

## ON ENTERING THE LIBERAL STATE

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### 1 INTRODUCTION

Ever since the twentieth century renaissance of political philosophy, that is since the publication of Rawls's *A Theory of Justice*, political philosophers have thought about the right combination of liberty and equality, the foundations of liberal equality, the relation between rights and duties, and the importance of communities. The so-called liberal-communitarian debate was shaped by several now famous 'primary position authors' (Rawls, Nozick, Ackerman, Dworkin, MacIntyre, Walzer, Barber) and kept alive by numerous lesser gods who took the trouble of reading, questioning, refining and criticizing everything that was written. Applied political philosophy turned out to be another respectable line of occupation. One could try to translate philosophical positions into practical solutions for policy problems: a Rawlsian environmental policy (several varieties are discussed in Manenschijn 1992), a Walzerian education (Gutmann 1987), a Rawlsian health care system (Daniels 1988), a Walzerian health care system (Trappenburg 1997), a Walzerian gender policy (Okin 1987), a Dworkinian minority policy (Kymlicka 1989), a Walzerian social security system (Van der Veen 1994), etcetera. Some of the lesser gods did such an excellent job that they readily turned into real gods themselves.

Recently political theorists plunged into another area of application which might prove to be a major new topic in its own right: the area of international justice. Many difficult questions of normative philosophy present themselves in this area: How much international redistribution of earthly resources is warranted from the perspective of justice? Are third world countries entitled to humanitarian aid or development aid? Do first world countries have the right to erect trade barriers in order to protect their markets? Should a liberal state allow newcomers on its territory and if so, which newcomers? Economic immigrants from poor third world countries? Political refugees? Victims of war? Victims of dictatorial regimes? Citizens from former colonies? Family members of one or more of these groups? And how many of them should one admit to one's territory? Should the borders be open, closed, 'fairly open', 'fairly closed', temporarily open, temporarily closed, or what? One might very well argue that these are not merely questions concerning the application of theories of justice; these are questions which ought to have been addressed at the very outset. Political philosophers have thought about 'equality of what' for a number of years without discussing the question 'equality between whom', whereas this latter aspect might be considered equally important (cf. De Beus 1995). Gradually they have started to remedy this deficiency, partly because the primary position authors took up the challenge after all (Rawls 1993, Walzer 1994, Ackerman 1994), partly because the aforementioned application specialists tried to rearrange the original theories so as to incorporate and solve problems of international justice. Some political philosophers fabricated theoretical positions on questions of international justice based on or inspired by Rawls's *A Theory of Justice* (e.g. Beitz 1979, Pogge 1989, Pogge 1994), others tried to build a position with Habermasian ingredients (Bader 1995), still others used utilitarian (Goodin 1988) or communitarian arguments (Miller 1995).

In this article I do not intend to review or evaluate this literature. That has been done by others already.<sup>2</sup> Instead I will try to add to the ongoing debate on international justice, by constructing what I hope is an interesting position with regard to immigration politics. I will use ingredients from two major theories of justice: the liberal theory of Bruce Ackerman (*Social Justice in the Liberal State*, 1980) on the one hand and the more or less communitarian theory of Michael Walzer (*Spheres of Justice*, 1983)<sup>3</sup> on the other. Two preliminary questions on this project may be

raised. First, is it acceptable and theoretically sound to aim for patchwork positions, consisting of both liberal universalist and communitarian arguments? And second, why choose these two relatively old primary positions, why not refer to more recent literature? As to the first question; for some years now, the debate between liberals and communitarians has become less fierce. Several famous liberals (notably Rawls and Dworkin) are now referred to as communitarian liberals (cf. Rijpkema 1995, Mulhall & Swift 1996), whereas distinguished communitarians acknowledge the existence and the necessity of some universal liberal values (Walzer 1996). It should be alright to formulate mixture positions using arguments from both sides by now. As to the second question: building on what was built during the last couple of years may not always be the only way to make progress. Sometimes it can be worthwhile to step back a little and try to fabricate a new perspective, using original ingredients as they were formulated by primary position authors in their standard works.

## 2 ACKERMAN

Ackerman's theory of justice is less familiar than Rawls's, Dworkin's or Nozick's.<sup>4</sup> It may require a short introduction or some freshening up. In Ackerman's opinion social justice consists in dialogue. Citizens in a liberal state are entitled to question one another on the legitimacy of their claims to power, wealth and resources. In answering each other's questions they have to abide by the three golden rules of liberal dialogue: rationality, consistency and neutrality. An answer is irrational when it cannot possibly be interpreted as an answer to the question posed (thus someone who starts singing a nursery rhyme when asked why he should be entitled to certain resources does not pass the rationality test). Speakers are considered inconsistent when their answers to one citizen's questions cannot be reconciled with their answers to other citizens' questions (thus someone who opposes abortion because he considers human life inviolable at all circumstances cannot argue consistently in favor of the death penalty). Speakers violate the neutrality principle when they use arguments that can be reduced to either of two statements: 'I am a better person than you are' or 'My conception of the good is better than yours'.

Ackerman asks his readers to join him on a spaceship that is travelling to another planet. During our journey to the new world we discuss the distribution of the new planet's resources, guided by the requirements of liberal conversation. We deal with a large variety of questions ranging from the pros and cons of utilitarianism, the rights of parents toward their children and vice versa those of children toward their parents, the place of the school in the liberal state, to abortion and genetic engineering.

Some of Ackerman's most penetrating dialogues are about citizenship. In order to qualify as a citizen of the liberal state one has to be able and willing to answer questions. One has to 'pass the dialogic test'. Hence trees and stones will never qualify, nor will animals as long as they remain mute. This might change though. As soon as apes would be able to engage in meaningful conversation and to question our claims to power and resources, we would have to acknowledge their claims to citizenship. We cannot refuse citizenship to individuals simply because they are hairy or inclined to live in trees. Citizenship is a political concept, not a biological one. This likewise entails that human beings who cannot possibly speak up for themselves (because they are senile, severely mentally retarded, unborn and residing in a womb or whatever) do not qualify as citizens of the liberal state. Citizens may nevertheless choose to award these fellow human beings some measure of protection, but their claims depend on what proper citizens think they should have. Their rights are less secure than those of talking apes (Ackerman 1980: 80).

Our spaceship, the Explorer, arrives on the new planet. We abide by the rules we developed during our journey and distribute goods and resources in peace and harmony. And then, one day, a

second spaceship, the Apollo, parks next to ours. Its inhabitants descend and demand a share of our resources. We must admit that they pass our dialogic test. They are not at all like stones or trees or senile human beings. Moreover, they declare that they are perfectly willing to endorse our principles; they will abide by the rationality, neutrality and consistency rules. Do we have to share our planet with them? Ackerman seems to think that we have to, since we cannot come up with any legitimate argument against it. Arguments against sharing with the Apollonians ('we were here first!') will bring us into conflict with our own conversational rules ('You are not claiming first people are better than those who arrived at a later date, are you? For that would be a breach of the neutrality principle'). It would be different if the Apollonians were planning to destroy our liberal state, if they were Nazis or totalitarian ideologues. A liberal state may refuse entrance to those who threaten to destroy its foundations. But those newcomers who evidently qualify as liberal citizens, who are willing to abide by our rules, ought to be given their share of the resources. The first principle of the Ackermanian immigration policy runs as follows:

1. Newcomers who are willing to respect the basic principles of the liberal state have a prima facie right to become citizens.

Ackerman's Explorer citizens have to treat the Apollonians in the same way as they treat each other. That is, they cannot deny them a share of the resources because they adhere a certain religion, because they have strange purposes in life, because they insist on wearing turbans or headscarfs, or because their skin is the wrong colour. Using any of these criteria in an admission procedure would violate the neutrality principle. Neither are the Explorers allowed to ask the Apollonians why they chose to come to the Explorers' planet in the first place. (Was there no other planet available? Was their former planet destroyed by a meteor? Were they persecuted on their home planet? Or did they just hope for better things when they set foot on the Explorers' planet?) The answers to these kind of questions should not determine the results of the admission procedure. We can hear the echo of traditional American immigration policy: immigrants may have all sorts of reasons to come to the United States. They may come to make a fortune, to start a new life, to establish a protestant community, to flee totalitarian persecution, to marry a wealthy American or whatever. Their reasons for coming should not be held against them. The second Ackermanian immigration principle can be formulated as a simple commandment: Thou shalt not discriminate. Or, in a bit more elaborate form:

2. Citizens of a liberal state have to uphold the neutrality principle when admitting newcomers. They are not to discriminate between newcomers on any basis whatsoever.

At that point Ackerman decides to translate his immigration dialogue to a "Realer World", to transfer it to the border between the poor East and the rich West (Ackerman 1980: 93). An Eastern immigrant demands recognition as a citizen of the Western liberal state. The Western statesman denies his request. Whereupon the following dialogue takes place (it is worthy and relevant to quote it at length):

"Easterner: Do you imagine you're better than me simply because you've been born west of the frontier?"

Westerner: No. If that were all, I would not hesitate before admitting you.

Easterner: Well, then, what's the trouble?"

Westerner: The fact is that we in the West are far from achieving a perfect technology of justice; if we admit more than Z newcomers, *our existing institutions will be unable to function in anything but an explicitly authoritarian manner.*

Easterner: But why am I being asked to bear the costs of imperfection?"

Westerner: Sorry, we're doing everything we can. But Z is the limit on immigrants.

Easterner: But you're not doing everything. Why not expel some of your native-born Westerners and make room for me? (...)

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Westerner: *Z is the limit on our assimilative capacity only on the assumption that there exists a cadre of natives familiar with the operation of liberal institutions. If some of the natives were removed even Z would be too many.*" (Ackerman 1980: 94, emphasis added)

In this dialogue two new arguments are introduced. Ackerman assumes that a real liberal state can 'process' a limited amount of newcomers, provided it wants to remain a liberal state. Too many newcomers may threaten "our existing institutions". This seems a promising criterion that might be rephrased into a third principle of immigration policy:

3a. Newcomers are allowed to enter the liberal state as long as this does not endanger its existing institutions.

However, it is not at all clear what kind of institutions are referred to in the principle, and what exactly would constitute a threat. In a later article, Ackerman rephrases his position on immigration politics as follows: "[*Social Justice in the Liberal State*] denies that rich Westerners can fence out their problems of justice merely by pointing out that foreigners are born 'elsewhere'. This does not mean that liberal states can never fence out. A sudden influx of millions of aliens may destroy the art of liberal politics itself (...) Within the framework of dialogic liberalism, no individual right is more precious than the right of the liberal community to sustain the ongoing process of public reason that serves as the constitution matrix for all other rights. It follows that there may be some grounds for restriction in real-world states: too many immigrants flooding the country at one time might undermine the fabric of liberal discourse." (Ackerman 1994: 379). There is a case to be made for the following interpretation: as soon as the liberal state would have to relinquish the process of liberal dialogue in order to accommodate its newcomers, it has reached the limit of its assimilative capacity. Thus, if a right-wing extremist revolution seems immanent and can only be avoided by a serious curtailment of liberties, we reach point Z and we are entitled to put a stop to the flow of incoming newcomers. This kind of 'public order criterion' has been proposed by others as well (e.g. Carens 1992). It seems a very plausible criterion. However, it turns out to be disappointingly vague as soon as we try to use it. Once we apply the criterion in real life Western European countries, it does not offer much of a stronghold. Do we put a stop to the number of immigrants when the country is trembling on the verge of a civil war? Or should we stop sooner, for example, once a certain percentage of citizens (10 percent? 20 percent?) sympathizes with right-wing extremist parties or ideas? Or might we consider a hold on the number of immigrants as soon as newcomers are being harassed by native citizens in one way or another (being scolded in the streets, suffering discrimination, having their houses burnt)? The public order criterion seems to be just as vague as the criterion that right-wing extremist parties tend to endorse: the availability of plain physical space. When can we say that the country is physically full? Do we have to cut down the forests in order to make room for newcomers? Or half of the forest perhaps (after all both we and the newcomers are entitled to recreational space, to say nothing of environmental values that ought to be weighed somehow)? Do we have to stop low building and have only multi-storey buildings from now on?

Apart from this inherent vagueness the public order criterion has another major disadvantage. It puts the government in a position where it must take right-wing extremist feelings into account. At the end of the day it even asks the government to give in to these feelings, to change its immigration policy because of its most xenophobic citizens. This will create an uncomfortable resemblance between the liberal state on the one hand and right-wing extremist political parties on the other.

There must be a better interpretation of Ackerman's institutional principle. I think we should

turn back to the original wording in 1980 ("if we admit more than Z newcomers, our existing institutions will be unable to function in anything but an explicitly authoritarian manner"). We might try to identify specific institutions that 'embody liberal dialogue' or 'uphold liberal discourse' and reflect on their assimilative capacity. The institutions that can be considered the principal platforms of liberal dialogue are representative bodies (parliament, city council, regional council) and the media (newspapers, radio and television programmes). Do these institutions assimilate newcomers and are they experiencing difficulties to the point where one might say that the limits of their assimilative capacities are within reach? Imagine a Western European parliament in which forty, or fifty recently arrived refugees from Afghanistan, Ethiopia or Ruanda want to take a seat. It is easy to see that the other members of parliament would have to invest a huge amount of time to explain their new colleagues everything there is to know about ministerial responsibility, parliamentary rights, voting procedures and the ongoing political agenda. However, in practice, we all know that newly arrived refugees never volunteer to run for public office. Once they consider to stand for parliament or even for the city council, they will no longer be newly arrived, so they will not be a special burden on the assimilative capacity of representative bodies. Before that day they will have encountered a number of other institutions:

- They will have rented a house or an apartment, possibly through some sort of mediating agency (building society, house building corporation).
- They will reside in a neighbourhood and may have met with local organizations. They will certainly have met the local shopkeepers, as well as their own neighbours.
- They will have learned the language of their new home country, so they will have met with some branch of the educational system.
- They may have met another branch of the educational system when they had to find a school for their children.
- They will have sought and found entrance to the medical system (medical insurance in some form or other, a general practitioner, local pharmacist, perhaps a gynaecologist or other medical specialist).
- They may have found a job (job seeking agency, employer, co-workers, union).
- They will have had some sort of allowance during the time when they did not have a job (welfare agency, unemployment insurance, child support).

In short: one might argue that they have been taken care of, not by the institutions that *constitute, uphold, or embody liberal dialogue*, but by those institutions that are the *object of liberal dialogue*, those institutions that liberal dialogue is about. These are the institutions that have to deal with newcomers when they are still newcomers, so we will have to reflect on their assimilative capacities. This I intend to do in paragraphs 3 and 4, using communitarian notions. For the moment let us just rephrase Ackerman's third principle in a more precise manner:

3b. The limit on the amount of newcomers in the liberal state is determined by the assimilative capacities of those institutions that may be considered the object of liberal dialogue.

The second principle hidden in the dialogue between Westerner and Easterner has everything to do with the kind of newcomers seeking admittance. Ackerman suggests that point Z is reached sooner when the newcomers are unfamiliar with the operation of liberal institutions. In 1994 he writes: "A sudden influx of millions of aliens may destroy the art of liberal politics itself, especially if these foreigners are untrained in the ways of liberal dialogue." (Ackerman 1994: 379) In plain English this entails that it will be a lot easier to accommodate fifty Swedes who intend to move to the Netherlands than fifty Russians or fifty refugees from Afghanistan. This sounds harsh, but it is

probably empirically correct. A Russian newcomer has been socialized in a communist regime, in a centrally planned economy that could only work on minor forms of informal sabotage, personal favours, bribes etcetera (Oversloot 1990). If you did not learn how to get things done without bribing public officials (because in your home country you could not get by without doing just that), it may take you a while to get used to uncorruptable Western bureaucrats. South Vietnamese refugees who arrived in Europe in the eighties grew up in a French colony that acquired independence in a bloody war, they reached maturity in a country with a US supported puppet government, had to live through the American intervention and a war with North Vietnam and subsequently had to grow accustomed to a communist regime. Under these terrible conditions you may start dreaming about a world of milk and honey, peace and quiet, or about liberal democratic states. But if you never experienced a government you could trust, it may take you quite a while to get used to liberal democratic practices ('What do you mean, I should not cheat on the government? What has any government ever done for me?').

If I interpret Ackerman correctly we are faced with a choice between  $x$  newcomers who have been socialized in some other liberal country (say again: fifty Swedes) or  $x-y$  newcomers who were not so fortunate (say: fifteen Bangladeshi). In Ackermanian terms this is a neutral choice. As long as we make sure not to discriminate (remember the second commandment; we are not allowed to take the Swedes each time we are faced with a similar choice) we may choose either way. The fourth and last Ackermanian immigration principle thus runs as follows:

4. The newcomers' background has to be taken into account when we determine the assimilative capacity of our institutions. Newcomers who have not been socialized in liberal countries are more difficult to accommodate.

Again we can hear the principles of the American immigration office (yearly quota for immigrants from different countries). In Western Europe many people would not perceive the Swedes vs. Bangladeshi choice a neutral one. Many of us would probably feel obliged to take the Bangladeshi. A recurring argument in Dutch discussions on asylum policy is that the most pitiful among refugees will never apply for citizenship in the Netherlands in the first place, because they will never make it to the plane. One sometimes gets the impression that Dutch policymakers would prefer to scout those pathetic applicants in their home countries. In the next paragraph I will argue that Ackerman's fourth principle stands in need of a communitarian amendment. However, before we start pottering with Walzerian concepts, let me summarize Ackerman's immigration policy for the liberal state:

1. Newcomers who are willing to respect the basic principles of the liberal state have a prima facie right to become citizens.
2. Citizens of a liberal state have to uphold the neutrality principle when admitting newcomers. They are not to discriminate between newcomers on any basis whatsoever.
3. The limit on the amount of newcomers in the liberal state is determined by the assimilative capacities of those institutions that may be considered the object of liberal dialogue.
4. The newcomers' background has to be taken into account when we determine the assimilative capacity of our institutions. Newcomers who have not been socialized in liberal countries are more difficult to accommodate.

### **3 WALZER**

The main characteristic of communitarian philosophers is that they derive moral principles from the

norms and values and societal practices in their own community (be it present norms and values or ancient traditions). Michael Walzer describes the difference between the universalist liberal way of doing moral philosophy and his own communitarian way in terms of Plato's famous cave metaphor: "One way to begin the philosophical enterprise (...) is to walk out of the cave, leave the city, climb the mountain, fashion for oneself (...) an objective and universal standpoint. Then one describes the terrain of everyday life from far away, so that it loses its particular contours and takes on a general shape. But I mean to stand in the cave, in the city, on the ground. Another way of doing philosophy is to interpret to one's fellow citizens the world of meanings that we share." (Walzer 1983: xiv) This orientation on the concepts and categories of one's own moral, cultural, political community has given communitarians a bad name in questions of international justice. Before incorporating any communitarian concepts into a position on matters of international justice we will try to remedy their reputation, at least to a certain extent. The first communitarian amendment to the Ackerman doctrine will be suggested during the process of restoring the communitarian reputation. The second one will take a separate paragraph (§ 4).

Critics charge communitarian philosophers with four cardinal offenses against, what you might call human decency in international justice (Bovens 1990):

1. Grounding one's moral principles in one's own political community will make it impossible to criticize other countries' moral practices, however reprehensible.
2. Grounding one's moral principles in one's own political community may lead to collective egoism. The community may choose not to acknowledge moral obligations toward outsiders.
3. If the community does acknowledge moral obligations toward outsiders (for example toward newcomers seeking entrance at the national border), it may decide to accept only those newcomers who share its cultural heritage. In other words the community may be inclined to discrimination.
4. If the community does not choose to have a discriminatory immigration policy it may discriminate at a later stage. It may force newcomers (or even minorities that were present in the community of old) to conform to the norms and values and culture practices of the majority in the community.

Communitarians will have to plead guilty to the first two charges. If one wants to criticize other communities effectively, one will need standards that apply to all communities, that is: some sort of universal principles. The same holds if we want to establish some sort of moral obligation to give aid to people in other communities. Walzer recently published an essay in which he argues that there is such a thing as a thin morality hidden within the thick morality of particular communities. This thin morality is the same for human beings all over the world. In times of crisis or ultimate need, we can reach out to each other because we recognize the thin morality in one another's thick cultural practices. Although the thin morality does not amount to a full-fledged doctrine of human rights and international justice, it can be seen as a major concession to the liberal universalist critique (Walzer 1996: 1-21).

Communitarians can defend themselves much better against the third charge. True, a communitarian political community may decide to admit newcomers on the basis of criteria such as cultural affinity, but that need not necessarily be a bad thing. In the worst case a country like the Netherlands might decide to give preferential treatment to Afrikaner South Africans who do not approve of the new, multicultural South Africa. There are historical ties between South Africans and the Netherlands, Afrikaner South Africans speak a peculiar kind of Dutch and they tend to be Christians on top of all that. However, a communitarian immigration agency in the Netherlands might also prefer to admit women refugees from Afghanistan, who want to flee the new regime, because like the majority of Dutch citizens, they believe in equality between men and women. Or

they might decide to admit newcomers from former colonies (Indonesia, Surinam), because they recognize special obligations toward them. Or they might decide to give preferential treatment to those who are most in need of a place in a friendly welfare state such as the Netherlands (people who are handicapped, ill qualified for the labour market etcetera), because they think it is a typical Dutch characteristic to take care of the weak.<sup>5</sup> With regard to the Ackerman choice between fifty Swedes or fifteen Bangladeshi, they may feel a moral obligation to choose the latter group. A country like the Netherlands that does not have a tradition of immigration (at least not since the seventeenth century) might decide not to admit newcomers who merely want to make a fortune. It may restrict its admission policy to political refugees.<sup>6</sup>

As long as there are many different political communities, each with its own historical ties, special commitments, and special obligations, aspiring immigrants need not necessarily be worse off in a world of communitarian immigration policies. For those who would really benefit from special attention and particular ties, a world of communitarian immigration policies might even be a better one. Provided of course, that this would not result in outright discriminatory patterns. At this point it is time to suggest a first communitarian amendment to the Ackermanian principles of immigration policy.

2\*/4\*. Citizens of the liberal state have to uphold the neutrality principle when deciding whom to admit in their midst. They must not discriminate on the basis of race, sex, religion, or on any other basis. However, within the limits of the non-discrimination principle, they are allowed to apply the moral principles of their political community. They may distribute places in the liberal state according to need and they may recognize special obligations toward some categories of aspiring newcomers. There is no reason whatsoever to harmonize the immigration policies of different countries. In fact, there is every reason to maintain differences in this regard.

The communitarian defense against the fourth charge of the liberal universalist critics resembles their defense against the third. A communitarian community may show an ugly face to newcomers; it may force them to adopt the moral standards and cultural practices of the majority. However, that does not necessarily have to be the case. It may also be a community where people recognize the importance of culture for one another and feel the need to facilitate different varieties of cultural practices. The community may have developed certain respectful ways of dealing with cultural differences other than the straightforward liberal rights approach. Yasemin Soysal wrote a book on the different ways in which Western European countries tend to cope with cultural minorities, guest workers from Turkey and North African countries in particular. Her investigation showed that different countries have developed different patterns of dealing with cultural minorities, different models of integration in society. One of her models might be deemed communitarian: "In [this] model, membership is organized around corporate groups and their functions. Corporate groups - defined by occupational, ethnic, religious, or gender identity - are emphasized as the source of action and authority. These groups assume certain 'natural' rights vis-à-vis the state. Individuals gain legitimacy and access to rights by subscribing to the wider collective groups through which they participate in different arenas of the social order. (...) This model emphasizes public interest and the welfare of social groups. Elaborate state structures of state-sponsored institutions develop to provide social services." (Soysal 1994: 37-38) The Netherlands is one of the countries in which newcomers are accommodated through this organisational-communitarian (Soysal herself calls it corporatist) model. Newcomers are supposed to create organisations that subsequently will be state-sponsored or subsidized. They will find their way in society through these organisations. Other countries adhere to other models that can be termed liberal-universalist. Their newcomers are supposed to



conquer their place in society via the labour market (Great Britain) or via the state (France).

The critics of communitarianism confront newcomers with the following choice: 'You either will be approached by a liberal-universalist state or by a communitarian one. In the liberal-universalist state you will be free to live your life in any way that suits you. In the communitarian state you will have to adopt the norms and values which are endorsed by the majority in your new home country.' A sympathetic communitarian might confront them with a different choice: 'Dear newcomers, either you will be approached as individuals with the same rights and duties as all other individuals. Or you will be approached through a specific system that your new home country has developed in order to incorporate cultural minorities. You will then be asked to create organisations that will speak on your behalf and that can bring forward specific wishes and demands that are connected with your cultural background or religion. Your minority organisations will be given a friendly hearing as well as financial support and maybe broadcasting time. Members of the organisations may become entitled to chairs in advisory bodies.'

I do not mean to advocate some kind of pillarisation policy for cultural minorities, I merely want to show that the choice between liberalism and communitarianism does not necessarily coincide with a choice between freedom and repression, not even for minority cultures.

#### 4 THE MORAL INTEGRITY OF INSTITUTIONS

Ackerman's third criterion referred to the assimilative capacity of existing institutions, meaning (we decided) those institutions that are the object of liberal dialogue. Some of these institutions have been created for newcomers and will be used only by them: language courses, centres for refugees. It seems easy to determine the assimilative capacity of these institutions. A centre for refugees can host only so many refugees at one time. You cannot have an infinite number of students in a language class, every teacher knows that teaching large groups is less effective than teaching smaller ones. For newcomer-institutions such as refugee centres and language courses, assimilative capacity is merely a practical matter. As far as the assimilative capacity of newcomer institutions constitutes a limit to the number of newcomers, it is not a fixed limit, it is a limit that can be shifted very easily (build another centre, hire more teachers, rent or build more classrooms).

In addition to these transitional institutions there are several other institutions dealing with newcomers: neighbourhoods, schools, the medical system, the labour market, welfare agencies. When can we say that the limits of the assimilative capacities of these institutions have been reached? How is that to be determined? I think we can determine the assimilative capacities of at least some institutions by establishing *moral breakpoints*. In order to do this we will need certain communitarian notions. We must reflect on the moral character, moral logic or moral integrity of institutions. This kind of concepts and categories do not feature prominently in liberal theories or justice, but they are widely discussed among communitarians, since one of their main interests is the way in which liberal universalist philosophy or a political community based on the principles of liberal philosophy can destroy institutions. They argue for example that families are disrupted by the liberal emphasis on individual rights, that neighbourhoods deteriorate for similar reasons, and that the bureaucratic character of state organized welfare has destroyed private charity (Lasch 1995), that neutral liberal education in schools tends to impoverish national culture (Bloom 1987), that professional ethics has been replaced by professional enterprise and limited responsibility (Sullivan 1995), etcetera. The moral *modus operandi* as well as the decline and fall of institutions is well trodden ground for communitarian thinkers. Let us try to construe moral breakpoints in the working of some institutions that are confronted with newcomers.

1. Primary school. In primary schools children are trained to know their way in society. They are

taught to read and write and learn basic facts about the world in order to be able to function as citizens. Most children already know a lot when they first go to school: they know how to speak the language of the country in which they live, and their parents have taught them some elementary rules of good behavior for children. Teachers can concentrate on reading, writing, doing sums, history, and geography. This is the normal order of things at school. A few newcomer children who do not know how to speak the language do not constitute a problem. Children learn fast and they are bound to pick up their new country's language when playing and learning with other children. However, this will be different when a large number of immigrant children enters the school. These children will no longer pick up the language of the country while playing on the schoolyard, because there are not enough children around to learn from. Thus teachers will have to change the primary school curriculum. They will have to teach in other languages, or they will have to teach their native tongue before being able to teach anything else. The moral breakpoint at school is reached once teachers can no longer teach the regular curriculum, once the primary school is no longer a school but a transitory institution for newcomers.

2. Neighbourhood. Nowadays being a resident in a certain neighbourhood is not a demanding status. One does not have to put much effort into being a neighbourhood resident. The obligations amount to being there from time to time, disposing one's garbage in an orderly fashion, taking care of the neighbours' pet when they have their holidays and sending one's children to the local school. The latter requirement is crucial: in a way schools are the heart of local communities. Normally this crucial requirement is an obligation that is very easy to fulfill. It is advantageous for parents when their children attend a nearby school. The children can go to school on their own and they will make friends with other children in the neighbourhood. However, when the local school has become a transitory institution with a curriculum for newcomer children, sending one's children to the neighbourhood-school is no longer an easy decision. Parents are bound to have doubts; they will be faced with a moral dilemma. They will ask themselves whether they are not depriving their children of educational opportunities. They will consider sending their children to other schools. If they decide to send them to the neighbourhood-school in spite of its disadvantages, they will consider this a sacrifice that they owe to their neighbourhood. As soon as parents are experiencing this type of dilemma, we reach a moral breakpoint in the normal order of things in the neighbourhood. Being a neighbourhood resident is no longer a self-evident moral status that does not involve far-reaching obligations; being a neighbourhood resident becomes a demanding moral status that may require sacrifices.

We might try to avoid this transformation of neighbourhood status. We might adopt some sort of admission policy for neighbourhoods (not allowing more than, say, 20 percent immigrant families in one neighbourhood). However, that would transform the moral character of neighbourhoods as well. Traditionally citizens have been free to choose their own neighbourhood. "[The neighbourhood] is an association without an organized or legally enforceable admissions policy. Strangers can be welcomed or not welcomed; they cannot be admitted or excluded. Of course, being welcomed or not welcomed is sometimes effectively the same thing as being admitted or excluded, but the distinction is theoretically important. In principle, individuals and families move into a neighbourhood for reasons of their own; they choose but are not chosen." (Walzer 1983: 36) Turning neighbourhoods into "petty fortresses" (ibid.: 39) changes the moral character of neighbourhoods just as much as changing neighbourhood residence into a demanding moral obligation.

3. Labour market. In a welfare state such as the Netherlands the labour market seems to have two important moral characteristics. (1) Work is heavily taxed so as to be able to afford a generous

system of welfare allowances. However, the tax level cannot be raised indefinitely; one ought to be able to earn a 'decent' income. (2) Work should take place under at least minimally decent conditions. The contents of the relationship between employer and employee should not be dictated by the employer solely. People are not supposed or morally obliged to accept degrading jobs that pay less than minimum wage.

A very large influx of newcomers might endanger one or both moral characteristics of the labour market, thus creating another moral breakpoint. If very many newcomers were not able to find a job, it might become necessary to raise the level of taxation to an unacceptable height in order to be able to support an ever growing non working population. (Workers might then start to wonder if they should really take the trouble to work, whilst the large majority of the population could stay home and relax.) If we wanted to avoid that scenario we might decide to lower welfare allowances. This way we could maintain an acceptable level of taxation, but this would probably entail that we would have to lower the minimum wage as well. Employers might seize the opportunity to exploit the large groups of workers seeking employment, by offering unattractive working conditions. Thus, work would become a degrading activity in which one would be forced to engage just to earn one's living in a very literal sense.

Thus we have identified three moral breakpoints, three points where the influx of too many newcomers at the same time may change the moral character of crucial institutions of society. All three breakpoints could be analysed further by empirical research: how many non native speaking children can be assimilated in a primary school without having to change the curriculum? At what point do parents start to worry about the percentage of newcomer children that will be educated alongside their own? At what point do native parents decide to send their children to schools in other neighbourhoods? At what point will they try to move into other neighbourhoods themselves? At what point do people leave the labour market because work does not seem to pay any longer? Since this article is meant to be an exercise in normative political theory I am not going to discuss empirical research concerning these issues. Instead I want to launch a major critique at my own moral breakpoints proposal, so as to test its robustness.

One might argue along the following lines. The most important obstacle that stands in the way of admitting extra newcomers seems to be the assimilative capacity of our existing institutions. Their moral logic is to be preserved and this entails a rather inflexible limit to the amount of newcomers our community can accommodate at one point. Well then, let us solve this nasty problem. Let us create new institutions that are especially developed for newcomers. We could ask the newcomers to live in one particular neighbourhood. As a matter of fact, newcomers already seem to prefer neighbourhoods where they can meet with other newcomers, preferably from the same home country. We probably would not have to coerce them, it will be enough to encourage an existing inclination among newcomers to settle in one particular neighbourhood (we can preserve the free entrance and exit character of neighbourhoods and still have ethnically segregated neighbourhoods). These ethnically segregated neighbourhoods would have their own neighbourhood schools. Hence, there will be no need to worry about moral breakpoints in local communities. Native neighbourhoods and native local schools may preserve their own moral logic because they will not have anything to do with newcomers.

The labour market breakpoint can be avoided in a similar fashion. We can determine that a number of years has to pass before newcomers are entitled to welfare allowances. This would mean that they would have to accept job offers that native workers would not consider. The newcomers would get very unattractive jobs which would pay very little. Obviously many newcomers would find it preferable to have the same working conditions as native citizens, but one may assume that having a lousy job in Western Europe would still be better than being unemployed or having a lousy

job in Morocco or Iraq. If not, the newcomers would not take the trouble of migrating. This type of no entitlement practice is by no means uncommon in present day immigration policy (Coleman & Harding 1995: 27). Of course, we would have to determine whether this no entitlement policy would be tenable up till the very end. For example, it will be easier to withhold unemployment benefits and child support than medical assistance or assistance from the fire department. But we might find practical solutions to deal with this kind of difficulties (we might demand a three or five years 'no claim period' and start counting afresh as soon as the newcomer were to use expensive public provisions). Another foreseeable disadvantage is that a no entitlement policy might make it attractive for employers to hire newcomers instead of native workers (not having to pay minimum wage and medical insurance for one's employees could save considerable costs). Native workers would then be made redundant and they would be eligible for an unemployment allowance. In that case, a large influx of newcomers would still be a drain on welfare resources, albeit indirectly. We would have to see to it that this could not happen, either through government legislation (any job requiring a minimum of education and skill will be considered a proper job, above minimum wage and with the appropriate welfare entitlements) or through wage negotiations.

Let us assume that we would be able to solve all practical difficulties. This proposal would then enable us to avoid the moral breakpoints described above, by creating separate institutions and institutional arrangements for newcomers: separate neighbourhoods with separate schools and a special programme at the labour market. Is there anything (morally) wrong with this proposal? Is there any reason to cling to the original assimilative-capacity-of-institutions/moral-breakpoints-proposal, which would undoubtedly result in a smaller influx of newcomers? In the remainder of this paragraph I will argue that there is, indeed, something morally wrong with the special institutions proposal. The argument will be rather complicated. It will consist of the following steps. First I will argue that there is something *prima facie* wrong with the special institutions proposal; it can be viewed in a very negative light. Then I will discuss two feasible, positive interpretations of the special institutions proposal, that might compensate for its negative *prima facie* characteristics. I will argue that these positive interpretations can be defended in immigrant societies, such as Canada, Australia and the United States. However, these interpretations cannot be put forward equally successfully in non immigrant societies. In Western European countries such as the Netherlands neither positive interpretation could outweigh the negative *prima facie* characteristics of the special institutions proposal. At least in Western Europe there seems to be every reason to hold on to the original moral breakpoints proposal.

#### *Prima facie negative characteristics*

Separate institutions and institutional arrangements for newcomers; separate neighbourhoods, separate schools and special treatment at the labour market. At first sight special institutions represent a pattern of discrimination, stigmatization and apartheid. This seems especially the case when we take into account that the special treatment at the labour market cannot possibly be seen as 'separate but equal'. You may object that newcomers who are treated worse than native citizens will still lead a better life than many of their compatriots whom they left behind in their home country. Should we not compare newcomers to their poverty stricken compatriots rather than to our own fellow citizens, you may ask. Perhaps we should, in an ideal world, but I do not think that we can, because that is not the way moral deliberations take place. We, citizens of country X, feel responsible for people residing on our territory, in our political community, in a way we do not feel responsible for people in the rest of the world (Cf. Seidman 1995: 142). Our community is something we create, it is something we need to feel content about. Our community has to be acceptable from a moral point of view; we do not want children on our territory being deprived of a proper education or medical care, we cannot tolerate hungry faces in our midst, and we do not want people

renting a garden-shed to live in. Of course, we know that there are lots of people around the world, living in conditions we abhor, but it is easier to accept that than to tolerate severe deprivation in our community. Poverty around the world is morally troubling; we, citizens of country X, may feel partially responsible for it and moral philosophers may argue that we ought to feel much more responsible for it than we are doing at present. But we, citizens of X, did not and do not actually create worldwide poverty in the way we create our own community. Overzealous moral philosophers who would explain us that we citizens of X are part of a larger, global We, which should be held responsible for all the trouble in the world, would probably reach the opposite of what it was they were trying to accomplish. If we citizens of X actually have to believe that we are creating (not just unconsciously contributing to but actually creating) worldwide poverty by eating meat and generally living the way we do, this would probably make us stop feeling sorry about anything. Attributing too much responsibility can lead to fatalism. Hence the fact that newcomers under the special institutions proposal are probably better off in our country than in their home country is of little concern. We will inevitably keep comparing the newcomers' lot to our own or our fellow citizens' and we are bound to feel uneasy about the differences.

*Positive interpretations of the special institutions proposal*

We will need a positive interpretation of the special institutions proposal which is more forceful than the global comparative perspective rejected above.

The first positive interpretation of the special institution proposal may be called *colonialist*. In this interpretation immigrants migrate to another country, not because they want to belong to this particular political community, but because they want to try their luck elsewhere, anywhere, and because they hope to establish their own community (quaker, Amish, mormon, muslim, Kurdish or whatever). They do not need a full scale integration programme; they need a chance to get in, a place to live, a chance to earn a living and perhaps a little help to get them through a transitional period in which they can establish their own community. Living in one ethnic-cultural neighbourhood and having a neighbourhoodschool providing a culturally colored education is a first step on the way to a proper cultural community. Of course, newcomers will never reach complete political independence on US, Canadian or Australian territory, but they may aim for some degree of cultural autonomy or cultural independence. Kymlicka has made some interesting propositions concerning cultural autonomy and minority rights within the context of an existing political community. In his theory these so-called collective rights are especially meant for "national minorities", that is "previously self-governing, territorially concentrated cultures" (Kymlicka 1995: 10). One may think of the Inuit and the Quebec population in Canada, Indians in the United States and the Aborigines in Australia. Kymlicka assumes that contemporary immigrants (people who recently migrated to another state) wish to integrate into the larger society, and would not aim at self-government of some sort or other. However, this need not necessarily be the case. One can imagine people like the Kurds striving first and foremost for a Kurdish community rather than applying for citizenship in another state on an individual basis.<sup>7</sup> In a country such as the United States something like a Kurdish colony would be conceivable. It would bring back memories of segregation and discrimination (the negative aspects of the special institutions proposal cannot be avoided entirely), but it could also rekindle the ancient tradition of immigrant colonies fighting for a new existence. However, in a country such as the Netherlands there is no such tradition. There never have been immigrant cultural communities on Dutch territory. The Jewish community is probably the only immigrant group which ever had anything remotely similar to the ancient American colonies, but even their situation cannot really be compared to the Amish or Mormon communities in the United States. Besides, the Jewish fate during the second world war has wiped away all positive connotations their cultural separateness might have had before the war. Hence, a colonialist

interpretation of the special institutions proposal would not refer to any positive historical experiences; it could never outweigh the negative characteristics of the special institutions proposal indicated above.

The second positive interpretation of the special-institutions proposal may be called the *trial period interpretation*. In this interpretation newcomers would have to survive a trial period before they could apply for citizenship. During the trial period they would have to prove themselves able to earn a living, to learn the language of their new country and gain some insight into its political system, culture and history. Something similar has been proposed by Van Gunsteren, who argues that aspiring citizens a) should be capable of dialogic performance, i.e. should be able to speak the language of their new country, b) should be willing to be a member of the particular historical community to which they want to belong (thus, they ought to know something about this community) and c) ought to have "a reasonably secure access to the means of their continued existence" (Van Gunsteren 1988: 736).

The trial period character of the special institutions proposal is most obvious when we look at the no entitlement policy. Immigrants have to prove that they are able to provide for themselves and their families without having to resort to government subsidies; they have to show that they are willing to work hard and to benefit their new country economically. It may sound a bit trite, but basically they have to show some potential to realize the American (Canadian, Australian) dream. The trial period may plausibly be seen as a struggle or a competition which is to result in citizenship for the fittest. Some newcomers may go back to their home countries during the trial period, because they feel that they do not have what it takes to make it in the new world. Others will remain stuck in the trial period, because they do not manage to survive without government assistance. And still others, the best and brightest or the most persevering ones, will become real citizens once the trial period is over. In traditional immigration countries this would not strike people as a harsh or unacceptable admission policy. However, in Western European countries, in particular in the Netherlands, such a trial period could not serve any morally acceptable purpose. Having a competition among newcomers, resulting in citizenship for the fittest, would oppose deeply felt values in this political community. Certain conditions for citizenship (language and some knowledge of the country's culture and history) may be perfectly acceptable, but distributing citizenship according to economic desert would never hold water in a non immigrant country. It would be considered morally preferable to award citizenship to every newcomer who was sufficiently integrated into the community after the trial period. If we were somehow forced to choose between aspiring candidates we might be inclined to distribute citizenship according to need rather than according to economic desert. (Recently an interview was published with an Ethiopian immigrant in the Netherlands. He announced that he was planning to move on to the United States, because the Netherlands was not up to his taste, being a country where the weak were cuddled by citizens as well as the state while the strong were not allowed to flourish (Van Kerkhoven 1997).) If the trial period is not used as a system of selection it makes little sense to have such a period at all. Say, we could allow  $x$  immigrants under the moral breakpoints regime because our labour market can absorb  $x$  immigrants without having to change its moral logic. The no entitlement policy will enable us to give entrance permits to  $x + y$  immigrants. For a number of years  $x + y$  people will be doing extremely dirty, degrading and underpaid work. Do we assume that the real labour market will be able to absorb  $x + y$  immigrants once this waiting period is over? Why would that be the case? I take it that we have not spent large amounts of money on the professional education of  $x + y$  immigrants, since that would destroy the rationale behind the no entitlement policy by raising the level of taxation. It seems unlikely that many immigrants have saved enough money and have found the time to educate themselves. The trial period has essentially functioned as a waiting period; we have shifted the moment of admission a few years ahead and have thereby created a period during

which we have taken advantage of  $x + y$  immigrants' plight. After this we will have to recognize  $x + y$  immigrants' claim to citizenship, whilst the labour market can absorb only  $x$  immigrants. However, we can no longer turn our back at  $y$  immigrants; it does not seem morally acceptable to refuse people's claim to citizenship after having exploited them for a number of years. In short, we have given up our plausible moral breakpoint criterion, we have admitted a large amount of newcomers and we are left with hardly any room for an admission policy after the trial period.

It is not at all easy to interpret separate neighbourhoods and separate schools as part of a trial period. Neighbourhoods and schools would have to be strongly connected to the no entitlement policy. One would have to imagine that immigrants could move to other neighbourhoods and send their children to other schools as soon as the trial period were over. During the trial period the separate neighbourhoods and separate schools for newcomers have acquired the same function and meaning as refugee centres and language classes; they will have become transitory institutions. This raises poignant questions about the appropriate duration of a transitional period. Imagine a child aged three when his parents move to the Netherlands. After a short period in a refugee centre the family finds a place to live in an immigrant neighbourhood, where the child frequents the neighbourhood-school. Under the special institutions regime this child will in all likelihood spend a large part of his childhood in transitory institutions. Is this necessary? Is it morally fair to the child? When will his real life, in a real community finally commence?

I think that it is morally undesirable to transform neighbourhoods and schools into transitional institutions. Two things may happen if we try to accomplish this. (1) Either the neighbourhoods and schools will not 'feel' or operate as transitory institutions, despite our efforts to accomplish just that. Immigrants will feel at home in their own neighbourhood, their children will be happily attending the local school and the immigrants will not want to move once the trial period is over. In that case we seem to have chosen the colonialist interpretation after all. Our transitional institutions have lost their transitional character; they have constituted a cultural community for immigrants instead. (2) Or the neighbourhoods and schools will operate as transitory institutions. Immigrants will not feel at home and settled for many years; they will resemble the people we can see on television, who have to spend their days in refugee camps. There is something very sad about people who have to reside in refugee centres or refugee camps. Their tragedy goes beyond their material conditions, it has also something to do with the waiting period character of this type of existence. One cannot ask immigrants to spend a large part of their lives waiting for the real thing to begin at long last.

To sum up, there seems to be adequate reason not to abandon the assimilative capacity of institutions proposal in favour of the special institutions proposal. The special institutions proposal has some serious negative characteristics (stigmatization, discrimination etcetera). There are two positive interpretations that might outweigh these negative aspects. However, the colonialist interpretation does not seem plausible outside the United States; it does not fit in a Western European context. The trial period interpretation is not very attractive as such with regard to neighbourhoods and schools. It is highly doubtful whether it could ever be right to turn these institutions into transitory institutions. The trial period interpretation is more plausible with respect to the labour market. However, it would only make sense there if it were allowed to function as a mechanism of selection for future citizens. In a Western European context this type of citizen selection would probably not be considered acceptable.

## **5 CONCLUSION**

To conclude, let us look at the revised immigration policy principles that were developed along the way:

1. Newcomers who are willing to respect the basic principles of the liberal state have a prima facie right to become citizens.
2. Citizens of the liberal state have to uphold the neutrality principle when deciding whom to admit in their midst. They must not discriminate on the basis of race, sex, religion, or on any other basis. However, within the limits of the non-discrimination principle, they are allowed to apply the moral principles of their political community. They may distribute places in the liberal state according to need and they may recognize special obligations toward some categories of aspiring newcomers. There is no reason whatsoever to harmonize the immigration policies of different countries. In fact, there is every reason to maintain differences in this regard.
3. The limit on the amount of newcomers in the liberal state is determined by the assimilative capacities of those institutions that may be considered the object of liberal dialogue. The limit is reached once these institutions pass a moral breakpoint, when their normal moral order changes character.

This is meant to be a position on immigration policy that can be discussed, amended and criticized (I have tried to undertake a first round of criticism myself by discussing the special institutions proposal). Immigration policy is an extremely sensitive issue. It is very likely that every normative position a political theorist may come up with will be rebuked. But that is no reason to leave the issue to right-wing extremist political parties who want to introduce principles most of us abhor and to politicians who merely want to downsize the influx of newcomers without invoking any principles at all.

## Notes

1. I am indebted to professor R.E. Goodin, Cas Mudde and Hans Oversloot for their comments on this essay.
2. Several positions are compared and evaluated in Barry & Goodin (1992), the bulk of the existing literature is discussed in a recent dissertation (Tholen 1997).
3. I will not go into the difficult question whether Walzer ought to be classified as a communitarian philosopher. He is usually characterized as such by others (e.g. Bovens 1990, Kymlicka 1990, Mulhall & Swift 1996) although he himself wrote an interesting article in which he severely criticizes the communitarian way of thinking (Walzer 1990).
4. Kymlicka's well known introduction to modern political philosophy, for example, refers to Ackerman only once, in a note (Kymlicka 1990: 233.)
5. I realize that this is a rather sunny picture of Dutch culture. I am sure one could paint other pictures as well. However, if one wants to take a communitarian route and derive moral principles from the norms and societal practices in one's own community, one would have to select good and sound moral practices, or, in Walzer's terms, one would have to give an attractive interpretation of "the world of meanings that we share". It would make no sense to select the most gruesome traditions (or to take each and every practice one would come across) and to derive moral norms from these traditions.
6. The Netherlands does not just admit political refugees. Citizens of the European Union are allowed to work in the Netherlands on the basis of EC treaties and regulations. Also family members of former guest workers (mostly from Turkey and Morocco) are allowed to immigrate. However, there is relatively little debate on these categories of immigrants, because they have to be admitted on the basis of international law. There is much more debate about the admission of refugees and on illegal immigrants who migrate for economic reasons.
7. Kymlicka discusses this possibility very briefly. Cf. "It would, in principle, be possible to allow or encourage immigrants today to view themselves as colonists, if they had extensive government support in terms of settlement, language rights, and the creation of political units." (1995: 15) and: "It is



possible to settle immigrant groups collectively, and to empower them, so that they become in effect national minorities, just as it is possible to tear down and disperse national minorities so that they become indistinguishable from uprooted immigrants." (1995: 101) Kymlicka seems to think there are two reasons not to choose this road: 1) most immigrants wish to integrate into the larger society; they do not want to establish their own community and 2) a politics of segregation will bring back all kinds of unpleasant memories (stigmatization, discrimination, apartheid etcetera).