will be broken down and presented broadly along the same lines as the debate in the Second Chamber. In an attempt to avoid redundancy, pride of place will be given to that which is novel rather than repeating arguments previously discussed.

Animal welfare and religious attitudes to animal welfare

Similarly to the debate in the Second Chamber, the debate in the First shows a broad consensus on the importance of animal welfare.⁸⁶ The only

⁸⁴ HEK 2011/12, No. 32(5): 41, 42.

⁸⁵ HTK 2010/11, No. 96(16): 142 (ChristenUnie).

⁸⁶ HEK 2011/12, No. 12(2): 2 (PvdA; represented by Schrijver); HEK 2011/12, No. 12(2): 5 (D66; represented by Backer); HEK 2011/12, No. 12(2): 7 (GroenLinks; represented by Vos); HEK 2011/12, No. 12(2): 12 (SGP; represented by Holdijk); HEK 2011/12, No. 12(7): 26 (PVV; represented by Faber-van de Klashorst); HEK 2011/12, No. 12(7): 29 (ChristenUnie; represented by Ester); HEK 2011/12, No. 12(7): 35 (SP; represented by Vliegenthart); HEK 2011/12, No. 12(7): 38 (VVD; represented by Schaap); HEK 2011/12, No. 12(7): 38 (50PLUS; represented by Nagel); HEK 2011/12, No. 12(7): 39 (OSF; represented by De Lange); EK 12, 13 december 2011, 12-9-80 (the State Secretary).

two parties not to voice that concern explicitly are the PvdD, who, as Party for the Animals needs not state the obvious, and the CDA, which party makes it clear at the outset of its contribution that its overriding concern lies with religious freedom.⁸⁷ With regard to the invocation of religious support for animal welfare, however, there is a marked distinction between the First and Second Chambers. Whereas many parties in the Second Chamber invoked Jewish and Islamic concern for animal welfare either as an argument for or against supporting the law, in the First Chamber hardly any parties refer to general religious attitudes to animal welfare. If they do so, also, it is not to emphasize that believers have the best intentions with regard to animal welfare, but only to point out, as GroenLinks, the PvdD, and the PVV do, that certain religious communities already practice forms of stunned slaughter.⁸⁸ Relatedly, the PvdA and the ChristenUnie point out religious organizations' willingness to discuss possibilities other than outright prohibition of unstunned slaughter.⁸⁹ The ChristenUnie, finally, does make mention of the Biblical origins of its own concern for animal welfare.⁹⁰ That party also, like the other parties in the First Chamber, makes no assumptions with regard to other believers' attitudes towards animal welfare, however.

Science

The First Chamber shows a general shift with regard to parties' appreciation of the scientific evidence concerning animal suffering (and in some instances parties' regard of science period). Most notably, of the four parties that supported the amendments-Van Veldhoven in the Second Chamber, only GroenLinks still regards the scientific evidence supporting a general ban on unstunned slaughter as conclusive.⁹¹ The PvdA, D66, and VVD all voice greater or smaller reservations. While the PvdA is sure that large cattle suffer more during unstunned slaughter, according to the party the bill's sponsor is too quick to reach the general conclusion that all species do so.⁹² While the PvdA, then, still seems prone to respect

⁸⁷ For the PvdD, see, e.g., HEK 2011/12, No. 12(2): 13 (represented by Koffeman); and for the CDA HEK 2011/12, No. 12(7): 27 (represented by Terpstra).

⁸⁸ HEK 2011/12, No. 12(2): 8, 9 (GroenLinks); HEK 2011/12, No. 12(2): 18, 19 (PvdD); HEK 2011/12, No. 12(7): 26 (PVV).

⁸⁹ HEK 2011/12, No. 12(2): 4 (PvdA); HEK 2011/12, No. 12(7): 33 (ChristenUnie).

⁹⁰ HEK 2011/12, No. 12(7): 29.

⁹¹ HEK 2011/12, No. 12(2): 8.

⁹² That being said, the PvdA's stated reasons for this conclusion have little bearing on science; firstly, the party questions MP Thieme's conclusion on miscarriages in the mainstream

the findings of science in general but regards science's findings in this particular instance as inconclusive, D66 and the VVD go a step further.

According to D66 it is very difficult, perhaps impossible, to objectify harm. Referring approvingly to an earlier statement by the SGP that an animal's consciousness is closed to human perception and that animal suffering is therefore a human projection and an example of anthropocentric thinking, D66 goes on to say that in contrast to, for instance, rules concerning hygiene and safety, the discussion about harm enters into 'very difficult, subjective territory'.⁹³ Scientific consensus as such, then, is a possibility which D66 does not deny, just as it does not deny that if such consensus were to be obtained, it would defer to it. The party does maintain, however, that with regard to animal suffering it is especially difficult to reach any such consensus because animal suffering is a subjective state and as such impossible to measure scientifically.⁹⁴ The VVD similarly claims that matters such as pain, stress, sense, and consciousness are difficult to tackle scientifically.⁹⁵ More in general, the VVD accuses the bill's sponsor of entertaining a view of science that

'reaches back to around the time of René Descartes, when people thought that science could give very clear and unambiguous answers and that an end could be put, thereby, to all doubt.'⁹⁶

The scientific skepticism evidenced by D66 especially is remarkable, coming as it does from a party that generally prides itself as a champion

industry (which may have bearing on the bill's proportionality, but not on the scientific evidence concerning animal suffering); secondly, the party observes that the wording of the amended bill implies that unstunned slaughter need not always be more harmful than prestunned slaughter (which is a correct observation regarding the law's wording, but not an observation from which any scientific conclusions follow). HEK 2011/12, No. 12(2): 4.

⁹³ *'dat er met de leeddiscussie een heel lastig, subjectief terrein wordt betreden.'* HEK 2011/12, No. 12(2): 13, 14. With regard to the SGP's remarks about 'anthropocentric thinking' (*'antropocentrisch denken'*) one is tempted to ask whether the claim that animal suffering is a human projection is not anthropocentric as well. See for the SGP's remarks HEK 2011/12, No. 12(2): 11.

⁹⁴ D66, in so arguing, seem to be confusing what Searle calls epistemic and ontological subjectivity, thereby missing the point that the issue is not to measure whether a cow is correct in preferring Beethoven to basketball, but whether he is in more pain in one situation than in another. Both questions involve subjectivity, but in very different ways.

⁹⁵ Importantly, this claim is made with regard to the amended bill's demand of scientific evidence in order to obtain an exemption from the prohibition of unstunned slaughter. HEK 2011/12, No. 12(7): 36, 37.

⁹⁶ *'dat ongeveer terugreikt tot de tijd van René Descartes, toen men dacht dat de wetenschap heel heldere en eenduidige antwoorden kon geven en dat daarmee aan alle twijfel een einde kon worden gemaakt.'* HEK 2011/12, No. 12(9): 96.

of fundamental scientific research.⁹⁷

The positions with regard to science of the other parties in the First Chamber are roughly the same as their counterparts in the Second, though often somewhat more substantiated or more extreme. The PvdD, for instance, now supports its claim of scientific consensus by pointing out that while there exists peer-reviewed scientific evidence supporting the claim that unstunned slaughter is more harmful to animals, there is no such peer-reviewed evidence to the contrary.⁹⁸ The ChristenUnie in the Second Chamber had dismissed science as merely a means to give faddish opinion an air of respectability.⁹⁹ Here the party takes a kind of pseudo-Kuhnian stance, pointing out that science is not ‘a linear concept, in which we think up something good, which then remains so forever.’¹⁰⁰ On the contrary, according to the party

‘[s]cience is an arena in which rivaling hypotheses fight with each other. There is no final victory. It could very well be that something is evident to a degree at moment A, but no longer at moment B. Then, for instance, the arrangement for the Jewish community and the Muslim community will be cancelled and it will be necessary to revert to a different stage. That doesn’t get you anywhere.’¹⁰¹

Against all the arguments amassed against science’s ability to measure pain or prove suffering, finally, stand both the PVV and the OSF. According to the first, not only does all the scientific evidence point in the same direction, it is also a matter of common sense that unstunned animals suffer more during slaughter than stunned animals.¹⁰² The OSF, secondly, rather than invoking common sense, invokes more science. Pain, fear, and stress, the party’s representative (also a professor in atomic, molecular,

⁹⁷ The party, for instance, argues that universities should focus more strongly on fundamental research; see <https://d66.nl/standpunt-over/meer-kwaliteit-hbo-en-universiteit/>, visited on November 14, 2014.

⁹⁸ This claim is not contradicted. HEK 2011/12, No. 12(2): 14, 16.

⁹⁹ HTK 2010/11, No. 96(16): 140.

¹⁰⁰ ‘Wetenschap is niet een lineair concept, waarin we iets bedenken wat goed is, wat vervolgens voor eeuwig zo is.’ HEK 2011/12, No. 12(9): 84.

¹⁰¹ ‘Wetenschap is een arena waarin rivaliserende hypothesen met elkaar vechten. Er is geen eindoverwinning. Het zou heel goed kunnen zijn dat iets op moment A een zekere evidentie heeft, maar op moment B weer niet. Dan wordt bijvoorbeeld de regeling voor de joodse gemeenschap en de moslimgemeenschap weer afgeschaft en moet men weer terug naar een ander stadium. Dat schiet niet echt op.’ HEK 2011/12, No. 12(9): 84.

¹⁰² HEK 2011/12, No. 12(7): 26.

and laser physics) argues, are essentially chemical processes. If a plant, for instance, is subjected to stress, it produces ethylene. Animals equally produce certain molecules when subjected to pain, fear, and stress. Such molecules, moreover, can be detected scientifically, for instance with a functional MRI. That this has not yet been done, the party argues, is a different matter, though it perhaps deserves our attention: ‘Then the whole problem that it wouldn’t be scientifically possible to demonstrate pain, fear, and stress will be out of the world.’¹⁰³

Religious Liberty

Only a handful of remarks are made concerning the grounds of religious liberty more generally. The PvdA states, for instance, that the Constitutional liberties aim to protect individuals against the state.¹⁰⁴ The PVV places religious liberty in the context of the separation of Church and State and the secular nature of the Dutch state, as does the OSF.¹⁰⁵ More generally, the VVD criticizes the amended bill for suggesting that the ‘moral values’ of society at large take precedence over religious commands: ‘Democracy is not identical to the right of majorities to force their particular opinions upon minorities. This bill threatens to come into conflict with this.’¹⁰⁶ Both the State Secretary and the ChristenUnie state that religious freedom entails that the State does not engage in determining what is or is not an essential part of a particular religion (though the ChristenUnie, also repeatedly emphasizes that eating religiously slaughtered meat is an essential part of the Jewish and Muslim religions).¹⁰⁷ The amended bill’s sponsor, finally, MP Thieme, also places the law in the context of State neutrality and the separation of Church and State.¹⁰⁸

Like the ChristenUnie, a few other parties maintain that religious liberty entails that the State must exercise restraint in determining what is or is not of religious importance to believers (GroenLinks and the OSF).¹⁰⁹

¹⁰³ ‘*Dan is het hele probleem dat het wetenschappelijk niet mogelijk zou zijn om pijn, angst en stress aan te tonen uit de wereld.*’ HEK 2011/12, No. 12(9): 77.

¹⁰⁴ HEK 2011/12, No. 12(2): 2.

¹⁰⁵ HEK 2011/12, No. 12(7): 26 (PVV) and HEK 2011/12, No. 12(7): 39 (OSF).

¹⁰⁶ ‘*Democratie is niet identiek met het recht van meerderheden eigen opvattingen aan minderheden op te leggen. Dit wetsvoorstel dreigt hiermee in botsing te komen.*’ HEK 2011/12, No. 12(7): 36.

¹⁰⁷ HEK 2011/12, No. 12(9): 82 (State Secretary) and HEK 2011/12, No. 12(7): 30 (ChristenUnie).

¹⁰⁸ HEK 2011/12, No. 12(9): 69.

¹⁰⁹ HEK 2011/12, No. 12(2): 9 (GroenLinks); HEK 2011/12, No. 12(7): 40 (OSF, see also be-

More parties, however, engage in determining whether or affirming that eating religiously slaughtered meat is central to the Jewish and Islamic religions.¹¹⁰ The PVV, conversely, draws on religious sources to affirm that stunned slaughter is acceptable practice for the religious communities in question.¹¹¹ The SP, the VVD, and 50PLUS, finally, neither engage in religious determinations by proxy, nor argue for the necessity of exercising restraint in such determinations.

Of the above mentioned parties, the OSF provides another clear example of the liberal-culturalist dynamic, already evidenced in the Second Chamber, through which the space for private conceptions of the good is effectively constrained by subjecting those conceptions to public deliberation. Given that animal suffering should, wherever possible, be minimized, the party states, we could ask ourselves the following question:

‘if, for whatever reason, certain religious groups no longer existed, would, under those circumstances, unstunned ritual slaughter still be practiced up to the present day?’¹¹²

The OSF doubts that strongly, inferring subsequently that there are no non-religious arguments to be found in favor of slaughtering methods that date from thousands of years ago. Consequently, the party pledges its support to the bill.¹¹³

The PvdD treats the decision for or against the law as a simple matter of balancing religious interests against animal welfare, without extra consideration for religious freedom as a constitutional liberty, though the PvdD does refer to the proposed ban on face-covering veils (the ‘burqa’-ban sponsored by the Cabinet Government) as an illustration of the permissibility of limiting religious freedom.¹¹⁴ 50PLUS stands relatively

low).

¹¹⁰ The PvdA states, somewhat strangely, that if it is ‘an essential aspect of the Jewish religion,’ the principle of equal treatment entails it is also essential for Muslims; HEK 2011/12, No. 12(2): 3. See further HEK 2011/12, No. 12(2): 7 (D66); HEK 2011/12, No. 12(2): 12 (SGP); HEK 2011/12, No. 12(7): 28 (CDA); HEK 2011/12, No. 12(7): 30 (ChristenUnie).

¹¹¹ ESXX HEK 2011/12, No. 12(7): 26.

¹¹² *‘in het geval dat bepaalde godsdienstige groeperingen om onverschillig welke reden niet meer zouden bestaan, zou onder die omstandigheden het onverdoofd ritueel slachten tot op de huidige dag nog uitgeoefend worden?’* HEK 2011/12, No. 12(7): 40.

¹¹³ HEK 2011/12, No. 12(7): 40.

¹¹⁴ HEK 2011/12, No. 12(2): 17. According to the PvdD, if limitation of religious freedom is permissible on an issue of such limited importance, surely it is permissible for the sake of animal welfare. According to the PvdA invoking the proposed burqa-ban is distasteful (idem).

alone in responding to the amendments-Van Veldhoven in exactly the way hoped for by its sponsors in the Second Chamber. According to 50PLUS the possibility of exemption from the bill, made possible by those amendments, and the existence of modern slaughter methods are sufficient to make the limitation of religious freedom proportional.¹¹⁵

Other parties choose to discuss religious freedom and its limitations predominantly through existing legal provisions and opinions. Of these parties, the PvdA and D66 stand out, both because of the particular legal provisions they draw upon and because the conclusions they subsequently draw run counter to those drawn by their parties in the Second Chamber.

The PvdA, interestingly, besides referring to art. 9 ECHR and art. 18 ICCPR (both of which proclaim the right to freedom of thought, conscience, and religion) and the case law of the European Court of Human Rights, also invokes art. 27 ICCPR.¹¹⁶ The invocation of this last article is interesting because art. 27 ICCPR is a bit of an anomaly in the pantheon of human rights, for it is often treated as codifying a collective right; that is to say, it is interpreted as protecting the right of groups, as groups, to their language, culture, and religion.¹¹⁷ Indeed, the PvdA, after mentioning art. 27 goes on to say that it is undeniable that many Jewish and Muslim citizens regard the amended bill as disrespecting 'their rights as a minority'.¹¹⁸ This is not just a matter of semantics; for if religious freedom is indeed a collective right and not an individual right, this implies that the State is not merely under the duty to refrain from interfering in, but must actually facilitate the religious affairs of minority moral communities.

D66 similarly invokes international law in a way that could have fundamental repercussions for the way in which minorities and their members are treated in the Netherlands. The party makes special reference to a recent case of the ECHR, *Eglise Metropolitaine de Bessarabie et autres vs. Moldova*. According to D66, this case underlines that the State has a duty to protect 'pluriformity, in which religious freedom plays an

¹¹⁵ HEK 2011/12, No. 12(7): 39.

¹¹⁶ HEK 2011/12, No. 12(2): 2, 3.

¹¹⁷ See especially the decisions of the United Nations Human Rights Committee on art. 27 ICCPR, in which the article is interpreted as protecting the collective identity of minority groups, sometimes even at the cost of restricting the rights of individual members of such groups if necessary 'for the continued viability and welfare of the minority as a whole' (as stated in *Kitok v. Sweden* (Human Rights Committee [UNHRC] 1985: §9.8)). See also *Lovelace v. Canada* (Human Rights Committee [UNHRC] 1981).

¹¹⁸ 'hun rechten als minderheid' HEK 2011/12, No. 12(2): 3.

important part'.¹¹⁹ Similarly to the PvdA's invocation of art. 27 ICCPR, interpreting religious freedom in light of a duty to protect pluriformity specifically, rather than, say, individual liberty, could have consequences for the way in which religious freedom is protected in the Netherlands. This can be illustrated by briefly revisiting the debate on the Framework Convention for the Protection of National Minorities, discussed in chapter 3. In the debates on that convention in the First Chamber in 2004, the Chamber broadly endorsed the Government's narrow interpretation of 'national minority' (restricting it to the Frisians) for the specific reason that broader interpretations could be inferred as granting group rights to members of non-national, i.e. cultural or religious minorities. The reason, back then, was precisely that granting such rights, which are also enshrined in art. 27 ICCPR, was seen as contrary to integration policy and ideals of common citizenship.

It is not clear from their contributions that either D66 or the PvdA are fully aware of these consequences. The invocation of both art. 27 ICCPR and the alleged duty to protect pluriformity does raise the question, however, of how parties conceive of religious liberty; as an individual right against the state, or as a collective right laying positive duties on the state. It is notable in this regard that the VVD speaks of 'the freedom of groups' to conduct certain rites.¹²⁰ Equally notable is that D66 takes the size of the minority group concerned to be of relevance, asking whether animal welfare should trump the right of 'several important minorities' to continue to exercise their religion.¹²¹ The ChristenUnie is more explicit in its embrace of a collectivist interpretation of religious liberty, finally, when it welcomes, later in the debate, the possibility of a covenant as a means of respecting the 'identity and culture of minority groups'.¹²² Even if parties do not explicitly endorse a collectivist interpretation of religious liberty, however, as will be demonstrated later in this chapter, there seems to be a general tendency in the debate to treat religious groups as the relevant object of its concern. This tendency ultimately culminates in the widespread endorsement in the First Chamber of the State Secretary's proposal to investigate the possibility of a covenant with religious groups.

¹¹⁹ 'pluriformiteit waarin de godsdienstvrijheid een belangrijke rol vervult'; HEK 2011/12, No. 12(2): 7.

¹²⁰ 'de vrijheid van groeperingen om gebruik te maken van deze rite,' HEK 2011/12, No. 12(7): 38.

¹²¹ 'enkele belangrijke minderheden'; HEK 2011/12, No. 12(2): 7.

¹²² 'die de identiteit en cultuur van minderheidsgroepen respecteert.' HEK 2011/12, No. 12(7): 33.

Proportionality

Above, the discussion of the proportionality of the bill in the Second Chamber was shown to revolve mainly around the two questions of 'religious wellbeing vs. animal welfare' and 'animal welfare vs. animal welfare'. Very little discussion in the Second Chamber addressed the question of 'religious liberty vs. animal welfare' directly. In the First Chamber, this is largely the same. As was demonstrated above, a number of parties reflect (in varying depth) on the nature of religious liberty.¹²³ Of these parties, only a very few use such reflections as a means to determine the proportionality of the imposed limitations on religious liberty. Of the parties that do so the OSF especially, and in lesser measure the PVV and the bill's sponsor, tend to interpret State neutrality as constituting *indifference* with regard to religious affairs.¹²⁴ That is to say, the state's actions may have an effect on religious affairs, but religion should play no role, for better or for worse, in the state's deliberations on public affairs. As a consequence, the bill's possible impact on particular religions carries no weight for these parties. The question of what is justifiably public is not entertained by these parties, however. The ChristenUnie, on the other hand, states that religious liberty is a 'classic constitutional right, which implies that the State must refrain from violating it.'¹²⁵ By 'classic constitutional right' the ChristenUnie can be taken to mean a constitutional right protecting negative liberty, i.e. imposing on the state a duty of non-intervention in religious' affairs. For the ChristenUnie this implies precisely the opposite of that which the aforementioned parties

¹²³ The PvdA state generally that the Constitutional liberties aim to protect individuals from the state (HEK 2011/12, No. 12(2): 2); the SGP state, somewhat confusingly, that the core of religious liberty is unstunned slaughter, if that is what believers understand it to be (HEK 2011/12, No. 12(2): 12); the PVV places religious liberty in the context of the separation of Church and State and the secular nature of the Dutch state, as does the OSF (HEK 2011/12, No. 12(7): 26 (PVV) and HEK 2011/12, No. 12(7): 39 (OSF)); both the Secretary of State and the ChristenUnie state that religious freedom entails that the State does not engage in determining what is or is not an essential part of a particular religion (though the ChristenUnie also repeatedly emphasizes that eating religiously slaughtered meat is an essential part of the Jewish and Muslim religions (FMB)) (EK 12, 13 december 2011, 12-9-82 (State Secretary) and HEK 2011/12, No. 12(7): 30); the amended bill's sponsor, finally, MP Thieme, also places the law in the context of State neutrality and the separation of Church and State (EK 12, 13 december 2011, 12-9-69).

¹²⁴ For the OSF and the law's sponsor see below. The PVV claims, on the basis that the Netherlands is a secular state and that State and Church are separated, that no one should be exempt from the law (the party also claims that stunned slaughter is not contrary to religious practice, however) (HEK 2011/12, No. 12(7): 26).

¹²⁵ 'een klassiek grondrecht, hetgeen impliceert dat de staat zich van een inbreuk daarop moet onthouden.' HEK 2011/12, No. 12(7): 31.

conclude, namely that the consequences of the bill for individual believers should carry more weight, rather than less, in the assessment of its proportionality.¹²⁶

The VVD also points to the bill's impact on a constitutional liberty to argue for its disproportionality, though the core of its argument is not that a law may never affect constitutional liberties, but that due process must be observed before it is allowed to do so. According to the VVD, that hasn't been the case with the Ritual Slaughter bill.¹²⁷ According to the party the bill, based as it is on the simple assumption that the shared ethical principles of the majority with regard to animal welfare have priority over religious liberty, pays too little heed to that demand (according to the VVD, this is an example of 'ethical absolutism').¹²⁸ As a consequence, the VVD regards the bill to be disproportional.¹²⁹

While generally the arguments concerning the bill's proportionality are the same in both chambers, there is a marked difference with regard to their relative support. This is especially the case with regard to the arguments concerning 'animal welfare vs. animal welfare'. As we saw above, in the Second Chamber the Christian parties argued that the bill was disproportional because it targeted religious slaughter only, while leaving the much larger infraction of animal welfare in the regular industry untouched. While in the Second Chamber this argument was expressed exclusively by the religious parties, in the First it resonates more broadly, especially with the PvdA and D66 (the SP and GroenLinks also mention the argument, but it is not clear which conclusions they connect to it).¹³⁰ According to D66 the amended bill addresses the wrong problem; instead of ritual slaughter, the necessity of reducing harmful practices in the mainstream meat processing industry should be on the agenda.¹³¹ The PvdA similarly wonders why the amended bill does not look at the

¹²⁶ HEK 2011/12, No. 12(7): 31.

¹²⁷ This aspect of proportionality had been addressed previously by the Council of State, however; see Kamerstukken II, 31571, nr. 4 HERDRUK, 3.

¹²⁸ 'Hier is sprake van een ethisch absolutisme: de principes van een meerderheid maken nadere afwegingen zo overbodig.' HEK 2011/12, No. 12(7): 36.

¹²⁹ The VVD also raises doubts with regard to the fundamental propriety of using the parliamentary right of initiative in order to draft a bill that so directly affects constitutional rights, implying that such a bill necessitates more fundamental consideration than can be offered by Parliament alone. HEK 2011/12, No. 12(7): 36.

¹³⁰ For the SP see HEK 2011/12, No. 12(7): 35; for GroenLinks see HEK 2011/12, No. 12(2): 15; for D66 and the PvdA see below.

¹³¹ HEK 2011/12, No. 12(2): 4, 5.

whole industry, asking of the PvdD whether it is its aim to reduce animal suffering, or if the party is engaged in ‘Prinzipienreiterei’.¹³²

With regard to the amended bill’s proportionality, then, besides the three Christian parties, the largest coalition party and the largest opposition party also (the VVD and PvdA respectively), as well as the party having introduced the amendments-Van Veldhoven, D66, regard the law either as clearly disproportional or at least as tending towards disproportionality.

Objections to the amendments-Van Veldhoven

The most principled objections to the amended bill have bearing on the inclusion, as a consequence of the amendments-Van Veldhoven, of a possible exception to the bill’s prohibition if applicants provide scientific evidence supporting the claim that unstunned slaughter is not more harmful than stunned slaughter. This is anathema to the PvdA especially, as it sets the protection of constitutional liberties on its head:

‘[the amended bill] now limits a constitutional right whereby the burden of proof is placed on the entitled party and not on the Government. A citizen is not permitted to exercise his constitutional right unless he can demonstrate, on the basis of independently established evidence, that no harm is done.’¹³³

The VVD and the ChristenUnie make similar points, while the CDA voices its complete agreement with all of the PvdA’s remarks concerning the bill’s compatibility with religious liberty.¹³⁴ Notably also, with regard to the amended bill’s ultimate fate, is that the State Secretary concurs with the PvdA’s remarks.¹³⁵

One must realize that the crucial point for the PvdA is not simply the reversed burden of proof, but the reversal of the burden of proof where the exercise of a *constitutional* right is concerned. For as it stands, the law asks of religious practitioners to prove not that they fall under a previously justified exemption (as when someone has to prove that he is

¹³² HEK 2011/12, No. 12(2): 14; see especially HEK 2011/12, No. 12(2): 3, 4.

¹³³ ‘omdat het [herziene wetsvoorstel] nu een grondrecht beperkt waarbij de bewijslast op de rechthebbende en niet op de overheid berust. Een burger mag zijn grondrecht niet uitoefenen tenzij hij op basis van onafhankelijk vastgesteld bewijs kan aantonen dat er geen schade wordt berokkend.’ HEK 2011/12, No. 12(2): 2.

¹³⁴ HEK 2011/12, No. 12(7): 27 (CDA). For the VVD and the ChristenUnie see below.

¹³⁵ HEK 2011/12, No. 12(9): 84.

religious to be exempted from certain mandatory insurance schemes), but to prove whether such an exemption can be justified period. This is odd, as the PvdA points out, for it is up to the State, and not up to individuals, to determine how far religious liberty carries, whether any limitations of religious liberty are justified, and finally whether any exceptions to the prohibition are in order. Government funding for religious groups for the scientific research of animal friendly slaughter practices, as proposed by GroenLinks as a means of removing the PvdA's objections, then, would not be sufficient, for such funding still does not address the fundamental problem. This is, again, that if the Government determines conditions for the exercise of a constitutional right, it is up to the Government to demonstrate that those limits are justified. It is not up to the individual citizen wishing to exercise his constitutional rights to prove that that exercise is justified, for it is that exercise which is protected by right in the first place.

It is not clear whether the PvdA's point is either fully grasped or shared by the other parties making similar objections. The ChristenUnie, for example, similarly to the PvdA, starts by pointing out that '[i]n a *rechtsstaat* such as ours the freedom is the rule and its limitation the exception.'¹³⁶ Going on to explain the consequences of this maxim, however, the party argues that

'[t]he amendment concerning ritual slaughter pierces this basic structure by placing the beneficiaries of the constitutional right under the burden that practicing their belief does not cause greater harm to animal welfare than is the case in stunned industrial mass slaughter. In other words, in the eyes of the sponsors religious freedom is not the starting point, but the interest that will be served by its limitation.'¹³⁷

Note that the ChristenUnie does not mention the burden of proof, but merely the burden of not causing greater harm. For the ChristenUnie, then, the crux seems to lie in the last sentence cited above, namely that the amended bill prioritizes other interests over religious freedom. In this the amended bill is no different than the original bill, however. As such,

¹³⁶ *'In een rechtsstaat als de onze staat de vrijheid voorop en is de beperking daarvan een uitzondering.'* HEK 2011/12, No. 12(7): 31.

¹³⁷ *'Het amendement rond de rituele slacht doorbreekt deze grondstructuur door de dragers van het grondrecht de last op te leggen dat het praktiseren van hun godsdienst het welzijn van dieren niet in grotere mate benadeelt dan bij de bedwelmde industriële massaslacht het geval is. Met andere woorden, in de ogen van de indieners is niet de godsdienstvrijheid het uitgangspunt, maar het door de beperking te dienen belang.'* HEK 2011/12, No. 12(7): 31.

then, the ChristenUnie's objection is merely a reiteration of the objection that the limitation is not proportional.

Similarly, the VVD also raises objections to the changes in the amended bill, claiming that the bill has thereby become not only a 'farce', but a legal anomaly ('*monstrum*').¹³⁸ The VVD's principle objection, however, does not concern the reversal of the burden of proof in light of the amended bill's relation to religious freedom, but more generally the necessity of formulating strict and positive criteria for any exemption to a given law.¹³⁹ As the State Secretary correctly points out, however, the problem with the amended bill is not that it does not form strict and positive criteria, for it is crystal clear what has to be done by an applicant to be granted an exemption. As the PvdD states also, in the case of environmental impact assessments, for example, it is not at all uncommon that the burden of proof is placed on the individual seeking dispensation from general rules.¹⁴⁰ The essential point, again, is not the reversed burden of proof *in se*, but that the proof has bearing on one's ability to exercise one's constitutional liberty.

Be that as it may, the State Secretary supports the PvdA's general point. According to the State Secretary, it is up to the legislative to provide arguments justifying the limitation of a legal right. The amended bill, to the contrary, asks the citizen to provide evidence in justification of a right that the Constitution already grants him.¹⁴¹ At the same time, however, the State Secretary continues to share the original bill's concern for animal welfare. Therefore, he suggests the possibility of a compromise.¹⁴²

The accommodation of religious freedom: a covenant for animal welfare

The State Secretary, having remained fairly aloof so far, shows his hand during the first term of the debate in the First Chamber. As in the Second, a number of parties in the First Chamber had already mentioned the desirability of a less intrusive means to promoting animal welfare. The SP

¹³⁸ 'De VVD-fractie beschouwt deze ontheffingsmogelijkheid niet alleen als een farce, maar ook als een monstrum.' HEK 2011/12, No. 12(7): 37.

¹³⁹ HEK 2011/12, No. 12(7): 37.

¹⁴⁰ HEK 2011/12, No. 12(2): 20.

¹⁴¹ HEK 2011/12, No. 12(9): 84.

¹⁴² The State Secretary suggests this compromise, in the form of a covenant, after discussing the merits of the amended bill; see HEK 2011/12, No. 12(9): 87 and further.

and the CDA also pointed to the present social climate of the Netherlands, which in the words of the SP is said to be 'cold and inhospitable with regard to certain religions'.¹⁴³ Answering such concerns, the State Secretary pledges his support to a covenant with religious groups, and proceeds to sketch its contours.¹⁴⁴ Almost all parties, be they strongly opposed to the bill (CDA, ChristenUnie, PvdA, D66, VVD) or highly sympathetic to it (GroenLinks, PVV) support the State Secretary's initiative.¹⁴⁵ Only the SP and the OSF are critical, even though their criticism concerns more the propriety of the State Secretary's actions (undercutting the sponsor's initiative at the eleventh hour) than the covenant itself.¹⁴⁶ The SGP and 50PLUS remain silent on the matter.

A covenant, according to the State Secretary, could include rules and regulations concerning quality standards and control as well as certification, but also guidelines for the number of slits allowed to the throat, and for the permissible duration of consciousness thereafter. Remarkably, the State Secretary also claims that if parties fail to live up to the rules laid down in such a covenant, their permit could be revoked.¹⁴⁷ This is remarkable because one of the points made with regard to the amendments-Van Veldhoven, and reiterated now by the bill's sponsor, is that limitations of religious liberty must be based upon statute.¹⁴⁸ If, then, a butcher previously permitted to perform unstunned slaughter were to have his permit revoked because he refused to sign a covenant agreed to by representatives of religious communities, the butcher might very well argue that such revocation constitutes an illegitimate breach of his religious freedom.

Be that as it may, what is even more remarkable, perhaps, is what the enthusiasm for such a covenant reveals: first, a widely shared hesitation to force the issue; and second, a predilection for compromise through engaging religious communities in discussion. Also, it shows an inclination

¹⁴³ *'een maatschappelijk klimaat dat ten opzichte van bepaalde religieuze groepen koud en guur is'*. HEK 2011/12, No. 12(7): 35. The CDA voices similar concerns; see HEK 2011/12, No. 12(7): 29.

¹⁴⁴ HEK 2011/12, No. 12(9): 87, 88.

¹⁴⁵ See HEK 2011/12, No. 12(7): 29 (CDA); HEK 2011/12, No. 12(7): 33, 79, 95 (ChristenUnie); HEK 2011/12, No. 12(2): 4 (PvdA); HEK 2011/12, No. 12(9): 93 (D66); EK 12, 13 december 2011, 12-9-96 (VVD); HEK 2011/12, No. 12(2): 9 (GroenLinks); HEK 2011/12, No. 12(9): 90 (PVV).

¹⁴⁶ HEK 2011/12, No. 12(9): 95, 96 (SP); HEK 2011/12, No. 12(9): 96, 97 (OSF)

¹⁴⁷ HEK 2011/12, No. 12(9): 88.

¹⁴⁸ HEK 2011/12, No. 12(9): 90. See also EK 12, 13 december 2011, 12-9-94 (PvdD); HEK 2011/12, No. 12(9): 97 (OSF)

towards treating religious believers as groups that can be addressed and accommodated as such.

In reaction to the State Secretary's proposal for a covenant, the bill's sponsor requests that the debate be suspended.¹⁴⁹ Most parties agree, preferring to await the results of the State Secretary's attempts before voting on the bill. The debate is resumed six months later, after the bill's sponsor's maternity leave, in June 2012. A week prior to the debate, the State Secretary presents the covenant.¹⁵⁰ Its content echoes a central element of the amendments-Ormel, prescribing post-cut stunning after 40 seconds if animals have not lost consciousness by that time. Slaughtering rites must be overseen by veterinarians, or, the State Secretary states during the debate, by veterinarians in training or interns. During the debate the State Secretary states that the Government has already taken steps to ensure the education of the necessary additional veterinary doctors.¹⁵¹ Finally, the covenant establishes a 'scientific committee' consisting of members of religious organizations, slaughterers, scientists, and the government, and authorizes this committee to debate and review scientific findings with regard to animal welfare and slaughtering practices.¹⁵²

The reconvened second and third term of the debate subsequently revolve in large part around the covenant, though some parties caution that the covenant, strictly speaking, falls outside the jurisdiction of Parliament.¹⁵³ Regarding the amended bill, no new arguments are added, nor do parties' positions deviate substantially from those presented earlier. Of note are the contribution of 50PLUS, declaring that given the separation of Church and State, the State should take its responsibility for animal welfare, and implying that the State instead is succumbing to a successful religious lobby;¹⁵⁴ and a short exchange between the State Secretary and the PVV. In this exchange the PVV responds to the State Secretary's expression of appreciation for 'the minorities in our country with religious motives,

¹⁴⁹ HEK 2011/12, No. 12(9): 89.

¹⁵⁰ Covenant unstunned slaughter according to religious rites (*Convenant onbedwelmd slachten volgens religieuze riten*, 's Gravenhage, 5 juni 2012).

¹⁵¹ HEK 2011/12, No. 32(5): 44. Note that the Government thereby sees it as its duty to facilitate religious liberty, and not simply to allow it.

¹⁵² Art. 4.3 Covenant unstunned slaughter according to religious rites (*Convenant onbedwelmd slachten volgens religieuze riten*, 's Gravenhage, 5 juni 2012).

¹⁵³ Especially D66; see HEK 2011/12, No. 32(5): 25. See also SGP, HEK 2011/12, No. 32(5): 28; ChristenUnie, HEK 2011/12, No. 32(5): 35; VVD, HEK 2011/12, No. 32(5): 37; see also OSF, HEK 2011/12, No. 32(5): 40.

¹⁵⁴ HEK 2011/12, No. 32(5): 38-39.

who wish to feel themselves, in modern fashion, with those religious motives, Dutchmen, and who wish to integrate.¹⁵⁵ The PVV asks of the State Secretary if he really believes this to be integration, for the matter at hand, according to the PVV, is that people refuse to conform to the Dutch law.¹⁵⁶ This exchange is notable, for it is the one point in the debate where the practice of religious slaughtering rites is addressed as a matter pertaining to *integration*, rather than to religious liberty.

Ultimately, when put to the vote the following week, the amended bill is defeated, by 51 to 21 votes.¹⁵⁷

Some reflections on the debate in the First Chamber: the private to public direction of constraint

Above, when discussing the debate in the Second Chamber, it was argued that that debate should not be taken entirely at face value; as the terms of that debate (viz. animal welfare and scientific evidence) were set by the proponents of the bill, the arguments deployed in those terms by the religious parties opposing it were deemed a shadow play. Not being able to argue their case in their own terms, i.e. religious liberty and freedom of conscience, these parties were forced to resort to argumentative strategies which for them were not at the core of the issue. In the debate in the First Chamber there is also a degree of shadow play, but in some ways it is the inverse of that in the Second Chamber. For the First Chamber is generally quite critical of the amended bill and its consequences for religious minorities. Here, however, it is certain non-religious parties that sometimes seem disingenuous in their argumentative strategies against the bill, especially when discrediting the claims of science.

That being said a number of parties are quite unambiguous in their rejection of the bill on the grounds that it contravenes religious liberty or the rights of minorities more generally. Regardless whether parties oppose the bill for this reason or because they find the scientific proof in its favor to be inconclusive, it is clear that a majority of parties is eager to be rid of the bill. As in the Second Chamber, however, it is especially the religious parties that argue against the bill specifically because it imposes

¹⁵⁵ *'de minderheden in ons land met religieuze motieven, die zich op een moderne wijze met die religieuze motieven Nederlander willen voelen en willen integreren.'* HEK 2011/12, No. 32(5): 47.

¹⁵⁶ HEK 2011/12, No. 32(5): 47.

¹⁵⁷ HEK 2011/12, No. 33(5): 25.

the comprehensive values of the majority on the minority. A notable exception is the VVD, which party denounces the 'ethical absolutism' inherent in the bill.

There is more awareness in the First Chamber, then, of the implications of the bill qua constitutional liberties. Also, more parties than in the Second Chamber are prepared to acknowledge that what counts as a reason in favor of the bill for the majority need not be shared by minority moral communities, and that these communities may also have their own (good) reasons to oppose the bill. Even so, it is only the religious parties and the VVD that state this inclination in unambiguous terms, thereby addressing the central issue raised by the bill, i.e. what is involved in the toleration of religious minorities. These parties seek justification for the bill in terms acceptable to those minorities and cannot find it. In doing so, they take an inherently framework-liberal approach to the accommodation of minority moral communities in liberal society.

As in the Second Chamber, at the other extreme stand a number of parties that are less concerned with publicly justifying the bill in the above sense. For these parties the justification offered by the bill's sponsor is sufficient, and that the bill will effectively constrain of the scope of religious diversity irrelevant. These parties are in a minority in the First Chamber, however.

Ultimately, it is the broad enthusiasm for a covenant with religious minorities, more than anything else, which demonstrates the inclination of a majority of parties in the First Chamber to accommodate the wishes of religious minorities. Though not equally inclined to offer arguments in terms of a procedural morality, in the process of addressing the issue these parties effectively revert to such a morality, preferring dialogue between equals above the imposition of the values of the majority from above. In doing so the debate in the First Chamber exemplifies the private to public direction of constraint inherent in framework liberalism.

Conclusion

Of all the debates analyzed in this dissertation, none address the issue of toleration as directly or unambiguously as that discussed in the present chapter. The Ritual Slaughter debate is not merely about the merits of pre-stunned vs. un-stunned slaughter, but about the right of religious minorities to practice their religion and about the justifiability of limiting

that right on the basis of values shared by the majority, but not the minority. This is not evident to all parties to the debate, however, especially in the Second Chamber.

In the Second Chamber many parties answer the question of the justifiability of limiting religious liberty on the basis of shared values with an unambiguous 'yes'. For these parties, the Ritual Slaughter bill is less about religious liberty than about animal welfare. That is to say, though these parties recognize that religious liberty is at issue, animal welfare for them is the more fundamental value, to which religious liberty must cede. In the Second Chamber, the religious parties are clearly in the defensive, arguing in vain that the bill threatens the core of religious liberty, i.e. the toleration of religious beliefs even if those beliefs are beyond the majority's pale.

Even so, out of deference to the constitutional status of religious liberty, the bill is only adopted in amended form in the Second Chamber. To take the sharper edges off of an outright ban on religious slaughtering practices, the amended bill purports to allow such practices if and to the extent that religious practitioners can demonstrate that such practices are no more harmful to animal welfare than pre-stunned slaughter.

Ultimately it is especially the reversal of the burden of prove involved in the amendment that leads to the bill's defeat in the First Chamber. This is not the only indication of the First Chamber's heightened appreciation of the bill's impact on religious liberty, however. For in the First Chamber the concern that the bill takes too little account of religious liberty and the freedom to disagree with the rest of society entailed by that liberty is not limited to the religious parties. As a consequence, a majority of parties in the First Chamber is inclined to reject the justification of the bill even if this justification passed muster in the Second Chamber.

This disinclination of parties is most apparent in their enthusiasm for a covenant with religious groups stipulating the conditions under which un-stunned slaughtering can take place. This enthusiasm, it was argued, illustrates a hesitation on the part of most of the parties in the First Chamber to foist comprehensive values on an unwilling minority. It can also be interpreted as a *de facto* commitment to a procedural morality favoring dialogue and compromise above the imposition of values from above.

The debate on the Ritual Slaughter bill, then, shows strong support for liberal culturalism in the Second Chamber and an, albeit somewhat half-hearted, embrace of a procedural morality reminiscent of framework liberalism in the First. Doing so it demonstrates once again that these two currents of liberalism both influence the contemporary practice of liberalism in the Netherlands. In the next and final chapter of this dissertation, the respective strengths of each current will be subjected to further scrutiny, as will the implications of the findings of this and the preceding chapters.

Chapter 7

Conclusion: The State of Toleration in the Netherlands

Introduction

So what is the shape that Dutch toleration is in, post-2000? 'What the hell happened,' in that sense, to the Netherlands?¹ Is it a country of tolerance, or intolerance? This dissertation research shows that minority communities in the Netherlands are under pressure to conform to majority practices and opinions. Despite pockets of resistance to this pressure, respect for diverging group identities, long a staple of Dutch politics and policies, has been replaced by an increased appreciation of individual liberty and a corresponding desire to establish that minority groups are equally appreciative of that liberty and its socio-cultural preconditions. Often, also, parties are concerned for the economic viability of all members of society and fear that their socio-cultural differences will impair the ability of members of minorities to sustain themselves economically. This can be a reason in itself for parties to reject diversity in favor of integration. Though the literature locates such shifts especially in the tumultuous first five years of the new millennium and sometimes presents them as just as inexplicable, hence the 'what the hell' of the opening question of this paragraph, they had been much longer in the making and reflected a gradual change in the self-understanding of the Netherlands as a liberal polity. Ultimately, it is these gradual changes that happened to the Netherlands, though it took the events of the early millennium to bring them to light.

In this concluding chapter the contentions of the preceding paragraph will be validated in five parts. After briefly reiterating the research question and the approach adopted in this research, first the apparent *volte face* that transpired in the Netherlands in the early years of the new millennium will be discussed in relation to the analysis presented in chapter 3 especially. Subsequently this apparent *volte face* is explained in terms of the substitution of a liberal culturalist interpretation of the Dutch polity for the preceding framework liberal account, revisiting to that end the pillarization-cum-multiculturalism thesis discussed in chapter 2 and the analysis of chapter 4 especially. As the next section shows, parliamentary attitudes to moral communities and diversity are not only shaped by ideas about identity and community, but also and in some cases especially by constraints built into the socio-economic structure of Dutch society. As evidenced in chapters 4 and 5, a commitment to socio-economic integration can entail a *de facto* rejection of socio-cultural diversity even

¹ See *supra*, 9.

if a party is not opposed to such diversity in principle. The following section discusses both the persistent strain of framework liberalism that is also apparent from all the debates analyzed, as well as the hesitation of a number of parties to follow their liberal culturalist convictions through to their conclusions when directly confronted by the consequences to be suffered by minority moral communities. The last section, drawing on these various conclusions, finally presents the diagnosis of the state that Dutch toleration is in post-2000.

The research question and adopted approach

In order to assess the shape that toleration is in in the Netherlands post-2000, this dissertation formulated and sought an answer to the following research question:

‘What is the standing, understood in the terms of contemporary liberal political philosophy, that Dutch Parliament accords to moral communities, as evidenced in parliamentary debates between 2000 and 2013?’

A moral community is a community of individuals sharing a comprehensive doctrine, i.e. a unified system of beliefs, values and ideals informing their conduct. Such a comprehensive doctrine can be partial or full, depending on its scope and substance. The standing of moral communities in liberal democracy points to their legal and moral standing in the system of law and legal practice in the Netherlands, i.e. which rights and what treatment are conferred on moral communities and on individuals qua belonging to such communities.

This thesis sought not to answer the question of the actual standing of moral communities in the Netherlands, but to answer the question of that standing as evidenced in parliamentary debates. What this thesis sought to uncover, then, was not so much the constitutional status of moral communities in the Netherlands narrowly defined, but the underlying attitudes about and justification of the standing of moral communities in society more generally, as evidenced in parliamentary debates.

The terms in which this dissertation took to understand the standing of moral communities were taken from contemporary liberal political philosophy. For the purposes of this dissertation, these terms were developed, in chapter 1, into two distinctly different liberal approaches to moral communities. These approaches were termed ‘liberal culturalism’

and 'framework liberalism' respectively. Each approach offers a different justification of the standing to be accorded to moral communities in a liberal polity.

For liberal culturalism, the value of moral communities is a function of the degree to which such communities aid or are a hindrance to the acquisition and exercise of individual autonomy by their members. To the extent that a moral community is premised upon the exercise of autonomy by its members it is regarded favorably; if it does not it is attributed negative value. A liberal cultural society is in that respect based on a partial comprehensive doctrine in which individual autonomy is the central value and is to that extent a moral community in its own right.

For framework liberalism, which takes freedom of conscience as its central value, moral communities are of intrinsic importance because such communities consist of individuals sharing conscientious beliefs. A framework liberal society is a society consisting of a diversity of moral communities, in which a shared procedural morality enables the members of these moral communities to cooperate, despite their different conscientious beliefs, in an overarching political community. Framework liberalism has the express purpose of establishing and maintaining order in a society consisting of preexisting moral communities, and as such is termed an order theory.

As the purpose served by the development of these two approaches was not prescriptive but analytical, their development was guided not by considerations of applicability to practice but of usefulness for analysis. The respective approaches are therefore deliberately stark and distinct from one another. These qualities were necessary for the approaches to be able function as unambiguous benchmarks of the current shape of the liberal polity of the Netherlands.

Debates were selected on the grounds of five criteria: relevance of the debated topic; formal nature of the debate; the dimensions of the debate; time of the debate; and (avoidance of) redundancy. On the basis of these criteria, the following five debates were selected:

- The debate on the Framework Convention for the Protection of National Minorities; 2000-2004;
- The debate with the Government about 'Building bridges'; 2004 ('*Bruggen bouwen*'; the final report of the Temporary Investigative

Committee Integration Policy);

- The debate on the Civic integration abroad bill; 2005;
- The debate on the Civic integration bill; 2006;
- The debate on the Ritual Slaughter bill; 2011-2012.

The analysis of these debates in chapters 3 through 6 revealed a marked inclination towards liberal culturalism in Dutch parliamentary practice between 2000 and 2013. Notwithstanding that inclination, there is also a persistent strain of framework liberalism running through the debates, evident especially in, but certainly not limited to, the contributions of the small orthodox Protestant parties. The following five sections will present this general answer to the research question in more detail.

A volte face?

One of the more remarkable findings of chapter 3, which analyzed the parliamentary debates on the Convention for the Protection of National Minorities which took place between 2000 and 2004, was the complete reversal in the interpretation of the ‘national minorities’ that were to fall under the protection of the Convention. Originally the Government had suggested a broad interpretation, including both the Frisians, i.e. the natives of the Dutch province of Fryslân, and residents belonging to the ‘target categories of integration policy’, who lived dispersed throughout Dutch society (including, by the way, Fryslân). During the first term of the debate in the Second Chamber in 2000, the orthodox Protestant parties GPV and SGP argued in vain that the protection the Convention aimed to offer was not readily compatible with the pursued civic integration of members of the latter category. Such reservations were swept away by the other parties in the Second Chamber in their dismissal of the GPV’s motion to restrict the Convention’s scope to the Frisians. In 2004, however, the revised position of the Government was identical to that put forward in the rejected motion of 2000. Though a few parties in the First Chamber (the PvdA, GroenLinks, and the SP) suggested that the protection offered the Frisians should be extended to ethnic and perhaps even religious minorities also, the approval bill was adopted without a vote, signaling broad support for the bill.

The reversal in the interpretation of the Convention for the Protection of National Minorities provides concrete evidence of the shift described in the

literature with regard to Dutch attitudes towards diversity and tolerance. They also suggest a partial explanation of why this shift became apparent at the time that it did. In the spring of 2001 the First Chamber had already voiced its doubts regarding the Government's broad interpretation of 'national minorities', causing the minister to suspend further debate on the approval bill. During the ensuing delay, the World Trade Center and Pentagon were attacked by Al Qaeda, Fortuyn put minority integration squarely on the Dutch political agenda and, barely a month before debate on the approval bill resumed in the First Chamber in November 2004, Theo van Gogh was murdered by a radical Islamist in Amsterdam. These events and the turmoil they caused led parliamentarians to interpret the Convention not primarily in light of the plight of national minorities, as emphasized previously with regard to Central and Eastern European countries especially, but in light of the threat national minorities themselves could pose to the peace and security of the states they inhabited. As the unity of society could no longer be taken for granted, the integration of members of minority moral communities in society became a more pressing matter than the protection of their distinct identities, as did the stipulation of the terms of membership of that society. This implicitly brought the question to the fore of what kind of liberal society the Netherlands wished to be, liberal-culturalist or framework-liberal. The answer, in this debate in any case, was that the Netherlands did not wish to be a framework-liberal society.

The link between (the fear of) social fragmentation, integration policy, and a heightened appreciation of the cultural preconditions of sustainable diversity that underlay the rejection of framework liberalism in the debates on the Convention for the Protection of National Minorities was to be made explicit in the explanatory memorandums of the civic integration laws especially, and was evidenced also in numerous contributions to the debates analyzed in chapters 4 and 5. As will be discussed more fully in the following section, however, even as the events pointed to in the previous paragraph explain why the shift became manifest so suddenly, giving the appearance of a *volte face*, arguably they only served to highlight and hasten a process that was already well under way by 2000.

Moreover, while the debates on the Convention for the Protection of National Minorities provide further evidence of shifting attitudes in the Netherlands signaled in the literature, they offer little evidence of an outright rejection of socio-cultural diversity in general or any minority

moral communities in particular.² The reservations expressed in the First Chamber had less to do with diversity than with the obligation, as laid down in the Convention, to preserve and protect distinct moral communities as collectivities. Only in the case of the Frisians were parliamentarians inclined to grant a special status to a moral community as such, but not where other moral communities were concerned. The privileged treatment of the Frisians, however, reflected not so much an intrinsically higher status vis-à-vis other moral communities in the Netherlands, as their geographical location.

It is not necessary, then, to interpret the refusal to grant non-Frisian minorities the protection of the Convention as a rejection of the right of minority moral communities to pursue the maintenance of their identity or community. Many parties simply regarded the current regime of minorities protection in the Netherlands as adequate to such ends. On the other hand, the ease with which the protection of the Convention was extended to the Frisians should be noted, for it highlights an element of singular consequence, for better or for worse, in the special treatment of moral communities. This is whether a moral community inhabits its own territory. If it does, as in the case of the Frisians, according such a moral community a distinct moral status in addition to its distinct territorial state can contain an element of redundancy. This is the better case. For members of moral communities who have no, or no exclusive title to territory, matters are considerably more complicated.

The Convention for the Protection of National Minorities can usefully be understood as a codification of a procedural morality, reminiscent of that of framework liberalism, to be applied to the relations between moral communities within a state and to the relations between the state and moral communities. The debates on the approval bill of the Convention ultimately showed little evidence of a desire on the part of Parliament to apply such a procedural morality to non-Frisian moral communities, nor even of a desire to regard such communities as relevantly similar to the territorial bound Frisian minority. But even if that desire had been present, it would have proven difficult in practice, in the Dutch context, to meet several of the central measures through which the Convention aims to preserve and protect moral communities, such as the use of minority languages in education and administration especially, not to mention road

² The so-called 'retreat from multiculturalism'; see *supra*, chapter 2, 72-79. How the findings of this thesis relate to this literature will be discussed in more detail below (*infra*, 264-265).

signs.³ Rather than lingering on the variety of practical reasons why this would be difficult – though not impossible – it should be noted that even if such measures were taken, the members of moral communities to which such measures would apply, including the ‘target categories of integration policy’, living dispersed among the majority population of the Netherlands as they do, still would not constitute a local majority such as the Frisians. As a consequence, the security of identity that the Convention aims to offer would be compromised severely despite such measures, because the identity of members of such minorities is continuously subjected to societal influences beyond their, or anyone’s, control.

That is neither here nor there, however, because given Parliament’s principled choice to restrict the scope of the Convention to the Frisians, such practicalities need not be taken into consideration. The procedural morality reminiscent of framework liberalism was deemed applicable to the Frisians, but not to the rest of society. While Parliament expressed respect for diversity in that society, most parties saw the maintenance of minority identities as a matter of individual choice and individual responsibility, a contention that was expressed in the debates analyzed in chapters 4 and 5 as well. Dutch society was seen as consisting not of a plurality of moral communities with their distinct comprehensive doctrines, but of individuals. Moreover, it was feared that stimulating the preservation of the separate identities of such moral communities, as had been policy in the 1980s, would encourage the dissociation of their members from broader society. What was taken to be imperative was forestalling such dissociation and preserving the allegiance of all members of society to the values of the *rechtsstaat*.

The gradual displacement of framework liberalism

As stated, the events of the first four years of the new millennium offer only a partial explanation of the shift that occurred in the Netherlands, explaining the moment that it became apparent more than its nature. This section focuses on the nature of the shift, explaining it in terms of a gradual substitution of a liberal culturalist interpretation of the Dutch polity for the preceding framework liberal account. This shift had been underway for a number of decades at least, gaining momentum during the 1990s and reaching a tipping point sometime between 2000 and 2004.

³ This last measure, incidentally, points to the tacit identification, in the Convention, of national minorities with territory.

This was the topic of chapter 2, which focused attention especially on the pillarization-cum-multiculturalism thesis. In this section we will briefly revisit the findings of this chapter for the light they shed on later events.

Recall that the pillarization-cum-multiculturalism thesis posited, firstly, a close relationship between the procedural morality attributed to a stylized account of the pillarization era and the minorities policies of the 1980s. These policies attempted, *inter alia*, to artificially create conditions favorable to the development of a procedural morality among members of moral communities that might otherwise destabilize Dutch society. Secondly, the pillarization-cum-multiculturalism thesis concerned the equitable application of legal provisions with regard to religion and welfare to long-term residents of foreign origin. In part as a result of this equitable application of law and policy, a new minority religion, the Islam, became a visible presence in the Netherlands. At the same time, the equitable distribution of welfare caused resentment vis-à-vis those newcomers who made use of the benefits on offer.

Revisiting the pillarization-cum-multiculturalism thesis helps to offset any impression that framework liberalism and its procedural morality can only be applied to the 'federal' accommodation of moral communities, i.e. by granting minorities a degree of territorial autonomy or rights such as those enjoyed by the Frisians. Though such a federal accommodation arguably offers the best possible conditions for the protection of moral communities, framework liberalism's principal purpose is to provide the means and justification of a 'societal' accommodation of moral communities. The aim of such societal accommodation is to protect the integrity of minority moral communities whose members live dispersed among the majority. These means and justification were implicit in the ill-fated policy of integration without loss of identity discussed in chapter 2. This brings us to the main reason to revisit the pillarization-cum-multiculturalism thesis, which is precisely to bring to memory the ill fate of both integration without loss of identity and pillarization-cum-multiculturalism policies more generally. For the second part of chapter 2 demonstrated both the rejection of the policy objective of integration without loss of identity during the 1990s in favor of policies stimulating economic participation more directly, as well as the growing consciousness, at roughly the same time, of the Netherlands as a moral community in its own right. This growing consciousness was accompanied by the at times explicit rejection of what was left of the procedural morality identified with pillarization-cum-multiculturalism and the endorsement of certain tenets

of liberal culturalism. These tenets included especially an instrumental attitude towards moral communities, an unwillingness to accommodate conceptions of the good conflicting with publicly endorsed comprehensive views, and an explicit affirmation of 'how we do things here'. Dutch society, then, was increasingly identified as a moral community endorsing a partial comprehensive doctrine consisting of such liberal culturalist tenets. The concerns raised with regard to the compatibility of the Islam with this partial comprehensive doctrine from the 1990s onwards, especially with its commitment to liberal freedoms, are indicative of this process of self-discovery.

That the Netherlands, at the time of the debates discussed in the previous chapters, was broadly regarded as a moral community in its own right was borne out especially in the debates discussed in chapters 4 and 5. Chapter 4 analyzed the debate, in the Second Chamber of Parliament in 2004, of the past and future of Dutch Integration Policy. This debate was conducted in reaction to the Government's response to the findings of a parliamentary enquiry investigating three decades of integration policy. Subsequently chapter 5 analyzed the legislative debates concerning two civic integration bills, Civic integration abroad, debated in both chambers of Parliament in 2005, and the Civic integration bill, debated in both chambers in 2006.

The debate on the past and future of Dutch Integration Policy demonstrated a strong commitment to liberal culturalism on the part of the Government and a number of parties in the Second Chamber, most notably GroenLinks, the CDA, and the VVD. These three parties each expressed a commitment to individual autonomy, though each framed this commitment in different terms. This implicit commitment to liberal culturalism was countered by the orthodox Protestant parties SGP and ChristenUnie. Other parties, such as most notably the PvdA, D66, and the SP, for reasons to be explored in the next section, leant towards liberal culturalism in the debate, without however voicing the same commitment to individual autonomy as GroenLinks, the CDA, or the VVD.

GroenLinks' position in this debate is of note because at roughly the same time that the party's representative in the Second Chamber argued for Governmental support for the emancipation of members of moral communities from religious authority, its representative in the First Chamber, during the final term of the debate on the Convention for the Protection of National Minorities, was arguing for enduring respect for

the religious identity of minority groups as a means to their integration. The CDA's position is noteworthy because a confessional party such as the CDA might be assumed to be wary of subjecting conceptions of the good received in part through religious revelation to public or interpersonal scrutiny (a point that will be elaborated below). Contrasting the positions of these two parties is instructive, for it shows, in the case of the CDA, how its desire to call Muslims to account for their beliefs led it to endorse individual autonomy, whereas GroenLinks' endorsement of autonomy led it to call Muslims to account.

The Islam, it was noted in chapter 4, figured in the debate on the past and future of Dutch Integration Policy in a number of different ways. It figured implicitly in discussions of the tone of the debate, which was said to be offensive to *allochtones* in general and Muslims in particular, and explicitly in the reflections of several parties, including GroenLinks and the CDA, on the (in)compatibility of the Islam with Dutch culture and society. For the CDA, it was imperative that the 'cultural relativism' of the past be rejected in favor of recognition of the 'dominant Dutch or European culture'. This was necessary in order to forestall riots and ghettos, according to the party. This meant mincing no words in addressing problems, nor in exacting allegiance to the *rechtsstaat* and democracy from Muslims especially. The Islam, as practiced and preached in the Netherlands, must be compatible with central values of Dutch society, such as individual choice and 'truthfulness', according to the CDA.

GroenLinks endorsed a similarly liberal culturalist position in this and later debates, but arrived there via a more direct route. In contrast to the CDA, which party was pushed towards autonomy because it wished to call Muslims to account, GroenLinks was pushed to rescind its prior endorsement of integration without loss of identity because it had adopted a conception of liberty that was highly reminiscent of the individual autonomy of liberal culturalism. Doing so the party must reject any unquestioned acceptance of traditional, religious, or other types of authority. The enduring existence of collective identities was fine, but only if such identities were the product of individual choices. Maintaining community identity for the sake of creating cohesive communities was rejected, for such communal cohesion in itself was a threat to individual liberty. This was also the reason that GroenLinks called on the Government to support the reported trend of secularization among Muslims. This secularization entailed a shift from a dogmatic acceptance of religious or traditional prescription to a critically reflexive attitude vis-à-vis received

beliefs. It also implied the justification of such beliefs in secular terms, i.e. terms open to intersubjective scrutiny.

At the same time, the debate on the past and future of integration policy, and indeed all the debates analyzed in the previous chapters, demonstrated a persistent strain of framework liberalism, expressed most explicitly by the orthodox Protestant parties SGP and ChristenUnie, which parties consistently emphasized the right of moral communities, including Islamic communities, to develop and express their own comprehensive doctrines. These parties' positions were determined by their prior commitment to liberty conceived as freedom of conscience, in a way similar in form to how GroenLinks' rejection of integration without loss of identity was a direct consequence of its choice to endorse liberty as individual autonomy.

An implicit endorsement of framework liberalism was also apparent in the broad support for freedom of education during the debate. For the orthodox Protestant parties supporting freedom of education was a consequence of their explicit endorsement of framework liberalism. For many other parties, however, it was arguably the other way around, however. As explained in chapter 2, supporting art. 23 of the Constitution, which protects the freedom of education, comes naturally to Dutch parties as a consequence of its origins in the Pacification of 1917. Implicit in this support is an endorsement of the freedom of conscience.

To the extent that the analysis of these debates evidences a dominant strain of liberal culturalism in Parliament in the period under investigation, it fits well with the general narrative in the literature, referred to commonly as the 'retreat of multiculturalism', of an increasing appreciation, in the Netherlands, for the cultural preconditions of liberty in Dutch society.⁴ The present work thus offers a substantive body of empirical evidence in (partial) support of a narrative that has been reiterated widely, though not always self-critically.⁵ Moreover, precisely because the conclusions of this research are grounded in a comprehensive analysis of debates, in which arguments and positions are interpreted in a broader, integrated context

⁴ See *supra*, chapter 2, fn. 110.

⁵ A review of the literature on the retreat from multiculturalism shows how the findings of a relatively few early publications have reverberated in the literature, most notably Entzinger 2003, Koopmans 2003 and Koopmans *et al.* 2005. Koopmans (2008) comments on the paucity of empirical foundations for many of the claims made in and about debates concerning (the retreat from) multiculturalism in the Netherlands, for example qualifying Slegers 2007 (see *infra*, fn. 6) as an 'impressionistic' study (177).

in light of an informed account of liberalism, they add considerable nuance to this narrative. There is very little evidence in the debates analyzed, for instance, of a widespread concern for the preservation of the Dutch national identity as a good in itself, nor do many parties provide substantive accounts of such an identity beyond the general, liberal-culturalist traits mentioned above.⁶ To the extent that there is evidence of an 'assimilationist mentality' or 'assimilationist turn',⁷ it is evident that the desired assimilation concerns such liberal-culturalist traits especially.⁸ The use of the term 'assimilationist' is therefore misleading, given its projection of a single, homogeneous identity into which the assimilating subject is absorbed, whereas liberal culturalism leaves ample room for a multiplicity of such 'thick' identities.⁹ There is no evidence, in any case, of a desire that newcomers, or anyone for that matter, 'completely embrace the Dutch identity by jettisoning their native identity'.¹⁰ In that sense, Mouritsen's depiction of the developments in the Netherlands and similar developments elsewhere in North Western Europe as a 'civic integrationist-' or simply 'civic turn' is more on the mark.¹¹

Moreover, the distinction applied in this thesis between liberal culturalism and framework liberalism reveals the limitations inherent in analyses that describe the retreat of multiculturalism, or 'rise of Culturalism', as the simple substitution of an ideology of 'multiculturalism' by the realization that 'our enlightened, liberal culture' is in need of defense.¹² As this thesis, shows, even if there is widespread support for the defense of liberalism and even for the identification of liberalism with Dutch culture, the oppositions inherent in liberal theory concerning the correct place of minority moral communities in liberal society are evident in that support as well. As demonstrated, it is possible to support liberalism, as a part

⁶ Prins & Saharso, for example, report the rise of 'new realism', a discourse characterized by, *inter alia*, a patriotic concern for and reaffirmation of Dutch national identity, in public and political debate in the first half of the period under review; see especially Prins & Saharso 2008: 368, 370-371. Slegers similarly reports that 'national identity' achieved prominence in public and political debate during the same period, writing that this identity is generally portrayed as 'homogenous and static' ('*homogeen en statisch*'); Slegers 2007: 50, 68; see also Wetenschappelijke Raad voor het Regeringsbeleid 2007: 87). This is not borne out by the current research.

⁷ See Duyvendak, Pels & Rijkschroeff 2005: 10; Duyvendak & Scholten 2012: 274; Entzinger 2006: 137, Slegers 2007: 54, Vasta 2007: 736.

⁸ As suggested in Joppke 2008: 541 (but see Mouritsen 2009: 30-32).

⁹ On the meaning of 'assimilation', see Barry 2002: 72-73 and Brubaker 2004: 118-120.

¹⁰ '*de Nederlandse identiteit volledig omarmen door afstand te doen van hun oorspronkelijke identiteit.*' Ghorashi 2006: 16.

¹¹ Mouritsen 2009: 23.

¹² Uitermark 2010: 1.

of Dutch culture even, without taking in a liberal-culturalist position or equating liberalism with the enlightenment. Indeed, the parties coming closest to explicitly and consistently supporting one of the two approaches guiding the current analysis are the small orthodox Protestant parties, who support framework liberalism. That being said few, if any, parties in Parliament take in a position that can be characterized as uniquely liberal-culturalist or framework liberal. Most parties draw on both approaches to liberal society, though in different measure, in determining their positions. Relatedly, the analysis of debates in terms of liberal culturalism and framework liberalism may also help to move certain normative discussions forward in which liberal-culturalist policies or positions especially are presented and/or dismissed as inherently illiberal, a point to be returned to below.¹³

Besides thus adding sophistication to the narrative of the retreat of multiculturalism, the analysis of debates in the preceding chapters qualifies the move towards liberal culturalism in another notable aspect as well. This is most apparent in chapter 5. This chapter demonstrates that a liberal-culturalist position need not only result from concern for the preservation of certain liberal freedoms. Such a position can also arise from concern for the economic viability of all inhabitants of the Netherlands, including especially those members of minority moral communities who are particularly challenged in this regard.

Socio-economic constraints on diversity

Freedom of education was rejected explicitly by one party during the debate on the past and future of integration policy, the SP. As argued in chapter 4, however, the SP's rejection of freedom of education should not be interpreted as hostility towards moral communities in particular or diversity in general. Though reminiscent of the French doctrine of *laïcité*, which is referred to approvingly by the party, the Socialist Party's position on such issues is predetermined by its concern for the socio-economic welfare of members of minority moral communities, and its conviction that socio-cultural integration is necessary for that welfare.

¹³ See, e.g., Joppke 2008: 541, Mouritsen 2009: esp. 31-33, Spijkerboer 2007: chapters 6 & 7. Spijkerboer provides an informative and somewhat provocative analysis of the parliamentary debates on the Civic integration bills, but limits his analysis to the contributions of three parties (VVD, GroenLinks, and ChristenUnie). Despite placing different emphasis and using different concepts, his findings are roughly the same as those in the present thesis, even if his normative evaluations are not.

Chapter 5, which discussed a number of legislative debates concerning two separate civic integration bills, revealed that other parties also, in similar fashion to the SP, were pushed towards a liberal culturalist position by the economic structure of Dutch society and their concern that all individuals meet the economic conditions of membership, i.e. that they are economically active. Ensuring socio-economic welfare was widely given priority over maintaining socio-cultural diversity. What was repeatedly stressed was the necessity of work, of having a job, and of being in that sense independent. Individuals are responsible for themselves and therefore must be self-supporting. Similarly, citizenship was often described as consisting in participation in society, which participation was predominantly interpreted in terms of work or employment.

When integration in the economy becomes the primary goal, moral communities are naturally appraised in light of that goal. Their evaluation thus becomes instrumental. In this light it is notable that moral communities, on the whole, played a relatively small role in the debates on civic integration. There is society and there is the individual, and there is little in between. The Netherlands itself was widely, if implicitly, treated as an economic association, of which one becomes a member through work. That is 'how we do things here'. To the extent that socio-cultural diversity does not impede individuals' ability to participate in society so conceived, it is unproblematic. If, however, membership of a moral community and endorsement of its particular conception of the good hampers an individual's economic and social prospects, both community and conception of the good are liable to be subjected to the critical appraisal of and possible rejection by the broader public.

A liberal culturalist position, it is clear from chapters 4 and 5, can be the result of a more or less explicit endorsement of its central value, i.e. individual autonomy, as shown to be the case with GroenLinks, but it can also be caused through the pursuit of other goals. In the case of the CDA, fear of societal disintegration and the desire to determine whether Muslims are committed to central Dutch values and the *rechtsstaat* forced a party that might be expected to be more sympathetic to religious liberty to embrace central tenets of liberal culturalism. And in the case of the SP, but also parties such as the PvdA and D66, a default liberal culturalist position was the result not so much of either an explicit rejection of framework liberalism or embrace of liberal culturalism, but of an appreciation of the various ways in which the isolation of moral communities in society can serve as a barrier to the individual welfare and wellbeing of their members.

The courage of conviction

After chapters 3 through 5, which showed little explicit support for framework liberalism beyond its consistent endorsement by the orthodox Protestant parties, nor much enthusiasm for the accommodation of moral communities as separate groups in society except for that of the same parties, the Ritual Slaughter debate presented an in some respects contrasting view. The outcome of that debate, we saw in the previous chapter, was a covenant giving representatives of Jewish and Islamic moral communities a direct say in governmental slaughtering policies. Not only does such a covenant express a desire to accommodate the wishes of moral communities, it also acknowledges that the conscientious beliefs of members of such communities can differ strongly from majority opinion, and that the majority must in some cases tolerate practices despite its heartfelt objections. This outcome, making room as it does for moral communities with a different perspective on the truth concerning ritual slaughter, provided evidence again of a small but persistent strain of framework liberalism in Dutch liberal practice.

Two points stand out especially in the Ritual Slaughter debate: the difference of approach between the Second and First Chambers respectively, and the CDA's strong defense of moral communities' liberty of conscience, which is remarkable especially in light of its earlier embrace of central tenets of liberal culturalism.

The difference in approach between the Second and the First Chamber was evident in the Ritual Slaughter debate; recall that for a number of parties in the Second Chamber 'how we do things here' was a strong argument in favor of denying Jewish and Islamic communities the right to engage in slaughtering practices as prescribed by their respective religions. Animal welfare was presented as a fundamental Dutch value, to which moral communities should be made to conform. The debate in the Second Chamber also provided a vivid illustration of liberal culturalism's public to private direction of constraint, as a number of parties called members of moral communities to account for their beliefs. In the Second Chamber, only the SGP, ChristenUnie, and the CDA argued explicitly for the right of moral communities to take a different view and not to subject their beliefs to public scrutiny or criticism. In the First Chamber, however, other parties also were much more reluctant to force majority opinion on minority groups. Tellingly, this was rarely made explicit, however; only the religious parties and the VVD were unambiguous in their statements that

the ethical principles of the majority need not be shared by minorities. The position of the religious parties in the First Chamber was the same as that expressed by them in the Second Chamber. That the (liberal conservative) VVD voiced its commitment to the freedom of conscience so explicitly in the First Chamber, after having tended towards liberal culturalism in previous debates, is testimony to the conflicting pull of the values of individual autonomy and freedom of conscience in liberal practice, a point to be returned to in the discussion. Other parties opting for the accommodation of minority moral communities by way of a covenant, however, chose to defend their position not in the terms of the desirability of such accommodation, but as an expression of their dissatisfaction with the bill especially. These parties couched their reservations vis-à-vis the bill in legal-technical arguments, or attempted to discredit the scientific evidence mustered in its support. Despite the First Chamber's ultimate rejection of the bill in favor of a covenant, then, and the implicit support for framework liberalism this entails, the fact that so few parties stated their position in framework liberal terms is in itself testimony to the relative lack of support for this position in the First Chamber.

If we look at the debates analyzed in chapters 3 through 5, the differences between the Second and the First Chamber mentioned above are not without precedent. In all the debates reviewed the First Chamber was consistently more divided internally and more critical of the proposed measures than the Second Chamber had been before it. More than the Second Chamber, the First Chamber's attention was apt to be drawn to constitutional or other legal issues, such as the proportionality of proposed measures or their compatibility with existing law or policy. Though positions in the First Chamber on such issues of course reflect political choices as well, the Second Chamber seems to be the more political of the two in the sense that this chamber attempts to express the desires of the polity, whereas the First Chamber tends to see the institutional and constitutional limits to the realization of those desires. It is significant therefore that the Second Chamber in the debates analyzed in this research often was ultimately largely agreed on the desirability of the bills proposed. In that Chamber the approval bill for the Convention for the Protection of National Minorities was only opposed by the SGP; GroenLinks and the SP were the only parties to oppose Civic Integration Abroad, while the Civic Integration bill was supported by all members of the Second Chamber bar one. In light of this general agreement on many issues to do with integration, the clear opposition between the three Christian parties and the rest of the Second Chamber during the Ritual

Slaughter debate is in itself remarkable.

With regard to the CDA's siding with the orthodox Protestant parties in the Ritual Slaughter debate despite its earlier inclination towards liberal culturalism, this can be seen as reinforcing the above contention that this inclination, in the debate on the past and future of integration policy, was caused by the party's desire to call Muslims to account for their beliefs. At the same time the discrepancy between its earlier position and its position during the Ritual Slaughter debate can be explained by reference to several characteristics and circumstances of the bill under discussion. The Ritual Slaughter bill differs from the other bills discussed in the previous chapters in three ways. First, the Ritual Slaughter bill, more than any of the other bills, targeted moral communities directly, proposing explicitly to refuse them a right previously enjoyed. The stakes were very tangible, and they were high. Forced so explicitly to choose between the freedom of conscience of members of religious moral communities and a majority refusing them this right, it is little wonder that the Christian Democrats sided with the religious minorities.

Secondly, and relatedly, the other bills discussed concerned less the taking away of privileges or rights and more the stipulation of the conditions for successful participation in Dutch society by all of its members, regardless of their conscience or creed. All parties, we saw, agreed that such conditions exist. Tellingly, the CDA made its strongest claims with regard to the (in-) compatibility of the Islam with the principles of the Dutch *rechtsstaat* in a debate in which nothing in particular was at stake, namely the debate on the history and future of Dutch integration policy.

The third way in which the Ritual Slaughter bill differs from the other bills is in the time of its submission and debate in Parliament. As we saw in chapter 2, and as pointed out by a number of parties during the debates, between the attacks of 11 September 2001 and the murder of Van Gogh in 2004, integration in general and the Islam in particular were hotly debated. By 2011, when the Ritual Slaughter bill's debate commenced in the Second Chamber, the gravitational pull of those events had diminished to a degree, allowing more room for the assertion of the rights of moral communities than had been politically expedient in 2004.¹⁴

If the events of 2001-2005 had relatively little influence on the CDA's

¹⁴ This was before the attack on the editorial board of the French satirical weekly *Charlie Hebdo* in January 2015.

position in the debates on the Ritual Slaughter bill, this implies however that other parties' positions at the time were similarly undistorted by those events. These parties' contributions to the debate in the Second Chamber suggested that the Christian parties' strong support for the rights of moral communities was opposed by a stronger, if less explicit, understanding of the Netherlands as committed to a partial comprehensive doctrine in its own right, in which the value of autonomy is of central importance, and in which comprehensive doctrines or conceptions of the good that are at odds with that partial comprehensive doctrine are rejected by the majority.

In a way the discrepancies in the CDA's position reflect the general findings of this dissertation research in miniature. This research sought an answer to the question of the standing, in the terms of contemporary liberal political philosophy, accorded to moral communities by Dutch parliament as evidenced in its debates since 2000. This standing, it has been shown, is predominantly reminiscent of that accorded to moral communities in liberal culturalism: moral communities are regarded favorably if and to the extent that the comprehensive doctrines endorsed by their members are not incompatible with the development and exercise of individual autonomy, which compatibility is subject to interpersonal or public scrutiny. That notwithstanding, the orthodox Protestant parties especially argue for the right of religious moral communities to entertain beliefs not shared by the majority and to refuse to subject these beliefs to the scrutiny of non-like-minded others, thereby ascribing these communities a standing reminiscent of that of framework liberalism. Thus tenets of both liberal culturalism and framework liberalism are apparent in the parliamentary debates analyzed and discussed in the previous chapters. These tenets are apparent also in the CDA's position. Notably, it is the party's fear for the disintegration of society that moved it to embrace liberal culturalism. In direct confrontation with a minority that would suffer at the hands of liberal cultural majority, however, the party sided with the minority instead, stressing the value of freedom of conscience above the interpersonal scrutiny of beliefs.

Notwithstanding the outcome of the Ritual Slaughter debate, the previous chapters demonstrated that the support for liberal culturalism, though generally more implicit than that for framework liberalism, was also more widespread in Parliament than the support for the latter. What does this entail for the state that Dutch toleration is in? This is the subject of the following, final section.

The state that Dutch toleration is in

It has been emphasized, from the start of this dissertation, that the purpose served by the development of the two liberal approaches to moral communities was not prescriptive but analytical. For this reason, the two liberal positions were drawn as starkly and uncompromisingly as possible. That notwithstanding, the analysis of parliamentary debates in the foregoing chapters has provided ample evidence of the implicit endorsement of the normative core of either approach by a number of parties in Dutch Parliament. This was most explicit in the case of the steady endorsement of central tenets of framework liberalism by the orthodox Protestant parties especially, but also in the often implicit, yet equally strong endorsement of liberal culturalism, at least since 2004, by the Government and a varying number of parties in both chambers of Parliament. Besides providing input for the research question, the debates analyzed therefore also provide an insight into the dynamics of conflict between these two normative positions.

Framework liberalism and liberal culturalism, it was established in chapter 1, have opposing directions of constraint. Framework liberalism, given its prioritization of the freedom of conscience, sets constraints on the scope of the political, which constraints are informed by the conceptions of the good endorsed within the moral communities of which framework liberal society consists. If a moral community objects to a political measure on the grounds of conscientiously held beliefs, framework liberalism dictates that such a political measure is illegitimate. Liberal culturalism, on the other hand, is characterized by a public-to-private direction of constraint. Given liberal culturalism's endorsement of individual autonomy and commitment to interpersonal scrutiny of conceptions of the good, the diversity of such conceptions of the good and comprehensive doctrines in society is effectively limited to those that are compatible with individual autonomy and the interpersonal scrutiny just mentioned.

Given these opposing directions of constraint it was suggested in chapter 1 that while a framework liberal society could accommodate individuals or moral communities committed to individual autonomy, a liberal culturalist society would be less hospitable to individuals committed to freedom of conscience. This suggestion, at least its latter half, is borne out by the debates analyzed in the previous chapters. The debates on the Ritual Slaughter bill, in the Second Chamber especially, are particularly instructive in this regard.

During the debate of the Ritual Slaughter bill in the Second Chamber, minority moral communities opposing the bill were repeatedly called upon to justify their position in terms accessible to the majority. Even while pointing out that religious liberty and the freedom of conscience involved the right to refuse to do so, the representatives of such minority moral communities, i.e. the MP's of the Christian parties in the Second Chamber, obliged their opponents by arguing that animal welfare was also imperative for religious communities and that scientific evidence was inconclusive with regard to the suffering of animals during ritual slaughter. This, however, only served to raise or reinforce the accusation of hypocrisy, weakening the position of the opponents of the bill further.

What the accusation of hypocrisy during the debates on the Ritual Slaughter bill demonstrates is the vulnerability of minority moral communities claiming freedom of conscience in a society otherwise committed to liberal culturalism. It shows how the commitment to liberal culturalism can be accompanied by a certain disregard of the freedom of conscience in practice, if autonomous individuals persist in browbeating others into justifying their beliefs. For if a member of a minority moral community attempts to justify his beliefs in terms that are acceptable to the majority, he cannot but compromise those beliefs, for he does not hold them for those reasons. But if he does not do so he is also compromised, for in the eyes of the majority his reasons to hold the beliefs that he does are apparently arbitrary.

This is precisely the reason why the MP for the CDA during the Ritual Slaughter debate in the Second Chamber insists that the essence of religious liberty is the right to hold a different point of view, and that toleration must needs extend to that which is not understood by the rest of society. When public justification of a religion is made a condition of its toleration, toleration becomes redundant and religious liberty becomes vacuous. Conversely, this is precisely the reason GroenLinks applauds the emergence of a secularized, more spiritual appreciation of Islam among young Muslims; the secularized nature of that emerging Islam ensures that it holds no secrets for non-believers. Indeed, GroenLinks contends that if the Islam is so interpreted there is no longer any reason for other to 'be afraid' of the religion or its adherents.¹⁵ For the non-secularized faithful, however, such a secularized version of their religion may very well fail to capture its essence.

¹⁵ See *supra*, chapter 4, fn. 114.

For the religiously faithful, especially for those of more orthodox persuasions, it is evident that the security of their faith does not rely on reasoning but on faith. This is precisely why freedom of education is so essential to religious freedom, and why the orthodox Protestant parties are so strongly committed to the freedom of education. This freedom is necessary in order to continue to understand and experience their religion in its own terms. As the Ritual Slaughter debate illustrates, the more society is premised upon a liberal culturalist appreciation of autonomy, the more important it becomes for religious communities to seek isolation from that society. For only by doing so can they insulate themselves from the demand to justify and thus compromise their beliefs. Failing freedom of education, the liberal culturalist values of society at large would be imparted to their children at a young age, so that the demand of justification would come from the religious community itself, causing it to erode from within.

For liberal culturalism, given its commitment to interpersonal, critical scrutiny of conceptions of the good and comprehensive doctrines, the boundaries moral communities attempt to draw around themselves and their articles of faith are of little relevance. These boundaries, however, are essential to framework liberalism, for it is only by respecting them that both the moral communities and the broader polity of which they form a part remain stable entities. Enduring respect for these boundaries is rooted in adherence to the procedural morality of framework liberalism, without which the liberal framework collapses. In a society where such a morality is absent or in decline, moral communities will face that much more pressure to adapt to the comprehensive doctrine of the majority. The findings of this dissertation research provide an illustration of this dynamic and strongly suggest that this is the kind of society the Netherlands is or is in the process of becoming.

Chapter 8

Where do we go from here? Lessons, and questions, for political philosophers

Introduction

‘Protection, therefore, against the tyranny of the magistrate is not enough: there needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compel all characters to fashion themselves upon the model of its own.’¹

John Stuart Mill’s principal concern in *On Liberty* was to address the oppression visited upon individuality through public opinion. His case for liberty of thought and expression as the central liberal institution was that it created the conditions that could thwart such oppression. Free speech was necessary to forestall the deterioration of democracy into a softer, more insidious ‘social tyranny’.² The findings of this thesis suggest that even under liberal-culturalist conditions, however, which arguably stand closest to the ideal envisaged by Mill, public opinion still can be a force that marginalizes individuals differing from the norm, especially if they are members of minority moral communities. Indeed, these findings show that freedom of speech may primarily be useful for the majority to criticize such minority moral communities, and that it is of little avail to those of their members who wish to protect themselves against the imposition of its ways by the majority. For their protection, freedom of conscience remains indispensable.

This dissertation research analyzes parliamentary debates in order to determine how certain liberal values bearing on individual freedom, religious liberty, and cultural diversity are currently interpreted in the Netherlands. Besides supplying ample material for this analysis, the debates themselves proved to be an object lesson in the practice of liberalism, showing how different interpretations interact and collide and the dynamics inherent therein. As such, the findings of this research should be of interest to students of political philosophy in general and liberal political philosophy in particular. In this final chapter, therefore,

¹ Mill 1975 [1859]: 9.

² *Idem.*

I will briefly revisit the theoretical beginnings of chapter 1 in order to reexamine certain central tenets of liberal theory in light of the findings of this research. These observations, it should be borne in mind, are partly speculative in nature, raising questions for, rather than passing judgment on, theory.

The social embeddedness of reason as a burden of judgment

Framework liberals such as Larmore and Kukathas assume, in line with Rawls, that the central task of liberal theory is to answer the question ‘how citizens, who remain deeply divided on religious, philosophical, and moral doctrines, can still maintain a just and stable democratic society.’³ Underlying this question is the contention that the free exercise of reason does not tend towards converging, but rather towards diverging moral beliefs. While this may be true with regard to reason freely exercised, however, it perhaps shines too positive a light on reason as generally exercised. For in practice reason is hardly ever exercised in isolation from, but in relation to society, and more often than not its shape and its products are strongly determined by that society.⁴ This in itself is a magnificent ‘burden of judgment’, which, unlike those burdens of judgment recognized by Rawls as stimulating the divergence of moral beliefs, may more often stimulate their convergence, a point to be returned to below.⁵ Indeed, recognizing the social embeddedness of reason goes a long way towards explaining why the pluralism which framework liberals, as well as Rawls, seek to accommodate is essentially a pluralism of moral communities, not of individuals. It also helps to understand why, despite liberal institutions highly conducive to the free exercise of reason, in densely populated, urbanized liberal societies such as the Netherlands the result of that exercise may not be more diversity, but precisely the opposite.

The Netherlands, it is clear from the preceding chapters, qualifies as a liberal society. Its commitment to liberalism is hybrid, as that of most actual liberal societies, in the sense that it is committed to both autonomy and the freedom of conscience. In theory this hybridity should leave ample room for diversity, even if the case of a country such as the Netherlands, which has been found to tend towards liberal culturalism. Autonomy is

³ Rawls 2005 [1993]: 10.

⁴ This is not to say that reasoners do not reason individually, but that their intentional mental states are influenced by the society they keep.

⁵ See *supra*, chapter 1, 34.

a second-order capacity to revise one's conception of the good if it is found rationally wanting; a society converging on the value of autonomy need not converge on any particular set of first order moral beliefs. But even though in theory a society consisting predominantly of autonomous individuals may harbor any number of diverging conceptions of the good, the findings of this research strongly suggest that in practice such a predominantly liberal-culturalist society will tend to further convergence of its moral beliefs. There are two reasons for this convergence on first order moral beliefs in a liberal-culturalist society, I believe, both relating to the social embeddedness of reason identified above. The first I will call the 'presumption of dogmatic belief' that is accorded to moral beliefs that are at odds with those of the majority. The second is the imperfection of autonomy.

Public justification and the presumption of dogmatic belief

The presumption of dogmatic belief is not an element of liberal-culturalist theory, but it may be a consequence of its application. It is a social mechanism that conceivably develops in liberal-culturalist society as follows. A society committed to liberal culturalism promotes a disposition of autonomy in its members. This disposition involves a tendency to critically scrutinize one's own beliefs and to revise them if this is found to be rationally necessary in light of one's other values, desires or beliefs. Because the goal is to filter out false beliefs, an autonomous individual will not hesitate to subject his beliefs to the critical scrutiny of like-minded others, making the search for truth a collective endeavor. This general tendency in liberal-culturalist society to submit moral beliefs to intersubjective, critical scrutiny puts pressure on individuals not so disposed to justify themselves to the liberal-culturalist majority. If they refuse to do so for whatever reason, the liberal-culturalist can interpret this unwillingness as a denial of the fallibility of those beliefs. This in turn may prompt the dismissal of such unconfirmed moral beliefs as mere dogma, and the holder of those beliefs as dogmatic, and therefore as unreasonable.

Chapter 6, in its analysis of the Ritual slaughter debate, provided evidence of the dynamic described above. As argued in the previous chapter, the demand that those deviating from the norm justify themselves in terms accessible to the majority effectively comprises a limitation of their freedom of conscience, whether they choose to act upon the demand or not. It stands to reason that the dynamics of public justification described

here are not limited to liberal-culturalist societies, but obtain where- and whenever a minority is called upon to justify its beliefs in terms designated reasonable by the majority. This has direct repercussions for the pursuit of what Gaus calls 'public reason liberalism', i.e. the accommodation of pluralism by identifying

'an agreed-upon public judgment or public reason that allows us to overcome the disunity and conflict that would characterize a condition in which each followed her own private judgment or reasoning about morality and justice.'⁶

Though such 'public reason liberalism' is associated primarily with Rawls and may therefore be thought to be especially reminiscent of framework liberalism, Gaus argues that the search for public reason is actually implicit in much, if not all, of liberalism's historical development.⁷ Indeed, the above observation of the dynamics of public justification at work in a predominantly liberal-culturalist society provides substance to this claim. It also demonstrates, however, that to the extent that public reason is informed by the normative ideals of the majority, the demand for public justification may only serve to disguise and legitimize the privileged place of the majority's view. If the goal of liberalism is indeed to accommodate pluralism, appeals to public reason should therefore be treated with caution, especially if public reason is informed by normative ideals of public justification.

The most important difference between framework liberalism and liberal culturalism, then, with regard to public reason is one of scope; framework liberalism attempts to limit the scope of the political, in which public reason obtains, to those matters which truly are of public concern. Framework liberalism thus distinguishes public reason from nonpublic reason. Liberal culturalism, however, given its commitment to rationality and the critical scrutiny of beliefs, makes no such distinction. Failing such a distinction, any topic or belief is a potential object of public deliberation in liberal-culturalist society. As a consequence, the scope of public reason in liberal-culturalist society is unbounded, hence the public to private direction of constraint of liberal culturalism.

The public to private direction of constraint in liberal-culturalist societies is the consequence of liberal culturalism's commitment to autonomy

⁶ Gaus 2015: 112.

⁷ *Idem.*

and the critical, rational scrutiny of beliefs and opinions entailed in that commitment. Given the presumption of dogmatic belief described above, the refusal of minority moral communities to play by the liberal-culturalist rules of justification is of no avail to them, as it will only result in their dismissal as unreasonable, thus furthering their marginalization. At the same time, the presumption of dogmatic belief isolates the majority from criticism from without, thus reinforcing its commitment to its own (partial) comprehensive doctrine. As a result of these twin processes of marginalization and isolation, liberal-culturalist society may actually converge on its first order moral beliefs, despite its nominal commitment to autonomy. This tendency to convergence is strengthened by a second, related characteristic feature suggested by the practice, if not the theory of liberal culturalism, namely the imperfection of autonomy.

The imperfection of autonomy

The central value inspiring liberal culturalism is individual autonomy. Aspiring to autonomy, however, is not the same as achieving it. The imperfection of actual autonomy is caused not only by the strengths of the actual desires and beliefs individuals have, which may be more difficult to revise in practice than theory would have it, but also by the imperfection of the very capacity for critical reflection through which autonomous man is supposed to investigate those desires and beliefs. This imperfection and its repercussions may usefully be approached by way of Rawls's 'burdens of judgment'.

According to Rawls, imperfections in man's use of reason are key to explaining the existence of 'reasonable pluralism', i.e. the simultaneous existence in liberal society of a diversity of conflicting yet equally 'reasonable comprehensive doctrines affirmed by reasonable people'.⁸ 'Burdens of judgment' is the term with which Rawls identifies a number of inherent limitations in the use of reason as a means of reaching shared judgments between reasonable persons.⁹ These burdens of judgment

⁸ Rawls 2005: 64.

⁹ Rawls 2005: 54-57. Gaus summarizes the burdens of judgment as follows: '1 The evidence is often conflicting and difficult to evaluate; 2 [...] even when we agree on the relevant considerations, we often weigh them differently; 3 because our concepts are vague, we must rely on interpretations that are often controversial; 4 the manner in which we evaluate evidence and rank considerations seems to some extent the function of our total life experiences, which of course differ; 5 because different sides of an issue rely on different types of normative considerations, it is often hard to assess their relative merits; 6 in conflicts between values, there often seems to be no uniquely correct answer' (Gaus 2003: 14).

figure in Rawls's political liberal theory especially as an explanation of reasonable pluralism, and therefore as an explanation of the divergence of first order moral beliefs between moral communities in liberal society. What these burdens of judgment do not explain, however, is why, despite these very burdens, there exists a convergence of first order moral beliefs within moral communities. This convergence, it seems, according to Rawls also, has not so much to do with reason, but with 'prior loyalties and commitments, attachments, and affections' incurred by individuals in the moral communities in which they happen to be born.¹⁰ What individuals believe, in other words, depends in larger part on the company they happen to keep, than on their use of reason.

Liberal culturalism, of course, is not committed to any particular set of first order beliefs, but to autonomy, i.e. to the deliberate and critical use of reason to investigate one's beliefs and reject them if they are found to be wanting. Doing so is a tall order, however. Even if one does not agree with Rawls that the burdens of judgment must result in reasonable pluralism, they do offer an indication of the fundamental complexity involved in reflecting on our beliefs and other (value) judgments. To the extent that a commitment to autonomy is practically feasible, it is to be expected that it will be a reactive, rather than an active, commitment, in the sense that the critical scrutiny of one's beliefs will generally be preempted by a particular incident calling one's first order beliefs into question. As a matter of economy, therefore, even an individual strongly committed to autonomy will leave certain of his beliefs unexamined. Other things being equal, then, the more one's first order beliefs are shared by others, the less will they be called into question. As a result, even in a society committed to liberal culturalism certain first order beliefs may be regarded as self-evidently true, rather than possibly false. This is all the more so if the commitment to autonomy itself is held less from conviction than from the circumstance of being born in liberal-culturalist surroundings. In this light it is notable that the debates analyzed in this dissertation research show that a commitment to autonomy is more readily witnessed in the rejection of others as wanting in autonomy, than in the manifest desire to address the fallibility of one's own beliefs.

Given imperfect autonomy, even in a society in which autonomy is held in high regard individuals may hold their moral beliefs, including the commitment to autonomy itself, not because they have confirmed them

¹⁰ Rawls 2005: 222.

rationally, but because they are socially confirmed. If it is indeed the case that imperfectly autonomous individuals may substitute socially accepted beliefs for their own judgment, a nominal commitment to autonomy can go hand in hand with a high degree of convergence on first order moral beliefs in actual liberal-culturalist societies.

Social tyranny, the freedom of expression, and the freedom of conscience

The presumption of dogmatic belief and the imperfection of autonomy may work in tandem to marginalize moral communities who refuse to subject their beliefs to the rational scrutiny of others and to reinforce the convergence on first order moral beliefs in actual liberal societies that tend towards liberal culturalism. While in theory autonomy is supposed to stimulate self-authorship and choice, the result in practice may therefore be a limitation of choice and the substitution of social for self-authorship. This is all the more so if members of minority moral communities live in heterogeneous urban neighborhoods. Tellingly, many members of Dutch orthodox Protestant communities that subsist in the Netherlands are concentrated in relatively small municipalities where they are somewhat isolated from the majority culture.¹¹

This raises the question of how the kind of social tyranny rejected by Mill can be prevented despite a nominal commitment to autonomy. Mill, of course, recognized the imperfection of man's nature; for Mill freedom of expression served the unrestricted investigation of opinion for the sake of finding the truth, even though human imperfection promised to make the road to its discovery long and difficult.¹² For the sake of finding the truth Mill defended a broad freedom of expression, constrained only by the harm principle. He also promoted 'experiments in living', i.e. a diversity of ways of life actually pursued, however.¹³

For Mill, experiments in living should spring from the minds of individuals striving to deviate from the mean. It was 'individuality' he admired, not tradition.¹⁴ Arguably such experiments for Mill did not include the

¹¹ The Netherlands, like the United States, has a 'bible belt' where orthodox protestants, though nowhere in the majority, form relatively large minorities.

¹² Mill 1975 [1859]: 70.

¹³ *Idem.*

¹⁴ 'Where, not the person's own character, but the traditions or customs of other people are

lifestyles of communities steeped in orthodoxy or otherwise committed to tradition for tradition's sake. But in actual liberal societies, communities significantly deviating from the mean may do so for the sake of protecting their conscience.

The more a liberal society converges on moral beliefs, the more pressure it levies on the members of such moral communities to conform to its own ways. Taking account of the mechanisms described above, it is clear that the freedom of conscience has at least as much of a role to play in warding off social oppression as liberty of expression does. If such oppression is the result of a homogenizing tendency in a predominantly liberal-culturalist society that is in practice assisted by the freedom of expression, freedom of conscience becomes that much more vital, not just for individuals, but for liberal society itself.

It is sometimes suggested that freedom of expression can serve as a substitute for the freedom of conscience, thereby securing the freedom of moral communities to adhere to and express opinions contrary to those of the majority in a liberal society.¹⁵ This contention should be rejected, however. The essence of the freedom of conscience is the freedom not to subject one's conceptions of the good to the critical scrutiny of non-likeminded others. The purpose it serves is therefore to insulate moral communities from criticism and societal pressures to change their beliefs. That is precisely why this freedom is so central to framework liberalism. The freedom of expression, however, serves an entirely different purpose. This purpose is to allow individuals to express criticism, be it of religious or secular authority, or of majority or minority beliefs and opinion. It is because freedom of expression thus facilitates the interpersonal scrutiny of conceptions of the good that it achieves such prominence in liberal-culturalist society. This prominence, however, offers scant security to moral communities that are already vulnerable to pressures to conform to that society.

Where do we go from here?

A liberal society aims to protect the individual liberty of its members. Individual liberty, the findings of this research demonstrate, cannot only

the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief of ingredient of individual and social progress.' Idem.

¹⁵ See, e.g., De Beer 2007.

suffer at the hands of other individuals, family members, or communities; it can also suffer at the hands of liberal society itself, when society sees no reason not to impose 'its own ideas and practices as rules of conduct on those who dissent from them'.¹⁶ Therefore it will not suffice to offer the protection of either freedom of expression or freedom of conscience. A liberal society must offer both. If it does not, the consequence may be that such a society will either slip into the kind of social tyranny feared by Mill, or that it will forsake its commitment to individual liberty by deferring to the primacy of moral communities instead. In either case, individual liberty is diminished. Because liberal society must therefore protect both freedom of expression and freedom of conscience, it must also accept the conflicts that will result as a consequence. The resilience of liberal society resides in its continuing ability to accommodate such conflicts, of which the ritual slaughter debate is but one example.

As both freedom of expression and liberty of conscience are necessary for an enduring liberal society, balancing these two liberties is not a matter of determining which one has primacy and setting the parameters of each accordingly, once and for all. It means acknowledging conflicts between these liberties when they arise and determining which of the two should prevail under the particular circumstances of each conflict. It is this ability to continuously reinvestigate the limits and scope of either liberty that marks a resilient liberal society. Recognizing the central values implicit in each is indispensable to such reinvestigation, and theoretical positions such as framework liberalism and liberal culturalism are helpful to that end. Contrary to liberal theory, however, liberal society is not premised on either individual autonomy or freedom of conscience, but on both.

As the findings of this dissertation show, liberal society can change. As society changes, the appreciation of individual liberty can change also. The conflicts that result as a consequence of such shifts, like those emerging in the Dutch shift from framework liberalism to liberal culturalism, do not of themselves signify that a country is becoming less, or more, liberal. These conflicts are to be expected and are a necessary part of the process of reinvestigating and renegotiating the conditions for the exercise of liberty pointed to above. It is the mark of a liberal society that it can accommodate such conflict.

¹⁶ Mill 1975 [1859]: 9.

The resilience of liberal society, then, resides not merely in achieving a balance between freedom of expression and liberty of conscience, but especially in its ability to achieve a dynamic equilibrium, adjusting to changing circumstances without jettisoning either. Typically, this means allowing for the renegotiation of the conditions under which either liberty may be enjoyed in particular cases. This calls for a high degree of tolerance for conflict. The danger liberal society faces, therefore, is not this kind of conflict, for it is endemic to the balancing act it must perform. The danger is that liberal society loses its balance by succumbing to the desire of settling the higher order conflict between these two liberties once and for all. This is a danger that liberal theorists, also, would do well to take to heart.

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Vauchigon, 2015

Nederlandse samenvatting

Zo zijn onze manieren

Morele gemeenschappen, integratie en tolerantie in Nederland: strijdende interpretaties van het liberalisme in de parlementaire praktijk, 2000-2013.

Dit proefschrift legt verslag van een onderzoek naar tolerantie in Nederland. Omdat zowel Nederland als tolerantie vele facetten heeft, zijn er verschillende manieren om de vraag naar tolerantie in Nederland te stellen, die elk een ander antwoord zullen geven. Bij gevolg is het antwoord dat in dit proefschrift besloten ligt uit der aard beperkt. Beperkingen vloeien zowel voort uit de invulling die in het onderzoek wordt gegeven aan tolerantie, alsook uit de wijze waarop Nederland in het onderzoek gerepresenteerd wordt.

De wijze waarop tolerantie in dit proefschrift is ingevuld is analoog aan de wijze waarop tolerantie in liberale democratieën vorm heeft gekregen: middels liberale instituties die ruimte bieden aan gewetensvrijheid en levensbeschouwelijke pluriformiteit. Dit onderzoek is dan ook een nader onderzoek naar de wijze waarop in Nederland centrale, liberale waarden die betrekking hebben op gewetensvrijheid en levensbeschouwelijke pluriformiteit geïnterpreteerd en in de praktijk gebracht worden. Het gaat daarbij dus niet om een onderzoek naar affectieve tolerantie, naar attitudes of emoties, maar om een onderzoek naar institutionele tolerantie, dat wil zeggen naar de wijze waarop de samenleving inrichting geeft aan voornoemde liberale waarden. Meer precies is het een onderzoek naar de wijze waarop de Nederlandse samenleving vindt dat inrichting gegeven moet worden aan die waarden, en waarom.

Een dergelijk onderzoek is daarmee een onderzoek naar redenen en argumenten die gegeven worden over de omgang met religieuze en culturele verschillen in de Nederlandse samenleving. Deze doelstelling

is van directe invloed op de keuze van het object van studie. Dit object betreft debatten die in het Nederlandse Parlement gevoerd zijn tussen 2000 en 2013. De reden om parlementaire debatten te analyseren is dat het parlement bij uitstek de plek is waar argumenten worden uitgewisseld over de institutionele inrichting van Nederland. Bovendien vertegenwoordigt het Parlement een brede dwarsdoorsnede van de leden van de samenleving – wellicht niet van de totale samenleving, maar in ieder geval van een groter gedeelte ervan dan vertegenwoordigd wordt in opiniestukken in kranten of andere media, en op een wijze die erop toeziet dat alle deelnemers aan debatten ook daadwerkelijk aan het woord komen. Daarbij komt dat debatten een coherent geheel vormen, waarbij ingegaan wordt op elkaars argumenten. Tenslotte is een belangrijke reden om het Nederlandse Parlement als *pars pro toto* te nemen dat, zelfs al is het niet representatief voor de gehele samenleving, het hoe dan ook van ingrijpende invloed is op hoe die samenleving ingericht wordt; het parlement kan immers maatschappelijke opvattingen kracht van wet geven.

De debatten die zijn onderzocht, vijf in totaal, hebben allemaal betrekking op de constitutionele status van wat in Nederland doorgaans wordt aangeduid als ‘etnische-’, ‘culturele-’ of ‘religieuze minderheden’. In dit proefschrift worden deze minderheidsgroeperingen gevangen onder de noemer ‘morele gemeenschappen’. Dit zijn groepen individuen die i bepaalde, gedeelde waarden en opvattingen over hoe te leven delen. Het archetype van een morele gemeenschap is een religieuze gemeenschap (een kerk), maar de gedeelde morele waarden hoeven geenszins religieus te zijn en kunnen evenzogoed een seculiere bron hebben. Het kenmerkende van een morele gemeenschap is dat de leden ervan bepaalde waarden delen als vanzelfsprekende richtlijnen in de inrichting van het leven.

Het doel van het onderzoek is dus nader te bepalen hoe het Nederlandse Parlement invulling geeft aan liberale waarden met betrekking tot de constitutionele status van morele gemeenschappen in de Nederlandse samenleving. Hiermee is het een onderzoek naar de wijze waarop het Parlement invulling geeft aan de liberale omgang met morele gemeenschappen. Dit doel vindt haar weerslag in de gekozen methode. De analyse van parlementaire debatten wordt namelijk geleid door twee concurrerende liberale opvattingen over hoe deze omgang er idealiter uit zou moeten zien. Deze twee opvattingen worden in hoofdstuk 1 ontwikkeld met het expliciete doel als analytische kader te dienen voor het onderzoek. In het Engels worden deze twee opvattingen aangeduid als ‘liberal

culturalism' en *'framework liberalism*'. Deze twee opvattingen worden in deze samenvatting aangeduid als respectievelijk 'levensbeschouwelijk liberalisme' en 'verzuilingsliberalisme'.

Zowel levensbeschouwelijk liberalisme als verzuilingsliberalisme wordt ontwikkeld aan de hand van bestaande liberale theorieën, al komt geen van beide overeen met een positie die daadwerkelijk wordt ingenomen, noch in de praktijk, noch in theorie. Daar zijn de beide ontwikkelde posities te extreem voor. Dat de posities extreem zijn is een bewuste keuze; het doel van de liberale posities is immers niet normatief, maar analytisch. Het doel is te kijken in hoeverre bijdragen aan de debatten in te delen zijn bij een van beide posities. Daarom moeten de twee posities elkaar zoveel mogelijk uitsluiten en heldere richtlijnen bieden aan de hand waarvan men de genoemde indeling kan maken. Bovenal moeten de twee posities een relevant onderscheid markeren in de liberale tegemoetreding van morele gemeenschappen.

De levensbeschouwelijk liberale positie wordt ontwikkeld aan de hand van een aantal contemporaine liberale theorieën die individuele autonomie in meer of mindere mate centraal stellen. Individuele autonomie wordt in dit proefschrift opgevat als het vermogen de eigen opvattingen en verlangens kritisch te beschouwen en indien gewenst aan te passen, als deze niet in overeenstemming zijn met meer doorslaggevende, 'hoger orde' opvattingen en verlangens. In de levensbeschouwelijke liberale positie wordt dit vermogen verheven tot de centrale liberale waarde. In die positie is het gebruik van dit vermogen van cruciaal belang om een waardevol leven te leiden, omdat men er in een waardevol leven naar moet streven om zich te ontdoen van opvattingen en verlangens die onredelijk zijn, in de zin dat er geen goede gronden of argumenten voor zijn. In het levensbeschouwelijk liberalisme staan daarmee rationele zelfreflectie en zelfkritiek centraal. Alleen zo kan men zich verschoond weten van het nastreven van irrationele of onredelijke levensbeschouwelijke opvattingen. Een levensbeschouwelijk liberale samenleving streeft ernaar dit vermogen in haar leden te cultiveren. Dit gebeurt in het onderwijs, maar deze cultivatie vindt ook haar weerslag in de wijze waarop de liberale instituties geïnterpreteerd worden. Zo zal de vrijheid van meningsuiting in een levensbeschouwelijk liberale samenleving een belangrijke rol spelen, omdat deze in dienst staat van het kritiseren van de eigen (en andermans) opvattingen.

Het verzuilingsliberalisme wordt ontwikkeld aan de hand van een aantal contemporaine liberale theorieën die onder de algemene noemer ‘politiek liberalisme’ vallen. In deze liberale theorieën staat gewetensvrijheid centraal, ofwel de vrijheid eigen opvattingen te huldigen over hoe het leven in te richten en te waarderen, en het recht hier geen verantwoording over af te leggen aan een ander, zij het de staat of een kritische landgenoot. Het verzuilingsliberalisme verheft op zijn beurt de gewetensvrijheid tot exclusieve, centrale waarde van het liberalisme. Deze positie richt zich dan ook op het creëren van de voorwaarden waaronder morele gemeenschappen, die immers gekenmerkt worden door eigen, gedeelde morele waarden en opvattingen, samen kunnen leven in een samenleving zonder dat één morele gemeenschap de ander de maat neemt en haar eigen morele waarden aan de ander opdringt middels de statelijke instituties. De wijze waarop het verzuilingsliberalisme dit nastreeft vertoont kenmerken van de gestileerde representatie van de verzuiling die beroemd is gemaakt door de politicoloog Lijphart, vandaar de benaming verzuilingsliberalisme.¹ Centraal in het verzuilingsliberalisme staat het bewuste streven geen enkele morele gemeenschap tegen haar zin in te binden aan overheidsbeleid of wetgeving. In het verzuilingsliberalisme wordt dit zo ver doorgevoerd dat een morele gemeenschap er als *ultimum remedium* voor kan kiezen zich af te zonderen van de samenleving en noch in de baten, noch in de lasten te delen. Een belangrijke uitzondering hierop wordt gemaakt voor maatregelen die een zwaarwegend publiek belang dienen, zoals het voortbestaan van de samenleving zelf. Indien een morele gemeenschap een levenswijze nastreeft die de andere leden van de samenleving of de samenleving zelf in gevaar brengt, is die samenleving gerechtigd maatregelen te nemen die indruisen tegen de wensen van de gewraakte morele gemeenschap.

De analyse van parlementaire debatten laat zien dat beide liberale posities een rol spelen in de wijze waarop parlementariërs invulling geven aan liberale waarden met betrekking tot de constitutionele status

¹ In vroege beschouwingen over de verzuiling wordt overigens ook de idee geopperd van een overkoepelende verzuilingsideologie, of ‘zuilengedachte’, inhoudende de eerbiediging, door de leden van elke zuil, van de vrijheid van andere zuilen om zichzelf naar eigen inzicht en overtuiging organisatorisch te manifesteren, ook al is men het met dat inzicht en die overtuiging fundamenteel oneens. In het licht van dergelijke beschouwingen is de term ‘verzuilingsliberalisme’ wellicht minder anachronistisch dan het in eerste opzicht lijkt. Zie vooral Schöffer, I. 1956. “Verzuiling, een specifiek Nederlands probleem.” *Sociologische Gids* 3, 121-127: 121; zie ook Kruijt, J.P. 1957. “Sociologische beschouwingen over zuilen en verzuiling.” *Socialisme en democratie* 14(1), 11-29: 27.

van morele gemeenschappen in de Nederlandse samenleving. Hoofdstuk 3 behandelt het parlementaire debat over de goedkeuringswet van het Kaderverdrag Bescherming Nationale Minderheden. Dit verdrag, gesloten door de Raad van Europa in 1995 maar in Nederland in werking getreden in 2005, voorzagt in een aantal maatregelen om de positie van morele minderheidsgemeenschappen veilig te stellen in landen waar deze positie bedreigd kon worden door andere morele gemeenschappen of een de minderheid onwelgevallige meerderheid. De goedkeuringswet, waarmee het verdrag in Nederland in werking zou treden, werd in de Tweede Kamer gedebatteerd in 2000 en in de Eerste Kamer in 2001 en 2004. Het aardige aan deze debatten is dat ze een kentering laten zien in de mate waarin Nederland het Kaderverdrag serieus neemt. Deze kentering is manifest in de veranderende inhoud die door het kabinet en het Parlement gegeven wordt aan de nationale minderheden die de bescherming van het verdrag zullen genieten. In 2000 wordt dit begrip zeer ruim opgevat; hieronder vallen niet alleen de Friezen die in Friesland wonen, maar ook de zogenaamde 'doelgroepen van het integratiebeleid', wat voornamelijk duidt op specifieke groepen naoorlogse arbeidsmigranten uit niet-Westerse landen en hun niet-genationaliseerde kinderen. Dat deze ruime definitie van te beschermen nationale minderheden op gespannen voet staat met de door de overheid nagestreefde integratie van de doelgroepen van het integratiebeleid wordt wel opgemerkt in de Tweede Kamer, maar door een meerderheid aldaar niet als bezwaarlijk ervaren. De voornaamste reden voor deze laconieke houding is dat de positie van minderheden in de Nederlandse samenleving op dat moment door die meerderheid als onproblematisch wordt gezien – minderheden zijn een probleem in Midden- en Oost Europa, maar niet in Nederland, zo is de teneur van het debat. De Eerste Kamer lijkt hier een jaar later al anders over te denken, en als de Kamer na een pauze in het debat die bijna drie jaar duurt deze in 2004 hervat is duidelijk dat een totale ommekeer heeft plaatsgevonden: juist vanwege de in 2000 geconstateerde maar toen weggewimpelde bezwaren tegen de brede definitie van nationale minderheden moet deze categorie nu zo eng mogelijk gedefinieerd worden. En zo komt het dat wanneer dit verdrag uiteindelijk in werking treedt, het alleen van toepassing is op de Friezen in Friesland. Wat de in hoofdstuk 3 beschreven debatten daarmee in ieder geval laten zien is dat het Parlement de Nederlandse samenleving niet wenst op te vatten als zijde samengesteld uit een diversiteit van morele gemeenschappen die als zodanig beschermd moeten worden. Voor zover een morele gemeenschap een bijzondere positie en dito bescherming toekomt, is dat de in Friesland

woonachtige Friese gemeenschap. Aan andere morele gemeenschappen, of het nu die van de naoorlogse arbeidsmigranten betreft of de autochtone orthodox-Christelijke gemeenten, hoeft geen bijzondere status te worden toegekend. Enerzijds is dit omdat het niet nodig wordt geacht – de bestaande liberale vrijheden zijn afdoende voor hun bescherming, maar anderzijds is dit ook omdat het niet wenselijk wordt geacht dat morele gemeenschappen gestimuleerd worden om zich van de bredere samenleving af te scheiden.

In hoofdstuk 4 wordt het debat met de regering over het rapport van de Tijdelijke Commissie Onderzoek Integratiebeleid (de Commissie Blok) geanalyseerd. Dit is overigens het enige geanalyseerde debat in het onderzoek dat niet gaat over wetgeving. Dit debat, dat in 2004 plaatsvond, biedt een verdere onderbouwing van de in het vorige hoofdstuk getrokken (negatieve) conclusie dat het Parlement de Nederlandse samenleving niet ziet als een verzameling op zichzelf staande morele gemeenschappen, en dat het Parlement in die zin geen verzuilingsliberale kijk heeft op de Nederlandse samenleving. Uit dit debat wordt namelijk duidelijk dat het Parlement de Nederlandse samenleving juist ziet als grotendeels op zichzelf staande morele gemeenschap, waarin bepaalde centrale (en ook liberale) waarden gedeeld worden en gedeeld moeten worden. Religieuze en culturele diversiteit zijn daarbij zeer wel mogelijk, maar alleen indien en voor zover deze diversiteit verenigbaar is met deze centrale waarden en niet in de weg staan aan participatie in de samenleving. Zonder de term ‘autonomie’ te noemen maken het CDA, GroenLinks en de VVD ieder duidelijk dat wat hen betreft individuele autonomie een van deze kernwaarden is. Deze partijen nemen daarmee een onvervalst levensbeschouwelijk liberale positie in. Tegenover deze partijen staan twee partijen die deze positie in niet mis te verstane bewoordingen afwijzen, de SGP en de ChristenUnie. Voor deze partijen is een centrale liberale waarde het recht om er een fundamenteel andere kijk op na te houden. Zij houden juist een sterk pleidooi voor gewetensvrijheid, en vertolken daarmee een onvervalst verzuilingsliberaal geluid. De andere partijen in het debat zijn minder expliciet, maar neigen in hun bijdragen meer naar de levensbeschouwelijk liberale positie dan naar het verzuilingsliberalisme.

Een tweede belangrijke vinding uit hoofdstuk 4 is dat een positie die op belangrijke punten overeenkomt met levensbeschouwelijk liberale uitgangspunten niet *per se* hoeft voort te vloeien uit een onderschrijving van levensbeschouwelijk liberale waarden zoals autonomie. De SP,

bijvoorbeeld, neemt met haar expliciete afwijzing van onderwijsvrijheid *de facto* een dergelijke levensbeschouwelijk liberale positie in. Deze partij doet dit echter uit zorg over de maatschappelijke segregatie die kan optreden in een op verzuilingsliberale gronden ingerichte samenleving, en de sociaaleconomische achterstand die met die segregatie gepaard kan gaan.

Hoofdstuk 5, waarin de debatten over twee wetsvoorstellen geanalyseerd worden, respectievelijk de wet Inburgering buitenland en de wet Inburgering, laat hetzelfde beeld zien als de debatten uit hoofdstuk 4. Deze debatten vonden respectievelijk plaats in 2005 en 2006. Uit de debatten blijkt ten eerste dat het Parlement overwegend neigt naar een levensbeschouwelijk liberale opvatting van de Nederlandse samenleving. Daarnaast blijkt dat deze opvatting deels wordt ingegeven door breed gedeelde zorgen over de mate waarin leden van morele gemeenschappen erin zullen slagen sociaaleconomisch succesvol of zelfs maar onafhankelijk te zijn, als zij zich primair blijven identificeren met een morele minderheidsgemeenschap. Sociaaleconomisch succes wordt sterk gecorreleerd aan het deel hebben aan de morele meerderheidsgemeenschap. Daarmee is overigens niet gezegd dat het gegeven dat de meerderheidsgemeenschap een levensbeschouwelijk liberale morele gemeenschap is van ondergeschikt belang is. Het blijkt uit deze debatten dat de bindende waarden deels liberale waarden zijn, en ten tweede ook dat de meerderheidsidentiteit die overgenomen dient te worden niet zozeer een 'dikke' nationale identiteit betreft, als wel een 'dunne', liberaal-democratische identiteit.

Hoofdstukken 3 tot en met 5 laten zien dat het Nederlandse Parlement de constitutionele status van morele gemeenschappen – zowel die van minderheden als die van de meerderheid – in hoofdzakelijk levensbeschouwelijk liberale termen begrijpt. Er is ruimte voor religieuze en culturele pluriformiteit, mits deze het resultaat is van eigen keuzes en niet van groepsdwang. Bovendien moet de meerderheid deze pluriformiteit respecteren en niet haar eigen opvattingen over de inrichting van het leven opdringen, behalve voor zover het de levensbeschouwelijk liberale opvattingen betreft. Behalve de orthodox-Protestantse partijen laten weinig partijen een expliciet verzuilingsliberaal geluid horen, al zijn er bepaalde verzuilingsliberale instituties, met name onderwijsvrijheid, die door vrijwel alle partijen onderschreven worden, hoe levensbeschouwelijk liberaal deze partijen ook lijken te zijn. In het licht van deze voorgaande hoofdstukken komt het debat over de Rituele slachtwet, een initiatiefwet

van de Partij voor de Dieren, dat in hoofdstuk 6 wordt geanalyseerd wellicht als een gedeeltelijke verrassing. Dit debat, dat plaatsvond in 2011 en 2012, toont namelijk zowel onvervalste kenmerken van het levensbeschouwelijk liberalisme als sterke trekken van het verzuilingsliberalisme.

De levensbeschouwelijk liberale positie toont zich tijdens het debat over de Rituele slachtwet vooral in de wijze waarop een meerderheid van de partijen in de Tweede Kamer zich opstelt tegenover een minderheid van christelijke partijen (CDA, ChristenUnie en SGP) die zich tijdens het debat hard maken voor de gewetensvrijheid, oftewel voor de vrijheid er voor de meerderheid onbegrijpelijke opvattingen op na te houden. Deze meerderheid eist namelijk impliciet van de minderheid dat zij haar opvattingen over de rituele slacht ofwel kan verdedigen in termen die de meerderheid aanvaardbaar acht, ofwel deze opvattingen aanpast omdat deze kennelijk redelijke grond missen. Gewetensvrijheid speelt voor de meerderheid van de Tweede Kamer nagenoeg geen rol van betekenis. In de Eerste Kamer is dit niet het geval. Hier maken enkelen partijen, waaronder voormelde christelijke partijen maar ook de VVD, duidelijk dat in een liberale samenleving de meerderheid haar eigen opvattingen niet aan een minderheid mag opdringen. Daarmee nemen deze partijen een verzuilingsliberale positie in in het debat, welke positie uiteindelijk leidt tot de afwijzing van het wetsvoorstel ten behoeve van het nastreven van een convenant tussen de overheid en religieuze minderheden over rituele slachtpraktijken.

De debatten laten daarmee een gemengd beeld zien. In het algemeen lijkt het levensbeschouwelijk liberalisme de boventoon te voeren in het Parlement, maar op cruciale momenten en met betrekking tot cruciale instituties is het verzuilingsliberalisme doorslaggevend. Toch luidt een van de conclusies van dit proefschrift, die gepresenteerd worden in hoofdstuk 7, dat morele minderheidsgemeenschappen in Nederland onder druk staan. Deze conclusie volgt enerzijds uit de constatering dat juist in de Tweede Kamer het levensbeschouwelijk liberalisme sterk vertegenwoordigd is. Van de twee kamers in het Parlement is de Tweede, die direct gekozen wordt en in die zin dichterbij de kiezers staat, representatiever voor de wensen van de bevolking dan de Eerste, die zich over het algemeen gevoeliger toont voor de constitutionele en technisch-juridische beperkingen die in de weg staan aan het tegemoetkomen aan die wensen. Juist de debatten in de Tweede Kamer laten zien hoe een levensbeschouwelijk-liberale meerderheid een morele minderheidsgemeenschap onder druk kan zetten zich aan te passen aan meerderheidsstandpunten, door van haar

te eisen dat zij zich verantwoordt tegenover de meerderheid in voor de meerderheid begrijpelijke termen. Daarbij komt dat de conclusie dat minderheidsgroeperingen in Nederland onder toenemende druk staan goed past in een bredere historische ontwikkeling, die in het proefschrift wordt beschreven in hoofdstuk 2. Deze ontwikkeling, die nu eens wordt aangeduid als 'de terugtocht van het multiculturalisme', dan weer als de 'opkomst van het assimilationisme', wordt in hoofdstuk 2 geduid in termen van een geleidelijke verdringing van een impliciet beleden verzuilingsliberalisme in Nederland, die wortels heeft in de Verzuiling, door een groeiende overtuiging dat de Nederlandse samenleving zelf een morele gemeenschap is, die gestoeld is op liberale morele waarden die richtinggevend zijn in de inrichting van het eigen leven en die gedeeld moeten worden door alle inwoners, wil Nederland ruimte kunnen geven aan levensbeschouwelijke pluriformiteit. In het licht van deze ontwikkeling en van de in de debatten geconstateerde dynamiek tussen een levensbeschouwelijk-liberale meerderheid en vertegenwoordigers of pleitbezorgers van morele minderheidsgemeenschappen moet verwacht worden dat de druk op die minderheidsgemeenschappen om zich aan te passen aan de denkbeelden van de meerderheid eerder zal toenemen dan afnemen.

Hoofdstuk 8, tenslotte, stipt een aantal punten van het onderzoek aan die vanuit een specifiek politiek-filosofisch oogpunt opvallend zijn, althans nopen tot nadere politiek-filosofische reflectie. Centraal in dat hoofdstuk, dat een wat speculatiever karakter heeft dan de voorgaande hoofdstukken, staat de hierboven reeds genoemde dynamiek tussen het levensbeschouwelijke liberalisme en het verzuilingsliberalisme, en de uitwerking van een dergelijke dynamiek op de liberale vrijheden in een overwegend levensbeschouwelijk-liberale samenleving zoals de Nederlandse. Een belangrijk aspect van deze dynamiek is dat kritiek op morele minderheidsgemeenschappen door de meerderheid gepaard kan gaan met een afnemend zelfkritisch vermogen van die meerderheid, waarbij elk afwijken van de eigen meerderheidsopvattingen wordt afgedaan als klaarblijkelijk onredelijk. Hiermee verwordt de levensbeschouwelijk-liberale doelstelling kritisch te staan ten opzichte van de eigen opvattingen en verlangens tot een vrijbriefkritiek te uiten op datgene wat afwijkt van die opvattingen en verlangens. Daarmee bestaat in een levensbeschouwelijk-liberale samenleving het gevaar van een toenemende intolerantie voor alle andersdenkenden, niet alleen andersdenkenden die horen tot evidente morele minderheidsgemeenschappen. Dat de vrijheid van meningsuiting

een rol van betekenis kan spelen in de bescherming van afwijkende minderheidsopvattingen wordt tenslotte ontkend. In een overwegend levensbeschouwelijk-liberaal land maakt de vrijheid van meningsuiting de weg weliswaar vrij voor een discussie over dergelijke opvattingen, maar beschermt deze niet. Morele minderheidsgemeenschappen zijn echter niet gebaat bij discussie over hun opvattingen, maar bij bescherming van het recht anders te denken dan de levensbeschouwelijk-liberale meerderheid.

Curriculum Vitae

Floris Mansvelt Beck was born on the 24th of May, 1974 in Zeist, the Netherlands. He spent most of his pre-teen years in the United States, moving to the Netherlands in 1983. After graduating from high school in 1993 (*Lorentz lyceum*; Eindhoven) he studied History for two years at Leiden University, switching to Law in 1995. Though studying international public law and obtaining a degree therein in 2002, a number of courses in the philosophy of law sparked a lasting interest in issues of legal and especially political philosophy. After a year in the governmental traineeship program (*Rijkstraineeship, vijfde tranche*) he returned to the department of Legal Philosophy in Leiden as a Ph.D.-fellow in 2003. This attempt at a Ph.D. was aborted in 2005. The next two years he worked as lecturer in Public International Law, first in Leiden (as junior lecturer), then, from 2006 to 2008, at the *Vrije Universiteit* in Amsterdam. He joined the Institute of Political Science of Leiden University at the end of 2007 in order to conduct the Ph.D.-research culminating in this dissertation. He has worked as lecturer in Ethics and Political Philosophy at the same institute since 2013.

