

*Segregation through Anti-Discrimination:
How the Netherlands Got Divided Again*

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Another question repeatedly asked by students: why do I work at such a bad school? But why, I ask, do you think this is a bad school? Well, Sir, if this isn't a bad school, why don't any Dutch kids go here? If this was a good school, Dutch parents would send their kids here, too, wouldn't they?

Kees Beekmans, pre-vocational education teacher, in *De Groene Amsterdammer* (24 January 2004).¹

A Devilish Dilemma

In the autumn of 2003, SV Blerick, a local amateur football club in Limburg, in the south of the Netherlands, made headlines when the news broke that young players with ethnic minority backgrounds were temporarily being barred from becoming members of the club. The club's chairman explained that it was virtually impossible to get club members from minority backgrounds, or their parents, involved with the club as volunteers. Nearly all the work in the club was therefore left to a dwindling number of native Dutch members. If the number of club members from immigrant backgrounds were to increase any further, then it looked likely that the few remaining board and committee members would quit. If that were to happen, the club would fall victim to its own success. At that time, about 30% of the total membership of SV Blerick was from an ethnic minority background – far more than at most other football clubs in the region. In 1997, the club had won the Fair Play Award, precisely because of the large number of players from ethnic minorities.²

Since then, other clubs have contemplated similar membership caps. The chairman of RVC/Rijswijk, a football club in a suburb of The Hague, recently declared:

The percentage of members from ethnic minorities is currently 45%. We are seeking to prevent this from rising any further (...) I realise that we are treading a very fine line here

(...), but we have no desire to become a Turkish or Surinamese club and drive away our native Dutch membership.³

In the Netherlands, regional governments have set up some forty 'Anti-Discrimination Bureaus' to closely monitor, investigate and prosecute cases of suspected discrimination. And the day following the club chairman's *cri-de-coeur* brought a stereotypical response from the Anti-Discrimination Bureau in The Hague:

We intend to investigate whether this is morally permissible (...). It is an extreme measure and, in our view, socially very undesirable. With this step, the clubs are well on the way to promoting segregation.⁴

Hence the well-meaning chairs of SV Blerick, RVC/Rijswijk and many other football clubs that gladly wanted to become mixed clubs find themselves confronted with a devilish dilemma. The explicit institution of a quota for ethnic minority players presents a real risk of having to answer discrimination charges. Yet, without a quota, their clubs may become immigrant clubs, and, in the worst case, collapse due to a lack of volunteers to shoulder the administrative and organisational responsibilities.

Nor are football clubs the only social institutions in the Netherlands facing this dilemma. Schools and housing corporations, too, are finding it necessary to limit the number of pupils and tenants with an ethnic minority background, as once a certain percentage has been reached, schools or neighbourhoods tip over to become entirely occupied by ethnic minorities. Over the past decades, school boards have gained much experience with progressively 'blacker'⁵ schools and the 'white flight' causing this phenomenon. Already, schools have had to be shut down due to the fact that, at these schools, a steadily increasing proportion of minority students has been accompanied by an equally steady decline in the total student population.

The devilish part of the dilemma is that the ban on quota systems, while designed to combat segregation appears to have achieved precisely the opposite. In many cases, after the

percentage of ethnic minorities in football clubs, schools or neighbourhoods had risen to a certain level, the flood could no longer be stemmed. Thus, many a football club has become an ethnic club, many a school a black school and many a neighbourhood a residential area predominantly populated by ethnic minorities.

During the last thirty years, Dutch football clubs, schools and urban areas have provided more than a few empirical examples of the processes captured in the ‘Schelling Segregation Model’, developed by the economist Thomas Schelling – somewhat ironically around the time of the start of the Dutch segregation processes.⁶ In these pre-PC times, Schelling developed his formal model by placing pennies and dimes on a chess board, and then moving these around according to various rules. The board symbolised a city, while each square of the board representing a house or a lot. The pennies and dimes stood for agents representing any two groups in society, such as different ethnic groups, boys and girls, smokers and non-smokers, *etc.* The neighbourhood of any single agent occupying a location on the board consisted of the squares adjacent to his or her own spot. Thus, interior agents had eight neighbours, while boundary agents had either three or five neighbours. The behavioural rules spelled out under which conditions particular agents were happy in their locations, and what strategy they could follow when they were not. If an agent was unhappy, it would try to move to another location on the board, or possibly exit the board entirely. Not too surprisingly, Schelling found that the board quickly evolved into a strongly segregated location pattern, if the ‘happiness rules’ governing the agents were specified so that segregation was heavily favoured. More surprisingly and importantly, Schelling also discovered that initially integrated boards tipped into full segregation, even when the agents’ happiness rules expressed only a mild preference for having neighbours of their own type (that is to say, even when the agents were satisfied with having only a few similar agents living in their neighbourhood).⁷ We will argue that this latter version of the model accurately

describes the segregation processes at work in Dutch schools, residential areas and sports clubs during the last thirty years.

No one in the Netherlands seems happy with the currently high levels of segregation. Immigrant parents regularly indicate that they would like to send their children to mixed schools and clubs. Football club chairs, school boards and housing corporations generally favour mixed clubs, schools, and neighbourhoods. Native Dutch parents, neighbourhood residents, and members of sports clubs presumably have no objection to mixed schools, neighbourhoods and clubs, as long as they know that at some point ‘a line will be drawn’. They have no problem with children from ethnic minorities as classmates for their child, as long as their child is not the sole white child at a black school. Dutch natives do not mind having immigrants as neighbours, but have no desire to end up living in Little Marrakesh or Little Istanbul. Parents and native Dutch neighbourhood residents would therefore rather be safe than sorry. As there is no guarantee that the influx of newcomers will be halted at some point in time, people exit before the school has become wholly black, and before the neighbourhood has turned into a Little Turkey.

In this chapter, we will consider which factors, and which organisations, have contributed most to the splitting of Dutch schools, urban areas and football clubs into two parts – a black and a white one. We will show that, since the early 1970s, overly stringent anti-discrimination policies have served to promote segregation in the Netherlands by effectively stripping the well-intentioned directors of social institutions of the means to achieve some degree of diversity. As housing corporations, school boards and sport clubs have been barred from using any quota systems, no effective diversification policy has been possible, and –just as Schelling would have predicted– strongly segregated black and white neighbourhoods, schools and clubs have resulted. In our view, this re-dividing of the country –some thirty years after the (in)famous Dutch religious and ideological pillars had dissolved–

was an unfortunate development.⁸ We believe that growing up in ethnically segregated neighbourhoods, and attending predominantly black schools, adversely affect the self-perception of, and the opportunities available to, the children from ethnic minority backgrounds, and are also harmful to social cohesion. We will also offer a number of recommendations as to how the legal openings could be created that are needed to enable a diversity policy.

The larger, theoretical message of this chapter is that it can be as detrimental to place a taboo on hierarchical views and solutions as it is to rely exclusively on hierarchical perspectives and measures. Compared to the other policies that have been advocated, the quota systems that have been proposed –and rejected– for Dutch schools, cities and clubs during the last thirty years have been hierarchical measures. As the clumsiness-hypothesis retrodicts, the steadfast refusal to seriously consider any hierarchical solutions has led to policies that have not been successful according to any way of organising, perceiving and justifying social relations – indeed, to policies that have achieved exactly the opposite of what was intended.

Segregation in Public Housing

The Netherlands: A Segregated Country

During the early 1980s, urban sociologists Bovenkerk, Bruin, Brunt, and Wouters were studying ethnic tensions in the Utrecht neighbourhood of Lombok.⁹ They discovered that these tensions did not date from the period when the first immigrant workers from Morocco and Turkey had moved into the neighbourhood. Back then (during the 1960s and the 1970s), the neighbourhood residents had responded with hospitality, going out of their way to help their immigrant neighbours feel at home. The social relations in Lombok only began to

deteriorate when the number of immigrants soared (partly due to the practice of family reunification), and when it became unclear who was to socialize whom in Lombok.

In the Netherlands, non-western ethnic minority groups are mainly found in certain neighbourhoods in the major cities, such as Lombok in the city of Utrecht. According to Dominguez Martinez and Vreeswijk, from the Rotterdam Institute for Economic Studies, 83% of the Cape Verdeans in the Netherlands live in one of the major cities, of which 79% live in Rotterdam.¹⁰ 74% of the Ghanaians and 70% of the Pakistanis live in one of the four major cities. The figures are less extreme for the bigger ethnic population groups but remain considerable: 57% of the Surinamese in the Netherlands reside in one of the four major cities, as do 48% of the Moroccan and 36% of the Turkish population. Ethnic minorities, in both the major cities and the smaller municipalities, are very likely to live in immigrant neighbourhoods. 86% of the Turks and 82% of all Moroccan households inhabit neighbourhoods with an immigrant population of at least 20%. It should be noted that the immigrant neighbourhoods in question are mixed, with an immigrant population from a variety of backgrounds. The Netherlands has very few ethnically homogenous (such as exclusively Turkish or Moroccan) neighbourhoods. The net result of all this is that nearly one third of the inhabitants of the major Dutch cities belong to ethnic minorities, while the national average is approximately one in ten.

Compared to other countries, the Netherlands is a highly segregated country. Even so, it is often assumed that the level of segregation in the Netherlands is nowhere near as bad as it is in the United States. However, if, instead of looking at the ghettos in the metropolises of the United States, the Dutch situation is compared to those American cities that are more or less of the same size as the cities in the Netherlands, a different picture emerges:

Ethnic minorities are as segregated from ethnic Dutch as are blacks and Hispanics from 'Anglo' Americans (that is, non-Hispanic whites). However, Dutch minorities tend to live in more ethnically varied neighbourhoods (often with other immigrant groups). African

Americans, Hispanics and Asians do not share neighbourhoods to the same degree in the USA.¹¹

Ruud Koopmans has compared the segregation index for certain categories of ethnic minorities in various European cities, and has shown that the degree the degree of segregation in the cities of Rotterdam, Amsterdam and The Hague is relatively high, particularly as compared to German cities.¹²

The obvious question is how such a high level of segregation could have developed in the Netherlands. Is this urban settlement pattern a consequence of the preferences of immigrant and native inhabitants, does it have to do with policy (deliberate or otherwise), or is it a combination of these factors? To a limited extent, this pattern has to do with choices made by ethnic minority groups. A good example is that of asylum seekers who, once having been granted a residence permit, choose not to remain in the region where the asylum seekers' centre is located, but instead elect to move to one of the four major cities in the Netherlands. This phenomenon can be observed on a modest scale, in particular among Afghans and Iraqis.¹³ Many Surinamese also apparently choose to live in neighbourhoods with high concentrations of ethnic minorities.¹⁴ However, opinion research has never shown that Turkish and Moroccan immigrants prefer to live among themselves. When asked, these immigrants tend to express a preference for a more mixed neighbourhood. Ethnic minorities with the financial means to do so move to neighbourhoods on the outskirts of the city, just like native Dutch inhabitants of deprived neighbourhoods do.¹⁵

The Blok Commission, a recent parliamentary commission that examined thirty years of Dutch integration policy, concluded in 2004 that the current segregation should largely be attributed to government policy.¹⁶ The problems began back in the early 1970s, when migrant workers –unlike the newcomers before them: the immigrants from the (former) dominions of the Dutch Indies, Surinam and the Antilles– were no longer provided housing upon arrival in

the Netherlands. These workers were initially housed by their employers in dilapidated boarding houses, and were later forced to seek accommodations that they were able to afford by themselves. Many washed up in the cheapest neighbourhoods in the four cities of Amsterdam, Rotterdam, The Hague and Utrecht.¹⁷ A high-ranking civil servant who had worked at the time at the Ministry of Culture, Recreation and Social Affairs explained it as follows to the Blok Commission:

The Ministry argued in favour of a more even distribution of foreign migrants throughout the country, by providing housing in the various projects that were being realised during the seventies and the eighties. Immigrants could be decently housed in these dwellings among the ethnic Dutch population. However, this was a non-issue: one not to be discussed, as these people were different from the Surinamese, Antilleans and Indonesians, who were 'presented' with dwellings, which meant that indirectly, a form of diversification policy was followed. This did not hold for the foreign migrant workers.¹⁸

The Blok Commission also quotes Mr Molleman, the former Minorities Policy Director at the Ministry of the Interior:

At that time (...) it had already become clear that the influx of ethnic minorities would be concentrated in the neighbourhoods with the lowest rent levels. It was all very logical, but here was where [the] most underprivileged people lived, often in very deprived circumstances. Back then, I pointed out that the developments in the immigration politics would serve to increase the country's social problems and would impose increasingly heavy burdens on the poorest groups in society, who were least able to cope with these.¹⁹

A Ban on Diversification

In an attempt to cushion or prevent these foreseeable events, municipal councils and housing corporations began to pursue a more or less official policy of spatial distribution of ethnic minorities across neighbourhoods and multi-tenant buildings.²⁰ Such attempts to achieve a certain degree of dispersal were, however, quickly blocked by the authorities. Politicians and public authorities compiled various policy documents (memoranda, circulars, reports) in which ethnic diversification was condemned as being 'inadmissible' or 'unlawful'. In 1983, the State Secretary for Public Housing declared ethnic diversification to be in violation of the principle of non-discrimination:

[There are cases] where the term ethnic diversification policy is primarily understood to mean a more even distribution of population groups throughout the municipality, to be achieved by means of the allocation of housing (*inter alia*) based on ethnic criteria. In that case, individual choice and the available stock of dwellings no longer form the decisive factors; the municipality determines the concentration or the distribution of minorities on the basis of irrelevant ethnic criteria, to which the individual is subservient. To my mind, such a treatment of ethnic minorities could very well violate the non-discrimination principle. Reference could be made in this connection to the International Convention on the Elimination of All Forms of Racial Discrimination.²¹

In 1988, when it was found that the local housing policy still bore traces of ethnic-based spatial distribution, the government once again emphasized that all such practices had to cease:

The individual freedom of choice, the available housing supply and conventional distribution and allocation criteria are key. No heed will be paid to the demands and opinions of the present residents about the number of ethnic minorities in their residential area (...).²²

In the nineties, the concentration of migrants increased even further, partly as a result of the absolute ban on any form of dispersal, but also due to the ongoing liberalisation of the housing market, which meant that the housing corporations began to give less attention to the lowest-income groups.²³ In response, the government finally voiced some concern in 1997, and a subsequent Memorandum on Urban Renewal stated that:

In certain neighbourhoods, where the ethnic concentration is dominant or threatening to become so, a better quality of life and working environment can be promoted (...) by the redifferentiation of the housing supply.²⁴

Yet, by 2000, this concern had once again abated. The policy memorandum *Mensen, Wensen, Wonen* ('People, Wishes, Housing'), published in the name of the then State Secretary for Housing Mr Remkes, asserts that an ethnically homogenous residential population is not necessarily a problem, as long as this is not due to a lack of choice.²⁵

Local administrators, housing corporation boards and civil servants all informed the Blok Commission that they were concerned about the absence of opportunities to achieve any

form of diversity. Ms. Brewster, who works for a housing corporation in the Bijlmer, an impoverished borough of Amsterdam put it like this:

The Bijlmer district is my territory, and I see a concentration of similar problems. As all the people in this area live in apartments, it is difficult for both the housing corporation and the government to come to grips with the problems. Moreover, it doesn't make it any better for these people, as the children grow up in a situation where everyone is mired in the same hopeless conditions. All they see around them is that this is the way it is supposed to be.²⁶

Mr. Tuijnman, from Rotterdam (the second largest city in the country), pointed out that the possibilities for diversification beyond the city limits are almost wholly lacking and that a further liberalisation of the housing market can only aggravate the situation:

As far as public housing is concerned, Rotterdam is completely dependent on the goodwill of the surrounding towns. I very much doubt that this will lead to anything, especially if the liberalisation process eliminates all the instruments we have at our disposal.²⁷

The current spatial segregation is therefore largely the result of governmental policies, in particular the liberalisation of the housing market, as well as the deliberate choice to discourage any form of tenant dispersal by housing corporations and municipal executives.

The Role of the Courts

A few times, the courts have been involved in cases relating to anti-segregation policy.²⁸ A regulation regarding housing allocation that had been designed by the city of Rotterdam to foster a well-balanced population structure was declared void by the Crown as early as 1974, on the grounds that this was in contravention of the Housing Accommodation Act and the International Convention on the Elimination of All Forms of Racial Discrimination. A housing corporation in Eindhoven that had not been willing to cooperate with a proposed reallocation of dwellings was firmly reprimanded – its refusal being judged by the cantonal court to be 'overtly' discriminatory.²⁹

Yet several court decisions demonstrated more understanding for these anti-segregation attempts. In 1981, the President of the Rotterdam Court ruled that the municipal housing policy was not unlawful, as the proposed anti-segregation policy was intended to offer immigrants more opportunities to gain access to better housing accommodation.³⁰ In 1990, a Utrecht residents' committee protested against the influx of foreign families in their neighbourhood, only to be accused of racism in a letter from the city's Housing Management Department. The residents subsequently applied to the Municipal Ombudsman, who decided in their favour; the Housing Management Department was compelled to retract the letter.³¹

The legal options for a diversification policy, however, were restricted in 1994. The Equal Treatment Act specifically prohibited discrimination on the grounds of religion, conviction, political affinity, race, sex, nationality, sexual orientation or marital status by institutions with respect to housing. In theory, the Equal Treatment Commission –the quasi-judicial body that had to enforce the Equal Treatment Act– could interpret a decision made pursuant to an anti-segregation policy as an (admissible) form of affirmative action (article 2, paragraph 3 of the Equal Treatment Act). However, we have not been able to turn up any decisions of the Commission in which this reasoning was followed.

Overall, we have to conclude that the courts and the (court-like) Equal Treatment Commission have *not* played a major role in striking down any efforts to prevent urban segregation. If anything, the courts have left some room for the imposition of quota systems in cities, provided that these would benefit ethnic minorities as much, if not more, than ethnically Dutch people. The taboo on quotas in urban planning was mainly laid down by the Dutch government at all levels.

Segregation in Education

Mixed Neighbourhoods, Segregated Schools

On 21 February 2003 Monique Kremer and Shervin Nekuee sounded the alarm on the op/ed pages of *De Volkskrant*, one of the leading Dutch newspapers. They were looking for a school for their son. Sheyda, and opined:

Our neighbourhood is perfectly mixed: half is from an ethnic minority background, while the other half is native Dutch. However, we lack a mixed school in our neighbourhood. There is a Christian primary school down the street, which is attended by only very few Dutch Christians. The school is black, but not mono-ethnic: 32 nationalities currently attend the school. There are clear advantages to so much diversity. Children from richly varied backgrounds mix together and learn to cope with differences. And, just as important: Dutch functions as their common language. Nonetheless, Sheyda's foreign-born father would rather that his son did not attend this black school. He is acutely aware of the narrow-mindedness of the dominant class in the Netherlands, the middle class. Unlike in classic immigration countries such as the United States, knowledge and professional skill is simply not enough to succeed, as is demonstrated by the thousands of well-educated refugees sidelined by unemployment. To 'make it' in the Netherlands, to get ahead, it is vital to have become thoroughly immersed in the codes of conduct of the mighty middle class. To succeed, Sheyda should attend the highly recommended white school in a different neighbourhood. (...)

Sheyda's native Dutch mother does not want Sheyda to attend this school. She is afraid that he will be bullied or teased by classmates because of his dark eyes and non-Dutch sounding name. As an adult, it can be a mark of pride to be different, but children want nothing more than to be the same as 'everyone else'. Moreover, this white school is no place for Sheyda to prepare for life in the Dutch Randstad. In a city where half of the population is made up of ethnic minorities, it is never too soon to start adjusting to cultural differences. Sheyda should feel at home in a city characterised by diversity. He must learn to surmount cultural bounds easily and flexibly in order to be able to live together with his fellow townsmen.³²

The segregated housing situation in the Netherlands has also aggravated the ethnic divisions in schools. Ethnic minority children who are growing up in deprived, black neighbourhoods usually go to school in their own neighbourhoods. Obviously, the neighbourhood school will often be predominantly populated by the children of immigrants. However, in many areas, the segregation in education is worse than the residential separation. In neighbourhoods where 40, 50 or 60% of the population consists of native Dutch people, and 60, 50 or 40% is made up of ethnic minorities, the population distribution of the neighbourhood is not reflected in that of the primary schools. Instead, in such neighbourhoods there is often a black school next to, or

across from, a white school. In some 7% of the Dutch primary schools, ethnic minorities account for over 50% of the student population.³³ Initially, black schools constituted a big-city problem, but today the number of black schools in medium-sized communities is on the rise as well. Even though a few native Dutch pupils from lower socio-economic backgrounds can sometimes be seen at a black school, well-educated middle class immigrant parents frequently choose to send their children to a white school and/or to move to a white neighbourhood.³⁴

Rusk, Frieling and Groenemeijer conclude in their comparative study that the spatial segregation in Dutch cities corresponds to that in American cities of the same size.³⁵ However, the segregation in education is much greater in the Netherlands than in the United States. They point out that in American studies on the effects of education since the 1960s, two conclusions are usually drawn: (1) a student's school career and academic success are largely determined by the socio-economic status of their family and that of their classmates; and (2) children from lower socio-economic classes benefit from attending a middle class school. Dutch researchers have frequently doubted whether these effects also occur in the Netherlands, arguing that schools in deprived neighbourhoods in the Netherlands are eligible for extra funding (each ethnic minority student counts as 1.9 students in the educational system, and hence more teaching staff can be hired). Yet, the assumed beneficial effects of this policy of positive discrimination on education in deprived areas have never been conclusively demonstrated.³⁶

The report of the Blok Commission lists a number of studies that compare the learning performances at black and white schools. According to these studies, a higher concentration of ethnic minorities results in lower scores in language. The Commission's report also points out that the composition of school classes affects the scores of students from ethnic minorities. The problem that has hobbled a lot of educational research is that children attending a black school also tend to come from the lower socio-economic classes, and tend to

have parents with only little education. For this reason, it is very difficult to establish the effect that the schools' ethnicity has on the pupils' performance, independently from such other factors as family background, socio-economic status, or the neighbourhood that they grew up in.

The Equal Treatment Commission Rules

Attempts to combat segregation at schools through following a diversification policy have been more or less forbidden by the Equal Treatment Commission – the powerful, quasi-judicial arbiter in Dutch anti-discrimination matters. A Protestant school in IJmuiden pursued a quota policy for ethnic minority students of 25%, prompted by the thought that the school population should largely reflect the neighbourhood in which the school is located. As approximately 15% of the residents of Zee- en Duinwijk (which is the name for this neighbourhood) came from an ethnic minority background, the school felt that it had already been generous with a quota of 25%. Ethnic minority students who registered for a class in which the 25% quota had already been reached were placed on a waiting list. The Anti-Discrimination Bureau in Haarlem immediately requested the Equal Treatment Commission to call the school board to order, which it duly did. The Commission ruled that the diversity policy of the school board illegally discriminated against individuals on the grounds of cultural background.³⁷

The school board of a group of Protestant schools in Ede attempted to implement an admissions policy on the basis of the language spoken in the home (which is different from the criterion of ethnicity). Children for whom Dutch was a second language (called 'NT2 students') were spread as much as possible across the various affiliated schools, after consultation with the parents. A quota of 15% NT2 students per class was adhered to.

Experience had taught the school board that exceeding this quota would prompt a brisk exodus of the white students; native Dutch parents would start to transfer their children to a different school. In this case, the Equal Treatment Commission was milder in its judgement, as the NT2 criterion could be defended in terms of educational motives. Nonetheless, the school board in Ede lost the case in the end, as it was unable to provide conclusive evidence that schools with more than 15% NT2 students per class delivered a poorer educational performance. The Commission also found it unreasonable to continue to designate immigrant students in more advanced classes (who had therefore attended Dutch schools for a number of years) as NT2 students. The fact that the Commission did not immediately label the NT2 criterion a ‘dubious distinction’ may seem hopeful. Yet, the conditions laid down by the Commission for invoking this criterion were formulated so strictly that, in practical terms, a successful appeal for diversity on the grounds of NT2 was virtually ruled out.³⁸

And indeed, at least for the time being, the Equal Treatment Commission appears determined not to stray from its very narrow path. As recent as 18 February 2005, the Commission reprimanded the municipality of Tiel for having allowed local schools to refer immigrant parents who had applied for a place for their children to other local schools whenever the percentage of black kids at the schools in question had equalled the percentage of black people in the neighbourhood. Over the last ten years, these arrangements had succeeded in reducing the number of black schools to zero, as well as in stopping the previous ‘white flight’ from the municipality. Yet, the Commission ruled that these policies are too discriminatory to be allowed to continue.

The case law of the Equal Rights Commission with respect to private schools that are seeking to retain their identity again poses a bitter dilemma. According to the Equal Treatment Act, private schools are entitled to refuse students on the basis of the religious or life principles of the parents. If a school chooses to adhere to this principle, it is required to be

consistent and to refuse all children holding alternative beliefs. A school, which presumes that a quota of, say, 15% of children with different religious beliefs poses no danger to its identity, is not permitted to implement this reasoning. The choice is stark: either apartheid based on religious beliefs and convictions, or an open admissions policy with the corresponding risks of becoming a black, segregated school from which white students have fled.³⁹

All or Nothing?

Segregation through Anti-Discrimination

It therefore appears that there is indeed a correlation between the high degree of segregation in the Netherlands on the one hand, and the antidiscrimination policies pursued over the past three decades on the other. As far as housing is concerned, this cannot be directly attributed to the case law of the Equal Treatment Commission, or of the regular courts. Instead, urban segregation seems to be due to a self-imposed reticence on part of the Dutch state, which, at all levels, has remained very afraid that any attempt to spread ethnic minorities across the country would amount to discrimination. After the city of Rotterdam was once reprimanded by the courts (in 1974) for pursuing a quota policy in the allocation of public housing, many an administrator has been content to assume that diversification was ruled out by law. This assumption recurs in reports from advisory bodies, politicians' speeches and government documents without the involvement of the courts, or semi-judicial authorities like the Equal Treatment Commission.

The situation in education is somewhat different. Twice, the Equal Treatment Commission forbade well-meaning school boards from implementing a quota policy that was intended to keep the schools mixed. In particular, private schools have been compelled by the

Equal Treatment Commission to choose between all or nothing. Private schools have been permitted to set limits on the number of minority pupils they admit, but only if they stringently guard their –in most cases, Christian– identity. As a result, these schools have remained wholly white.

The anti-discrimination logic that has been applied by the Equal Treatment Commission has thus achieved the exact opposite of what was intended. On the one hand, schools have been allowed to stringently preserve their religious identity, corporations have been free to demolish subsidised housing for luxury villas, and football clubs have been allowed to charge high admission fees – all measures that have de facto excluded minorities. On the other hand, the use of explicit quotas in order to promote mixed schools, mixed neighbourhoods and mixed clubs has remained taboo – even when the proposed percentages for minorities have been considerably higher than the percentages of ethnic minorities living in the neighbourhood.

The Dutch anti-discrimination policies relating to the fields of housing and education have not nearly been clumsy enough. In fact, the extent to which these policies have backfired again illustrates the thesis that when attempts to solve (or pre-empt) pressing social issues are not creative combinations of all the ways of organising, perceiving and justifying social relations, then these efforts tend to be self-defeating. However, contrary to the failures analysed in chapters 2, 3 and 6, in this case there was not an over-abundance of hierarchical measures, but rather a dearth of such measures. This becomes clear when we spell out which ways of organising and thinking were present, and which ones were not. Any individualistic perspective on integration and immigration would seek to increase unlimited, free choice. As such, it would first and foremost play down the extent to which immigration would create social tensions. In addition, it would assume that any tensions that might have arisen could easily be solved by offering individual people as much choice and opportunity –in housing,

education, professions, *etc*– as possible. (For instance, the arch-typically individualistic Cato Institute in Washington, D.C. has advocated opening the United States labour market to foreign workers, arguing –among other things– that this would *not* lead to a massive influx of workers).⁴⁰ There is one proviso, though: as individualism puts individual choice on a pedestal, it would also be inclined to respect the right of individuals to form a school or sports club that would reserve the right to exclude other individuals from becoming members; this riddle is, of course, a perennial dilemma in individualistic thinking. Still, it is possible to unearth traces of individualism in the policies that have contributed to the emergence of the high levels of segregation in the Netherlands over the past three decades – in particular in the ongoing privatisation of Dutch housing. The continuing shift from public to private housing in the Netherlands has obviously reduced the possibilities for a more hierarchical steering towards integration of immigrants coming into the country. Another individualistic element was present in the emphasis that, back in 1983, the then State Secretary for Public Housing put on individual freedom to choose where to live. Yet, these are trace elements. The main thrust of the Dutch anti-discrimination policies has been egalitarian. Egalitarianism is of course the way of organising, perceiving and justifying that stresses solidarity and similarity between people, and that is constantly engaged in uncovering, protesting and reducing power inequalities and hidden forms of discrimination. The absolute refusal by the Dutch government to allow the making of any *distinctions* along ethnic or linguistic lines, on the assumption that any such distinctions could only serve divisionary or racist purposes, evinces one particular version –a ‘politically correct’ one– of this egalitarian spirit. The odd one out is therefore the hierarchical way of organising, perceiving and justifying social relations. Differentiating the whole population into precise segments, and then prescribing, and imposing, the desired representation of these segments in schools, neighbourhoods, dwellings and sport clubs is a quintessentially hierarchical undertaking. As the Dutch integration and

anti-discrimination policies have not left any room for these hierarchical measures, they have achieved the opposite of what has been intended: the emergence of a highly segregated society divided between more affluent, white neighbourhoods, schools and sports clubs, and much poorer and more desolate black urban areas, schools and clubs, in which resignation and fatalism have taken hold. The emergence of these divisions has done nothing for the abatement of discrimination in the Netherlands. A recent report of the National Bureau against Racial Discrimination concludes that there has been no general, long-term decline of racism within the Netherlands, while acts of anti-Semitism have risen in recent years.⁴¹

Desegregation through Affirmative Action

A clumsier approach –with at least some room for hierarchical solutions– may help to reverse the trend towards ever more segregation in the Netherlands. Let us first examine the field of education, where some case law has already been accumulated. We propose that the Equal Treatment Commission starts allowing schools to apply quotas under certain circumstances. The simplest way would be through invoking article 2, paragraph 1, of the Equal Treatment Act, which permits an indirect distinction to be applied whenever this can be justified.⁴² On this legal basis, the Equal Treatment Commission could begin to relax the requirements relating to quotas for the so-called ‘NT2’ students. Thus, an objective criterion could be developed that would not discriminate along specifically ethnic lines: second- and third-generation immigrant students who speak Dutch at home will not be far behind in language skills, while children of newly arrived asylum seekers will be, regardless of their ethnic heritage. Too many students with very poor Dutch language skills tend to drag down the performance level of the whole class, and typically place an enormous burden on teachers. It is therefore a legitimate aim for schools to set limits on the share of children with poor Dutch

language skills. A positive side effect would presumably be that –under this arrangement– white parents would become less interested in sending their children to predominantly white schools, thus preventing other schools from becoming entirely black.

Another option is offered by article 2, paragraph 3, of the Equal Treatment Act – the affirmative action article. This article permits a direct or indirect distinction to be made whenever this grants an ethnic or cultural minority a privileged position through which actual inequalities are eliminated. There is sufficient evidence to conclude that minority students would benefit from attending mixed schools, and that the existence of integrated schools would thus help to level the playing field for the various ethnic groups. However, several hurdles remain to be overcome. For example, paragraph 3 of article 2 states that the objective of the distinction must be to grant a privileged position to individuals belonging to a minority group. This could be interpreted as implying that the school quota for ethnic minorities should be higher than the percentage of ethnic minorities living in the neighbourhood. This would also prevent any school boards from using the quotas for the less lofty purpose of keeping the school relatively white. A trickier problem could arise if minority parents wanting to register their children at a particular school that had already met its quota were to argue that they had been placed at a disadvantage compared to native Dutch parents for whose children there would still be places available. A quota policy could only be justified in terms of ethnic groups as a whole, as these groups would be better off than in the case of segregation, but would not always be a boon to each individual member of every minority group. To assuage this problem, municipalities or school boards should arrange to have the children who could not be offered admission to their preferred school placed at other, comparable schools close by.

In the near future, the city of Rotterdam will offer a very interesting test case. The municipal executive has announced a change in policy with regard to admissions to primary

schools. It has identified all the primary schools which do not mirror the ethnic composition of the neighbourhood population – according to this criterion, 18 schools in Rotterdam are too white, while 20 are too black. The alderman responsible for education has proposed that these schools will work with quota, for native Dutch pupils and immigrant pupils respectively, in order to get a more balanced student population.⁴³ The proposal has met with some opposition, with critics referring to the Equal Treatment Act, but it has been favourably received by the municipal council, and will be put into practice in the coming years.

With regard to public housing, there have thus far been very few judicial decisions that have explicitly prohibited the striving for integration and diversity. Moreover, there are numerous socially accepted instances where a representative composition has been aimed for, and which have rarely been held up for review by a judicial institution. For instance, in student housing an equal number of girls and boys is usually considered desirable, and personnel managers tend to prefer an even mix of older and younger employees. The desire to achieve a balanced representation of all the relevant groups within a population is also often decisive to the composition of innumerable public participation and advisory bodies, while the editorial boards of academic journals frequently attempt to attract a larger number of younger and/or female members. Maintaining or achieving a balance is accepted in all these instances, and virtually no one has ever thought of calling in the law. Furthermore, housing is characterised by a host of other restrictions on the choice of places to live, such as safety, nature, habitat or income requirements, all of which are generally accepted.

The housing corporations should break with their overly restrictive and largely self-imposed interpretation of the law, and instead begin to apply representativeness, or social cohesion, as the appropriate criterion with which to limit the freedom of people to choose where to live. It is by no means certain that the courts, or the Equal Treatment Commission, would not permit this.⁴⁴ Should a case of this kind be brought before the Equal Treatment

Commission, again either paragraph 1 or 3, of article 2, of the Equal Treatment Act would offer the best legal recourse, as these paragraphs allow for various criteria (such as the promotion of social cohesion) that justify affirmative action-policies.

Finally, the football clubs in Blerick and Rijswijk: what admissions policy should they pursue? As far as we are concerned, setting quotas is perfectly legitimate, provided the clubs are able to meet a few requirements. In order to avoid any semblance of discrimination, the quota would have to be higher than the share of ethnic minorities in the clubs' catchment areas. Furthermore, the clubs should have first tried out other alternatives. Have they seriously attempted to recruit minority parents as volunteers? Some clubs allow new members to join only after the prospective members, or their parents, have committed themselves to undertaking a number of services or jobs for the club. If these clubs could show that this admission rule has not had its desired impact, temporary quotas should be allowed as a legitimate choice. Better to have a football club with a quota than no football club at all. So far, the events in Blerick and Rijswijk appear to have proven us right. In Blerick, the number of immigrant volunteers rose from three to twelve once the club installed a quota.⁴⁵ The football club RVC/Rijswijk, on the other hand, has recently announced a merger with FC Kranenburg and will cease to exist as an independent club.

The solutions that we propose are eminently clumsy. By bringing quotas back in we restore pride of place to the hierarchical way of organising. Yet, by insisting that these quotas be accompanied by arrangements (such as cooperation between schools) that would ensure that any quotas would not significantly impinge on individual choice, we also cater to the individualistic perspective (which, in any event, is already being taken care of by the ongoing privatisation of Dutch housing). Last, we assuage egalitarian concerns regarding lack of solidarity and the dangers of social stigmas by arguing that quotas for ethnic minorities in

urban areas, schools and clubs should only be allowed after less drastic measures have failed, and should always be higher than the proportion of ethnic minorities in the immediate area.

Endnotes

¹ All quotes from the Dutch have been translated by the authors.

² *Dagblad De Limburger* (11 December 2003).

³ *Haagse Courant* (21 January 2004).

⁴ *Haagse Courant* (22 January 2004).

⁵ Please note that in the Netherlands, unlike for instance in the United States, it is widely acceptable to refer to citizens from a non-western ethnic background as 'black' people, and those from a western background as 'white people'. In the Netherlands, to the best of our knowledge, virtually nobody has ever protested these terms. They are not perceived to be pejorative in any shape or form, and they are routinely used in academic discourse, as well as civil (in both senses of that term), discourse. The same applies to 'black/white' schools, and 'black/white' neighbourhoods.

⁶ Thomas C. Schelling, *Micromotives and Macrobehavior* (New York: W. W. Norton, 1978), pp. 147-155.

⁷ For the formal model, see for instance:

<http://www.econ.iastate.edu/tesfatsi/demos/schelling/schellhp.htm>.

⁸ Arend Lijphart, *Verzuiling, Kentering en Pacificatie in de Nederlandse Politiek* (Amsterdam: De Bussy, 1968).

⁹ F. Bovenkerk, K. Bruin, L. Brunt and H. Wouters, *Vreemd Volk, Gemengde Gevoelens: Etnische Verhoudingen in een Grote Stad* (Meppel: Boom, 1985).

¹⁰ Silvia Dominguez Martinez and Annemiek Vreeswijk, 'Ruimtelijke Concentratie van Allochtonen', in: Justus Veenman (ed.), *De Toekomst in Meervoud: Perspectief op Multicultureel Nederland* (Assen: Van Gorcum, 2002), pp. 38-42.

¹¹ David Rusk, Dirk Frieling and Leon Groenemeijer, *Inside Game/Outside Game: Segregation and Spatial Planning in Metropolitan Areas*, study commissioned by the ministries of the Interior, Economic Affairs and Agriculture, Nature Management and Fisheries and the cities of Arnhem and The Hague (2001).

¹² Ruud Koopmans, 'Het Nederlandse Integratiebeleid in Internationaal Vergelijkend Perspectief: Etnische Segregatie onder de Multiculturele Oppervlakte', in: Huib Pellikaan and Margot Trappenburg (eds.), *Politiek in de Multiculturele Samenleving* (Meppel/Amsterdam: Boon, 2003), pp. 64-100.

¹³ Dominguez Martinez, and Vreeswijk, *op. cit.*

¹⁴ Verwey Jonker Instituut, *Bronnenonderzoek Integratiebeleid* (Utrecht, 2003).

¹⁵ Dominguez Martinez and Vreeswijk, *op. cit.*, p. 38, and The Blok Commission, *Bruggen Bouwen: Report of the Parliamentary Commission on Integration Policy* (The Hague: Tweede Kamer der Staten-Generaal, 2004), p. 382. Available at:

http://www.tweedekamer.nl/organisatie/voorlichting/commissies/eindrapport_integratiebeleid.jsp.

¹⁶ Blok Commission, *op. cit.*, p. 352.

¹⁷ Blok Commission, *op. cit.*

¹⁸ Blok Commission, *op. cit.*

¹⁹ Blok Commission, *op. cit.*, p. 371.

²⁰ Blok Commission, *op. cit.*

²¹ Verwey Jonker Instituut, *op. cit.*, p. 143.

²² Verwey Jonker Instituut, *op. cit.*, p. 151.

²³ Blok Commission, *op. cit.*, p. 374.

²⁴ Verwey Jonker Instituut, *op. cit.*, p. 155.

²⁵ This report can be downloaded from the website of the Ministry of Housing, Spatial Planning and the Environment. See:

<http://www.vrom.nl/pagina.html?id=2706&sp=2&dn=13542>.

²⁶ Blok Commission, *op. cit.*, p. 393.

²⁷ Blok Commission, *op. cit.*, p. 393.

²⁸ Based on information taken from the overview provided on the website of the National Bureau against Racial Discrimination (www.lbr.nl), in the section on law and legislation, subparagraph 'housing'.

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- ²⁹ Koninklijk Besluit (Royal Decree) of 19 June 1974, *Bulletin of Acts, Orders and Decrees* 1974, 496.
- ³⁰ Decision dating from 10 April 1981, NJ 1981, 359.
- ³¹ Decision Ombudsman Municipality of Utrecht, 4 September 1990, summarized on the website of the National Bureau against Racial Discrimination, *op. cit.*
- ³² Monique Kremer and Shervin Nekuee, 'Overheid moet Segregatie Aanpakken', *De Volkskrant* (21 November 2003), p. 7.
- ³³ Blok Commission, *op. cit.*, p. 329.
- ³⁴ Blok Commission, *op. cit.*, pp. 320-331.
- ³⁵ Rusk, Frieling and Groenemeijer, *op. cit.*
- ³⁶ *Ibid*, p. 79.
- ³⁷ Decision Equal Treatment Commission, 2001-99.
- ³⁸ Decision Equal Treatment Commission, 2003-105.
- ³⁹ Bart Vermeulen, *Witte en Zwarte Scholen: Over Spreidingsbeleid, Onderwijsvrijheid en Sociale Cohesie* (The Hague: Elsevier, 2001), and Margot Trappenburg, 'Schoolkeuze en Apartheid in Nederland', *Krisis* (Vol. 4, No. 4, 2003), pp. 74-84.
- ⁴⁰ See, for instance, Daniel Griswold, 'Willing Workers: Fixing the Problem of Illegal Mexican Immigration into the United States' (Washington, DC: The Cato Institute, 2002). Available at: <http://www.freetrade.org/pubs/pas/tpa-019.pdf>.
- ⁴¹ Landelijk Bureau ter Bestrijding van Rassendiscriminatie, *Racisme in Nederland: De Stand van Zaken* (Rotterdam: February 2004), available at: <http://www.lbr.nl/?node=1231>.
- ⁴² The Equal Treatment Law seeks to forbid discrimination on the basis of religion, world view, political conviction, race, gender, nationality, sexual identity or marital status. Article 2, paragraph 1 states that making distinctions can be justified if there is a legitimate goal and the means to accomplish that goal are suitable and necessary. Article 2, paragraph 3, states that making distinctions can also be justified if they are part of a policy that aims to favour women or members of an ethnic minority group, provided the policy is reasonable given its goals.
- ⁴³ See: www.rotterdam.nl/smartsite2044732.dws?MainMenu=0 (22 November 2004).
- ⁴⁴ However, compare Equal Treatment Commission 1998-105. This case related to a white male candidate who had been rejected by the programme council of a cable company. The cable company strove to achieve an evenly representative programme council (male, female, old, young, native Dutch and ethnic minority members). Not an entirely unreasonable striving for a programme council, but nonetheless designated by the Equal Treatment Commission as being inconsistent with the Equal Treatment Act.
- ⁴⁵ *NRC Handelsblad* (28 December 2004).