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EDITORIAL

Toleration: A Contested Value

Lenka Strnadová (visiting editor)

Toleration and Equal Respect

There are plenty of practices in contemporary world that we are not exactly happy about but frequently expected to tolerate, ranging from governments' and municipalities' often unpopular policies to the swearing of our colleagues in the workplace or various religious, dietary and other habits of people living in our society. There are equally as many things we are urged not to tolerate in a free liberal society – bullying, censorship, racism etc. Try to scan any newspapers for notions of toleration or tolerance and you will find out that our public discourse is abundant in 'toleration talk'. With the excessive use of the term toleration, the contours of the term have become somewhat fuzzy, in most cases substituting (in a rather misplaced mode) notions like acceptance or acknowledgement. However, there are crucial debates of our time, among others numerous controversies over the treatment and integration of religious, cultural or ethnic minorities, in which the term toleration does not play a mere role of an empty speech figure. Quite the opposite, within the discourse of multiculturalism (as vague as the term itself is) toleration maintains quite rightfully a central position as one of the guiding principles. However, the same could be said of the value of respect as well. In liberal democracies, proud of their adherence to the protection of human rights and liberties, to respect is to become part of a civilization. But again, even respect must have limits. The effects of the principles of tolerance/toleration and respect on our policies, behaviour, and day-to-day conduct can hardly be exaggerated. However, the use of the terms is far too often intuitive, rather than clear and analytical. Hence, many theorists in last few decades tried to delineate what toleration and respect are, what are and should be their limits, and what the relation between the notions is. The extensive theoretical debate then became highly informative as to our treatment of specific issues of multicultural cohabitation and the structuration of the rights and duties for specific groups and individuals in our culturally, ethnically, socio-economically, and religiously diverse societies.

Recapitulating the history of multiculturalist claims of minority movements, Bhikhu Parekh, one of the most cited authorities in the field, opens his volume's introduction stating that '[t]heir demand for recognition goes far beyond the familiar plea for toleration, for the latter implies conceding the validity of society's

disapproval and relying on its self-restraint. Rather they ask for the acceptance, respect and even public affirmation of their differences' (Parekh 2000: 1). While Parekh, a well-known defender of the dialogical politics of recognition, from the very beginning openly advocates the politics of recognition as superior and more functional with regard to the aim of multicultural integration, his initial formulation of the difference between the notions of toleration and respect bears attributes generally accepted by much more liberally minded theorists as well. There is a widespread consensus that disapproval (and sometimes also dislike¹) and self-restraint (in other places dubbed 'non-rejection'²) constitute core qualities characterizing toleration and distinguishing it from the notion of (equal) respect and related concepts of recognition.

Toleration Defined

Toleration³ itself is an old concept, historically mainly associated with liberal virtues. The 'heroes' of liberal tradition, Locke, Kant, J.S. Mill as well as the 20th century liberals like Rawls, Rorty, Barry, or Raz all contributed their own elements to the substantial tradition of thinking about toleration and its role in a society, traditionally with the emphasis on the relation between toleration and the protection of the liberty of the individual (currently counter-posed by some to the rights of minority groups, Galeotti 2002: 6). The motives and justifications for toleration have differed over the years. For Locke, (religious) toleration represented the way out of the irrational belief of the possibility of a coercive imposition of faith, a solution to his scepticism as well as a pragmatic precautionary measure preventing social turbulence (Locke 2000). Other arguments, starting with J.S. Mill, took a more utilitarian mode accentuating consequentialist reasons for toleration which have not lost their appeal for many theorists even today (see Shorten 2005).

Quite in line with other literature on toleration, Shorten, defining the notion, claims that '[i]nstances of toleration occur under specific conditions: x can be said to be tolerating y 's performance of z when x disapproves of y doing z , when y has freely chosen that she wants to do z , and when x has the capacity to prevent y from

¹ For a detailed analysis of the role of disapproval and dislike respectively, in toleration see McKinnon, 2006: 18–34.

² See McKinnon, 2007: 128.

³ In this paper I follow Cohen's terminological distinction between 'toleration' on one side and 'tolerance' on the other. There is no completely clear boundary between the terms. In one sense, the quality of tolerance often accompanies the acts of toleration and in this way, the two notions tend to overlap. However, drawing on Walzer's and Oberdiek's accounts, Cohen concludes that there is a difference between toleration and tolerance. Toleration refers to an activity or behaviour; it is also often related to public or institutional provisions. The term tolerance is usually reserved to an attitude or virtue (the two not obviously being the same but falling within the same category with regard to our object of exploration). See Cohen, 2004.

performing *z*, and yet chooses not to' (see Shorten 2005: 281). Thus, to the discontent of some critics of the principle of toleration, toleration always implies a relation of power/control between the tolerator and the tolerated which is translated into the capacity of the potential tolerator to prevent the action from happening. By definition, the classic liberal notion of toleration is hence a negative one, expressing a certain degree of repugnance, while at the same time serving to promote a positively viewed principle of individual liberty. Still, inequality and the presence of a majoritarian (in Gramscian terms hegemonic) discourse are counted among marked and indispensable circumstances of toleration.⁴ These and other circumstances have been labelled by Peter Nicholson as 'difference' (meaning the tolerator's idea of what is right, valuable, or appropriate differs from the practice which is to be tolerated), 'importance' (we consider the case significant), 'opposition' (the element of disapproval and/or dislike), and 'power'. Apart from its circumstances, toleration is, as mentioned earlier, characterized by 'non-rejection', and the feature of 'requirement' (the discourse rationalising why toleration is required) (Peter Nicholson cited in McKinnon 2007: 128, 2006: 14).

For years, the debate on toleration has been haunted by a number of troubles and controversies which inspire many theorists representing equally communitarian, critical, and liberal strands of thought to re-assess the strengths of toleration with results ranging from redefinition of the term in more culturally sensitive terms (Galeotti 2002), suggesting going beyond toleration (for instance Walzer 1997; Modood 2007 as well as many non-libertarian political thinkers; cf. McKinnon 2003), to the view that liberalism cannot find the true expression of its values in toleration. Instead, liberalism, by abstaining from the state's interference into the matters of conscience, substitutes toleration and renders the concept redundant (Shorten 2005: 276).

Seligman (2004: 12) identifies some of the main challenges the concept of toleration must deal with. First of all, there is Bernard Williams' remark that toleration (or rather tolerance) may generally seem like an 'impossible virtue' (Williams 1996; cf. McKinnon 2006: 31–32). From another point of view, toleration is not able to appreciate fully the crucial character of cultural commitments, group difference, and the need for equal inclusion of all individuals as bearers of different social statuses and identities within the civil society and public sphere. Even if we

⁴ According to Galeotti there could in theory exist a positive interpretation of toleration 'as acceptance', which would in fact look much more appealing with regard to the ideal of equality and inclusion (see Galeotti, 2002: 21). However, if the premises of toleration are disapproval and dislike, there is hardly any way how to progress to the positive meaning of the notion. Still, many contemporary authors, including Galeotti, try to overcome this 'toleration impasse' by relating toleration rather to the virtue of respect toward the objects of toleration (coming closer to equal respect for the individual or even to the principle of recognition). More on these alternatives follows later in this section of the article.

in general allow for the relevance of the principle of toleration, there remains the question of the sources and reasons for toleration, and above all the utmost intriguing and troubling question of the limits to toleration.

The Possibility of Toleration

Firstly, let us consider whether tolerance is really an impossible virtue. The questions to be answered are in fact two: i) can we consider tolerance a virtue?, and ii) is it an impossible one? At one place, Alasdair MacIntyre defines virtue as ‘an acquired human quality the possession and exercise of which tends to enable us to achieve those goods which are internal to practices and the lack of which effectively prevents us from achieving any such goods’ (MacIntyre 2004: 224). Leaving other aspects of MacIntyre’s approach to ethics aside, we can confidently claim that MacIntyre is quite right to suggest that the definition is general enough to accommodate a number of points of view. Adopting this definition, we can clearly see that not only does tolerance fit the definition but it is also desirable for us to define it in terms of virtue. For several centuries, toleration has been an institutional means accompanying the liberalization of modern societies and the process of development of the rights and liberties of the individual. The practices of rights protection and human freedom are internal to our culture. Thus, tolerance, which for ages served to establish and defend these practices, is a virtue internal to them. By abandoning the virtue of tolerance, and replacing it for example by a complete public indifference to matters of culture and religion, ‘we would have lost something important: a sense that certain things matter’ (Ten 1999: 1171). Going back to the definition of toleration, the quality of virtue is inherent in its definition. Cohen (2004: 72–73), McKinnon (2006: 27–34) or Mendus (1999: 8) agree that toleration is an expression of our commitment to the values our liberal political system represents, and as such, cases of ‘non-interference’ which are not inspired by good reasons or principles⁵ cannot be identified as acts of tolerance at all.⁶

The question, however, remains: is it an impossible virtue? The argument about impossibility is most famously raised by Williams. However, not to misinterpret his own thesis, while both Williams and other authors like McKinnon or Shorten consider toleration a difficult issue, they emphasize that not only is it ‘in some degree possible’, to cite Williams (1996: 27), but for our existing societies toleration understood in a political framework⁷ is an imperfect, yet indispensable practice.

⁵ The accounts of the values and principles necessary as precondition to toleration differ. For McKinnon, who introduces a wide definition of toleration, the key principle is the obligation of taking responsibility for one’s own belief (see McKinnon, 2006: 30).

⁶ For a more detailed discussion of toleration as a virtue see Horton, 1996.

⁷ According to McKinnon, political conceptions of toleration, rather than its philosophical accounts, are interested in designing mechanisms for how to find and set proper limits to toleration

Needless to say, should we interpret acts of toleration as motivated by strong evaluative moral judgements about the content and character of what is to be tolerated, we will necessarily find ourselves trapped in a strong paradox of toleration. Take the example of a Roma family who arrange a marriage for their 12-year old daughter and request for the act to be tolerated by the majority of society. If we were to base our toleration on a strong evaluative moral judgement, in order to tolerate the act we would have to come to a conclusion that the arranged marriage of a 12-year-old, under-age girl is morally acceptable and thus abandon our socially shared and previously justified belief that such an act is an infringement upon the generally accepted rights of the child. Not only is such a shift in our fundamental values unlikely and excessively burdensome for the tolerating party, but even if we were able to revise our justified beliefs in this manner, the very fact of adopting the Roma family's perspective would do away with one indispensable circumstance of toleration – the occurrence of dislike or/and disapproval. Thus, there would no longer be a case for toleration.

However, there are several alternative ways out of this impasse which do not use substantial moral judgements as reasons for toleration. They share an effort in finding a reason which could override our disapproval of the acts in question. From this perspective, the focus of toleration will shift from the action which is to be tolerated to the actor who is the object of toleration. This way we can dislike or disapprove of the challenged practice and still find reasons which in specific cases may persuade us not to interfere in matters of the minority. The most promising proposals in this vein seem to stem from the arguments of pluralism and reasonableness most eloquently articulated by John Rawls in his work entitled *Political Liberalism*. Without repeating Rawls' famous argument in detail, it can be useful to merely restate its main theses: since social pluralism is a fact that cannot be overcome, among different comprehensive doctrines held by different actors there will always be some 'reasonable disagreement', the source of which lies in the burdens of judgement. The notion of reasonable persons or doctrines importantly involves a predisposition of being ready to propose or accept fair terms of cooperation with others (Rawls 1996: 53); having a sense of justice. Under the rules of reasonableness and fairness, within the public sphere, we can only expect others to endorse our claims acknowledging the burdens of judgement and arguing from a perspective of public reason (Rawls 1996: 59), hence in publicly accessible terms.

Resorting to my initial set of questions on toleration, in the next section, I will explore the question of whether even the most developed notions of liberal toleration

(McKinnon, 2007: 129). Compared to elaborate philosophical explanations of the features and sources of toleration, political theory is far more interested in resolving practical difficulties in applying the concept.

are able to appreciate fully the crucial character of cultural commitments, group differences, and the need for equal inclusion of all individuals as bearers of different social statuses and identities within the civil society and public sphere.

Tolerated or Simply Endured?

Rawls's approach found many supporters and followers. However, there are several major criticisms of his theory. While many of them are rather a matter of misunderstanding than the flaws of Rawls's account itself, there is one which I find rather disturbing and worth discussion. Specifically, it revolves around the suspicion that Rawls's conditions of reasonableness and the principles of public reason tend to be positively biased toward members of the cultural and religious majority. If a claim stemming out of a comprehensive doctrine is to be accepted in public discourse, it must be reasonable in the sense of being compatible with other doctrines that form an overlapping consensus. Thus, some sorts of arguments, which are internal to the cultural or religious group and reflect their comprehensive doctrine, are simply ousted from the public discourse. Some authors argue that this approach does not allow the members of minority groups to find equal opportunities in expressing their claim. This, I would say, is rather unjust with regard to Rawls' theory. Rawls' aim is anti-discrimination and the state's neutrality toward all comprehensive doctrines. And formally, this is what his design of constitutional measures ensures (see Galeotti 2002: 53-57). It is true that the overlapping consensus is never fully inclusive of all comprehensive doctrines. It is not even meant to be. One of the strengths of the idea of public reason is that it helps set the boundaries between what qualifies for toleration and what should not be tolerated.⁸ Nevertheless, I suspect that what we consider a part of overlapping consensus tends to be perhaps much more restrictive than Rawls had intended it to be. However, this in my opinion (here I oppose for example Parekh 2000:87-88) is not inherent in the basic conception of public reason. The problem is in the largely unreflected implicit cultural and above all structural bias of both the public and the private sphere that are imposed upon members of a minority, particularly in non-liberal groups as 'a "special kind of burden" living in a society that organises itself according to a different set of priorities' (Shorten 2005: 293).

Here we return to the main features of toleration – the fact that it is negative and the fact that it involves a relation of power or control. For Rawls, comprehensive doctrines, their values and the conceptions of good, unless they form the basis for

⁸ Here I leave open the tricky question of an adjudicating mechanism necessary to complement the principle of reasonableness. Liberal theory of rights typically employs the principle of harm which, alas, has numerous imperfections and to my opinion, is still too dependent on substantially diverging conceptions of rights to be able to provide required clear-cut solutions to practical cases of toleration.

requiring an adoption of a public measure, are restricted to the private sphere. Here, all members having differing worldviews are free to pursue their own conception of the good life. In the public sphere, on the contrary, in order to be part of the inclusive body of equal citizens, they are required to adopt values and standpoints which at many points may be in variance with the comprehensive doctrines they believe in. Rawls tells us that this is a justified, fair, and balanced approach to all minorities guaranteeing extensive equality of opportunity and inclusion of all individuals. I believe I am not alone in doubting his assertions.⁹ To start with, by limiting the state's action to the principle of neutrality and disregarding difference in the public sphere, Rawls allows for the privatization and thus public neglect of issues related to identity, such as socio-economic disadvantages, social marginalization, exclusion, and disregard for non-liberal groups. In real societies, the socio-economic and cultural axes of identity are always interdependent, reinforcing each other¹⁰. As Galeotti argues, in case we deal with a real society in which mechanisms of exclusion, stigmatization of certain groups, and politically relevant structural relations of power and socio-economic domination exist, 'mere disregard of differences is clearly insufficient [...] it is insufficient because in ongoing societies where privileges and costs have already been linked to moral and cultural differences [...] adopting a neutral attitude towards those differences, far from neutralizing effects of previous discrimination, strengthens and reproduces them' (Galeotti 2002: 59-60). Furthermore, the demand for the use of public reason puts members of minority cultures, especially those more divergent in terms of their values from the principles of liberalism, under a strain of having to transform the arguments out of their commitments under comprehensive doctrines into liberal civic commitments of reasonableness. While the cultural values of the liberal majority necessarily find venue both in the private and the public sphere, the members of minorities are strongly discouraged to air any of their deep cultural norms in the public debate. Or at least not in the form which is their own, which would come from inside their identity.

To conclude, despite its doubtless merits, many theorists argue that the principle of liberal toleration, as implied by the neutralist conceptions of the state, does not deliver an adequate level of inclusion, equality, and integration of minorities. Even in the most sophisticated accounts, it is still marked by remnants of liberal superiority, arrogance, paternalism, and exclusionary practices.

⁹ For a very clear critical analysis, see Galeotti, 2002: 58–68.

¹⁰ See also Young, 2001: 1–18. Young, quite in line with what I suggest in this study, eloquently identifies structural inequalities that empirically have a tendency to parallel group categories. Conceptualizing structural inequality as a 'set of reproduced social processes that reinforce one another' (Young, 2001: 2), she concludes that structural social relations systematically privilege some groups over others. Thus, individualist policies of redistribution alone, without considering the aspects of such group stratification, can never serve as an efficient remedy for such structural biases of the system.

What Comes Next? The Boom of Alternative Conceptions and the Value of Respect

As I have already noted, recent literature on multiculturalism and toleration shows in general quite a decisive shift toward alternative approaches. These approaches keep within the premises of the liberal paradigm of individual rights but revitalize the liberal doctrine of toleration adding more emphasis to the importance of political inclusion, positive policies of the construction of equal respect toward minorities, recognition of the salience of culture for individuals' well-being and their situation in the society, and other aspects that lead beyond the initial concept of toleration. Given the current popularity and relevance of the topic, it is not surprising that a great number of authors in the last several years have contributed with their solutions and have elaborated on the debate concerning the future of toleration and respect, adding both to the profoundness of available exploration but also to the inner diversity of the treatments which often causes a more than limited amount of confusion.

Put simply, the liberal reactions to the critique of toleration can be divided into two groups. The first group of researchers can be labelled 'beyondists'. These authors acknowledge the shortcomings of 'old toleration' but refuse to "throw out the baby with the bath water". This internally differentiated group of writers includes researchers such as Dario Castiglione, Catriona McKinnon, Susan Mendus, Anna Elisabetta Galeotti, to name a few among many. What distinguishes old conceptions of toleration from the new ones are the attempts to support toleration with a more acceptable form of reasoning. According to Castiglione and McKinnon, toleration is today far more demanding with regard to the value of mutual respect (Castiglione – McKinnon 2001: 224-225). Moreover, the issue of the proper limits of toleration and our obligation not to tolerate comes visibly into the fore, followed by explorations of toleration as a virtue. Also, other topics already discussed in the paper are becoming objects of vivid discussion among these 'beyondists', particularly the paradox of the impossibility of toleration (Castiglione – McKinnon 2001: 225). It is quite common for this wide group of authors to add adjectives in front of their notions of tolerance, and this way specify the concept in a new way. The purpose of such a step is very often to allow for firmer incorporation of the principle of democratic inclusion or equal respect, alternatively even recognition into the very concept of tolerance, and thus, while remaining on the ground of the liberal individualist argument, move beyond the above mentioned structural and cultural inadequacies of the traditional conception of toleration.

Thus, Galeotti introduces a revised concept of toleration as recognition, building on the liberal concept of the neutrality of the public sphere but opening it to minority difference and issues previously exclusive to the private sphere (Galeotti

2002). A number of authors talk about strong or positive toleration as opposed to a weak or negative form of it. This strand of thought is especially resonant among the representatives of the theory of deliberative democracy, as James Bohman or Amy Gutmann, who consider public deliberation equipped with strengthened emphasis on the norms of equality, mutual understanding, and respect as being the proper way toward a truly democratically inclusive, culturally integrated society (Bohman 1996, 2003a, 2003b; Gutmann 2001; cf. Young 2000; Benhabib 1996a; Parkinson 2006).

Quite interesting also is the conception of ‘fair treatment as overriding reason’ in toleration suggested by Shorten, which for me represents another slightly different, though not quite unrelated, method of reconceptualising toleration. Quite in line with other listed authors, Shorten calls toleration ‘a “second-best” scenario’ (second-best to respect) (Shorten 2005: 297). While he acknowledges its unique function in contemporary social systems, he registers the dark side of toleration as paternalistic, negative, unilateral, and potentially not a sufficiently respectful extension of the majority’s social space. He joins Galeotti and others in their attempts to problematize publicly issues of culture and bring them directly to the discussion on toleration. What differs is his reliance on the lasting distinction between the forms of public recognition and toleration. While public recognition and respect have the capacity to counterbalance the effects of the stigmatization and marginalization of minority cultural practices (the capacity not available to toleration), such positive approaches are not always possible due to the fact that, in some cases, we are not willing or able based on our persuasion to respect or positively value certain culturally specific actions. Then, all we have is the possibility of toleration. This has to be, in Shorten’s interpretation, contextual and the main driving force behind it is not to treat cultural commitments unfairly. In line with current trends, Shorten does not argue for toleration based on substantive moral judgements concerning the content of minority actions that are to be tolerated. He turns to the principle of equal treatment of individuals, but unlike Rawls places the centre of attention around cultural commitments of the individual. He intends to incorporate the concepts of fairness and cultural commitment which should help him move beyond the terms of debate set by liberal neutralism and overcome its shortcomings mentioned above. Tolerance then occurs when despite the fact we are not respecting the action tolerated, we acknowledge the fact that our voluntary restraint is necessary in order not to treat cultural commitments of the minority unfairly (measured as an index of alienation from their own community)¹¹. On the other hand, the act of toleration is unthinkable should it result in alienation from our own culture or community.

¹¹ Here, I am afraid that Shorten’s scenario, despite its reliance on methods and notions of social sciences (alienation), would in practice often stand helpless before two sides of the conflict, who both

In this last section, I have summarized a number of conceptions that in sum, from my point of view, direct us to the correct and hopeful path on which contemporary policies of multicultural integration may successfully tread. While particular models may differ, there are several things recommendable for all of them to internalize, and on the other hand several potential threats to avoid. As to the generally advisable mechanism, they will have to include both toleration and non-toleration as matters of last resort but, aside from them, include a permanent emphasis on remedies for structurally and politically rooted inequalities and injustices toward disadvantaged groups which can only be countered by the weakening of the strict boundary between the public and the private and opening up the public space to discussions on matters of controversial values and identities and the qualms closely related to them.

On the other hand, any solution must be rooted in individualist, though contextualized, culturally sensitive ontological premises in order to avoid the imposition of identities upon individuals, group reification, and further stabilization of segregationist tendencies in multicultural societies.

Politics of Group Recognition – a Brief Note

Of course, another option for reacting to the difficulties of the notion of toleration – a more ‘communitarian-minded’ one – is to actually reject toleration as inadequate altogether and substitute it with even stronger, more cultural and group-oriented versions of positive respect and recognition. Such solutions have long been advocated by Bhikhu Parekh, whose statement was used in opening section of this text, but also by Charles Taylor and others. Parekh’s dialogical conception of cultural integration stretches between, or rather incorporates both elements of communitarian multiculturalism and the theories of deliberative democracy that will be considered separately. However, both he and the communitarians have much in common when it comes to conceiving the nature of human identity and the nature of cultural commitments. Also, their basic recipes for cultural integration largely correspond, revolving around the idea of recognition. There are several levels of difference recognition, from acceptance, via the respect which requires changes in our attitudes, up to public affirmation of the value of difference (Parekh 2000: 2). Policies of respect and recognition of cultural collective rights have long been subject to criticism on the part of liberally minded academia and the public. Traditional multiculturalist policies have resulted in phenomena of further marginalization, segregation, and the reinforced stigmatization of minority groups. Groups have been constructed with excessive emphasis on their internal unity, disregarding internal variance and in practice leaving individual members of perceived groups

would suffer a certain amount of alienation, not being able to provide an ultimate adjudication.

under the dictate of the norms imposed by the group. These are just some examples of quite boldly and generally sketched criticisms that undermine the viability of politics of recognition in its stronger form.

Structure of this Volume

This very brief excursion into the approaches to toleration and the critiques of the concept only begins to reveal how intricate a field we are entering. The articles collected in this volume all try to develop the initial arguments much further, and to greater depth, both on the level of theoretical analysis, and empirical research supported by case studies clearly illustrating the importance of a conceptual discussion for social and political practice.

All articles within this volume come out of the RESPECT project (GA no. 244549) supported by the European Commission, 7th Framework Programme. As such they represent the nature and mission of the project: to explore the extent to which the implementation of tolerance-inspired policies (particularly those related to the distribution of public space and ethnic, cultural or religious topographies of space) risks undermining the pursuit of basic democratic commitments, and – if so – what conception of tolerance, grounded on what bases, may be invoked so as to limit such a risk.

The issue opens on more theoretical grounds. Here, Andres Moles discusses critically arguments about the permissibility of hate speech provided by Ronald Dworkin. Moles argues that so-called expressive interests do not constitute a sufficient argument for protection of hate speech, and instead proposes arguments relevant to justice and the principle of harm.

In the following piece, Sophie Guérard de Latour, discusses both the theory and practical implications of French republicanism for the treatment of minorities and the protection of minority rights. A highly nuanced analysis of communitarian, perfectionist, pragmatic and critical strands in republicanism, enables Guérard to highlight the shortcomings of specific approaches and argue for the critical republican tradition as the most promising of the four with regard to upholding the values French universalism is originally meant to uphold.

Building on solid conceptual framework which finds a clear boundary between tolerance and respect, Sune Lægaard's article considers the recent Danish mosque debate as a debate about distribution of public space to a religious minority and asks whether and, if so, how the case can be described in terms of tolerance and respect. The aim of the article is of high social and political relevance, providing several lessons learned for general public, as it means to test the very applicability of the concepts developed in theory to public practice and debate.

Focusing on the specific issue of housing in their comparative study, Gideon Calder, Francesco Chiesa, Mariann Dósa, Jean-Baptiste Duez and Chiara Testino explore the spatial and other marginalization of Roma and Traveller populations in Italy, Hungary, France, and Wales just to find common patterns of treating the minorities across Europe which calls for further normative debate on implications of tolerance in public policy.

The issue closes by an article analysing the special use of the principles of toleration and respect promoted by recent literature on deliberative democracy. Referring mainly to arguments developed by Anne Phillips, Lenka Strnadová goes on analyzing the impact of the implementation of principles of tolerance, respect, and recognition on the democratic inclusion and legitimacy of public sphere in the case of the Roma in the Czech Republic.

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Expressive Interest and the Integrity of Hate Speakers

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Abstract: *The paper focuses on the claim that citizens' expressive interests in speech warrant protection to hate speech. I analyse this view by exploring three different arguments that Ronald Dworkin has produced in recent years. The arguments I advance holds that Dworkin's fails to show that such interests are sufficient for protection. Drawing from some research on social psychology I claim that hate speech is harmful in a justice-relevant manner. If I am correct, then, given Dworkin's ideas about integrity and equality of resources, he cannot claim that restricting hate speech fails to treat speakers with less respect and concern.*

Keywords: *Automatic behaviour, autonomy, R. Dworkin, free speech, integrity*

Introduction

A popular strategy for defending freedom of speech distinguishes the interests involved in expression. First, speech serves our *deliberative* interests in different ways. Being exposed to different ideas helps us to make up our minds about a variety of issues. It might direct our attention to some facts that we did not previously know or we did not pay enough attention to. Mill famously argued that free speech is conducive to discovering truths, and we have an important interest to hold beliefs that are true (Mill 1991; Cohen 1993). Even if we do not change our actual beliefs, free speech helps us to revise our convictions and to put them under critical scrutiny, perhaps strengthening the reasons we have to keep those beliefs.

Second, we also have *expressive* interests. In general, we want to 'be[...] able to call something to the attention of a wide audience' (Scanlon 2003b: 86) for a number of reasons: we might want to 'bear witness' to a viewpoint concerning, say, political justice or to articulate 'thoughts, attitudes and feelings on matters of personal or broader human concern' (Cohen 1993: 224). An important dimension of being a moral person includes trying to persuade others about the validity of our convictions. Sometimes, speaking our minds is necessary for personal integrity; seeing justice not being done gives us a strong reason to express our views and to try to rectify this. Expressive interests are not necessarily of such serious order; we also want to communicate to others our experiences and thoughts even the trivial ones.

A natural question is whether by themselves these interests are sufficient to protect free expression. To many liberals the response seems to be 'yes'. Curiously,

many liberals defend speech from the point of view of *deliberative* interest (Scanlon 2003a, Nolan West 2004, Brison 1998,), but relatively little has been said about our *expressive* interests. Still, there is an assumption that the latter also support protection of speech. An important exception to this trend is Ronald Dworkin, who, along the years has written extensively about our expressive interests. The claim that I shall advance is that our expressive interests do not suffice to protect some forms of racist speech¹.

I shall proceed as follows; first I shall briefly describe how I understand the distinctiveness of a free speech principle. In section 2, I will examine how expression is related to a just distribution of resources. In section 3, I discuss two accounts of integrity: political and ethical and their relation to speech. Finally in section 4, I argue that integrity does not provide sufficient reason to protect racist speech.

I – Speech and Harm

In general, liberals defend a form of the ‘harm principle’, the idea that ‘the only purpose for which power can be rightfully exercised over any member of [society] is to prevent harm to others’ (Mill 1991: 14). The relation between the harm principle and free speech is not a straightforward one. The idea that speech must be free from intervention can be either an instantiation of the more general harm principle, or an independent principle. On the one hand, ‘minimalists’ argue that expressive activities are covered by the harm principle – a general presumption of liberty. Their main claim is that speech does not harm third parties and, being that consistent with the harm principle, it must be protected. A popular account of this view holds that, unlike other forms of action, speech cannot cause harm because it is *always* mentally mediated. By mental mediation, it is meant that communication is rationally evaluated, and that the ways in which speech affects agents’ preferences and beliefs are always assessed by critical reflection. There is another less extreme strategy, which holds that, although speech has some costs, these are always redressable by ‘more, and better speech’ (Brison 1998: 42-3; Nolan West 2004).

‘Maximalists’ are not convinced by the argument above. They wish to protect speech beyond the harm principle, that is, to furnish it with an independent justification. This position holds that it is not enough to show that speech causes harm because there are further reasons to protect it beyond the harm principle. As Schauer argues

¹ Hate speech can be broadly taken as a ‘derogatory opinion about or attitude toward some group identified by a marker such as race, religion, ethnicity or sexual orientation, or towards an individual qua member of such a group’ (Sumner 2004: 15). As it will be clearer in section II, the main objection to hate speech is that it triggers certain kinds of effects.

The Free Speech principle is an exception or qualification [...] to the general rule in force under a particular political theory [say, the harm principle]. When a Free Speech Principle is accepted, there is a principle according to which speech is less subject to regulation [...] than other forms of conduct having the same or equivalent effects (Schauer 1982: 7).

Maximalism holds that ‘expression merits stringent protection because its great value guarantees that the benefits of protection trump the costs’ (Cohen 1993: 20). In this view, free speech is ‘an exception to the exception’: you can do what you want, except those actions that are harmful, but you can harm others through speech. (Hurley 2004: 189). Among the arguments for protecting speech, a popular claim holds that free speech is necessary if government is to treat all its citizens with equal respect and concern. One aspect of this claim is the topic of this paper.

II – Speech and Distributive Equality

Many liberals agree that the fundamental goal of government is to adhere to the ‘abstract egalitarian principle’ according to which ‘[it] must act in a way that makes the lives of those it governs better lives, and it must show equal concern for the life of each’ (Dworkin 2000: 128). An attractive interpretation of this principle consists in making distributions endowment-insensitive but ambition-sensitive. In order to illustrate this, Dworkin imagines a situation in which all impersonal resources are to be distributed through an auction. People bid for the resources they desire, until no one ‘would prefer someone else’s bundle of resources to his own bundle’ (Dworkin 2000: 67). This ‘envy test’ is a necessary (but not sufficient) condition of an egalitarian distribution.

The auction-based device involves people taking responsibility for the costs of their own ambitions and projects, because the costs of any given resource will fluctuate according to how much others bid for it.

To be sure, the envy test might be satisfied in a variety of ways. If the auctioneer transforms all resources into plovers’ eggs and pre-phylloxera claret there might be some people who will not envy others’ bundles, not because they are satisfied with their own bundle, but because they dislike eggs and wine. This distribution will fall short of treating everyone with equal respect and concern. We need, then, a principle which links the abstract egalitarian principle with the envy test. One such link is the ‘principle of abstraction’. This principle ‘recognizes that the true opportunity cost of any transferable resource is the price others would pay for it in an auction whose resources were offered in as abstract form as possible, that is, in the form that permits the greatest possible flexibility in fine-tuning bids to plans and preferences’ (Dworkin 2000: 151). The principle of abstraction makes liberty constitutive to an egalitarian distribution because it is necessary for discerning the true opportunity costs of different resources, thus satisfying the abstract egalitarian

principle. However, it is also compatible with limiting free choice when its exercise would harm third parties. This principle also rules out perfectionist or paternalistic policies by insisting that ‘the resources people have available [...] be fixed by the costs of their having these to others, rather than by any collective judgment about the comparative worth or projects or personal moralities’ (Dworkin 2000: 154).

But establishing free choice is not sufficient for satisfying the abstract egalitarian principle. We still need an account of the relative value of different liberties. This account would help us to see why our expressive interests have such an importance compared to, for instance, freedom to speed driving. Such an account is provided by the ‘principle of authenticity’. Because equality requires sensitivity to people’s ambitions and life plans, any permissible auction

requires [...] some baseline principles specially protecting the parties’ freedom to engage in activities crucial to forming and reviewing the convictions, commitments, associations, projects, and tastes that they bring to the auction, and after the auction, to the various decisions about production and trade that will reform and redistribute their initial holdings (Dworkin 2000:159).

A general protection of free speech clearly figures in this account of authenticity, for it is advantageous to the parties to express their commitments and beliefs to a wide audience. The principle of authenticity captures the basic idea underlying the autonomy defence of free speech by insisting that speakers have an interest in having ‘an opportunity to influence the corresponding opinions of others, on which their success in the auctions in large part depends’ (Dworkin 2000:160). Restricting the opportunity a person has to influence others is an arbitrary way of distorting the opportunity costs of that person’s lifestyle; such a distortion constitutes a breach to the egalitarian principle of equal respect. It is from this perspective that our expressive interests are sufficient to establish a principle of free speech.

Authenticity, however, allows too much: as stated, it does not distinguish between different kinds of preferences and might deliver results that fail to treat some members as equals. The ‘principle of independence’ corrects this failure. Contrast three different ways in which a particular lifestyle might be more expensive to lead. First, someone might find it costly to realise his plans because few people share his tastes. Imagine Bob, who enjoys playing baseball, but because he lives in the UK he finds that doing so is more expensive than in the US. Second, some ways of life might be harder to lead because the government *deliberately* increases their costs based on an account of their intrinsic merits. Someone who faces religious persecution, or whose speech is denied faces higher costs than she would in the absence of these policies. Third, a person’s life can be inflicted with distorted opportunity costs if other people’s bids reflect contempt or dislike for

her. A clear example could be a situation in which members of a racist community bid for areas of land and build segregated zones, leaving members of other races with fewer resources and opportunities than they would have had in the absence of such a prejudice. In the first example, the extra cost that Bob has to pay in order to play baseball is not unjust because that is what is needed to establish the true opportunity costs of baseball in that particular society. In the second case, though, there is injustice: the government fails to treat members with equal concern and respect when it imposes extra costs on some lifestyles because it finds them less meritorious. The third case is also unjust: here the ‘principle of independence’ limits free choice in order to protect those who ‘are the objects of systematic prejudice from suffering any serious or pervasive disadvantage from that prejudice’ (Dworkin 2000: 161).

What is the relation between hate speech and independence of prejudice and authenticity? One option consists in claiming that authenticity takes priority over independence in the sense that the harms done through speech are not sufficient to restrict the authenticity of speakers. This can be done in two ways.

A Minimalist Defence

First, one can take a minimalist defence and claim that independence does not apply here because speech does not distort the opportunity costs of victims. In this view, the costs of speech are similar to costs that an egalitarian distribution does not condemn. Now, imagine John, a person who suffers due to other peoples’ racist prejudices. Although John is protected from discrimination in employment, he nevertheless is not protected from the effects of these attitudes. Based on this minimalist approach, one can argue that the effects of speech are not detrimental to justice: they are akin to those suffered by Bob. However, this strategy does not seem promising for two reasons.

First, a robust defence of free speech cannot ignore its costs. Second, equality of resources cannot be neutral about those effects, because they flow from racial or sexist prejudice. Equality of resources must condemn ‘the attitudes that create disadvantage’ based on racial or sexual prejudice (Dworkin 2000: 162).

Problems for Minimalism

Let me explain briefly some of the ways in which speech is harmful². Evidence shows that a large amount of human behaviour is automatic, in the sense of being unconscious, unintentional and effortless (Wilson 2002: 222 n.4; Bargh – Chartrand 1999). For instance it has been argued that merely thinking about

² Here I rehearse some of the arguments defended in (Moles 2007: 62-74).

performing an action increases the likelihood of a person performing that action. Also, the mere perception of a piece of behaviour increases the likelihood of an agent performing that behaviour. These two tendencies, the tendency to imitate whatever we perceive and the tendency to act according to concepts that are activated (and concepts assimilated to them) are the default states of our minds (Hurley 2004).

An important component of implicit cognition is social stereotyping: an automatic process by which traits that purportedly describe social groups are integrated. Although social stereotypes are a quick and efficient way to categorise new information about groups, in most cases they are inaccurate: they integrate concepts which have little to do with the group in question, or, sometimes they merely reflect prejudice (Chen – Bargh 1997: 542). The content of racial and gender stereotypes are well known in Western societies. For instance, traits associated with black people are poverty, aggressiveness, criminality, low intelligence, laziness, and sexual perversity (Devine 1989: 8). An experiment described by Devine shows how stereotypes are applied to assess situations. People were shown a short film in which a man behaved in an ‘ambiguously aggressive way’. After the film they had to complete a report qualifying the man’s behaviour from ‘very aggressive’ to ‘not aggressive’. Not surprisingly, when the role was played by a black actor, people tended to interpret his behaviour as being much more aggressive than when it was played by a white actor (Devine 1989: 9). Moreover, social stereotypes are causally effective in producing behaviour even in those who reject the content of the stereotype. In a different experiment, people who were primed with black faces reacted more aggressively than those who were not, when asked to repeat a tedious task (Bargh – Chen – Burrows 1996).

Going back to free speech, then, we can distinguish between two different kinds of costs. On the one hand, there are the direct costs associated to the targets of speech. It is well known that minorities suffer from discrimination in employment and are (to some extent) excluded from the enjoyment of some social goods (Cleveland – Vescio – Barnes-Furrell 2004; Brief – Butz – Deitch 2004; Demuijnck 2009). Any egalitarian theory of justice needs to be sensitive to these forms of disadvantage. On the other hand, speech has also indirect costs to audiences by triggering processes of mental contamination. Mental contamination is ‘the process whereby a person has an unwanted mental response because of mental processing that is unconscious or uncontrollable’ (Wilson – Brekke 1994: 117). In this sense people who react in a prejudiced manner because of the automatic impact of racist stereotypes, and who at the same time do not approve of reacting in this way count as being mentally contaminated. Dovidio and his colleagues use the term ‘aversive racism’ to refer to this kind of phenomenon. They define aversive racism as

a modern form of prejudice that characterizes the racial attitudes of many Whites who endorse egalitarian values, [...] but who discriminate in subtle, rationalizable ways. [Aversive racists] consciously and sincerely support egalitarian principles and believe themselves to be nonprejudiced [but] also unconsciously harbor negative feelings and beliefs about Blacks, which may be based in part on almost unavoidable cognitive, motivational, and sociocultural processes (Dovidio – Kawakami 1997: 512)³.

Victims of aversive racism are harmed in a justice relevant manner because both their sense of justice and their authenticity are compromised. First, aversive racists think that they should not treat people differently because of their race, and secondly, their capacity to react autonomously is jeopardised when they cannot respond to the reasons that apply to them, but respond according to the content of social stereotypes. As claimed above, equality of resources cannot be neutral towards these kinds of effects⁴.

Towards Maximalism

There is, though, a second strategy. One can claim that authenticity takes precedent over independence while recognising the costs of speech, and yet, insist that these are not sufficient to restrict expression.

Before we move into the maximalist arguments, notice that there is a conflict between the authenticity of different parts involved in speech. On the one hand, it makes sense for *audiences* to protect their deliberative interests from mental contamination, especially from those forms that threaten aspects of our lives to which we attribute great importance, such as the way we treat others (Moles 2007). In this sense it would be reasonable to make the original distribution of resources (and liberties) sensitive to the environment in which people form and revise their personalities when those limits are established with the intention of realising circumstances in which people are all treated as equals. It is true that equality of resources *already* places a limit on *public* actions that fail to treat everyone with equal respect and concern by prohibiting state-sponsored racism or legal forms of discrimination, but this does not accommodate restrictions on *private* actions. It seems, however, that the effects of mental contamination undermine this objection, for the harmful impact of aversive racism and similar processes might bypass the public/private distinction. Thus, one might claim that some spill-over is likely to occur between

³ A possible similar concept is ‘aversive sexism’, the process by which egalitarian people can display sexist attitudes due to automatic mental processing.

⁴ The concepts of aversive racism and mental contamination register only the existence of this kind of racial prejudice. They do not explain why particular groups are associated with particular negative traits. A fuller understanding of racism needs to pay attention to these aspects. I want to thank an anonymous referee for this journal for pressing me on this point.

these two spheres⁵. Although deliberate governmental distortions of opportunity costs might be *worse* than those resulting from private actions, there is no reason to suppose that the latter is irrelevant for justice.

It is important to bear in mind that the claim defended here is not an example of ‘cultural paternalism’ of the sort Dworkin rejects. Instead, it is based on an assessment of how exposure to certain forms of speech might be detrimental to the authenticity of audiences and to the independence of both them and the targets of hate speech. The claim I defend is also not paternalistic in another sense: I am not arguing that it would be *better* for speakers’ authenticity if they were not allowed to express their views because they are immoral or unpopular. The argument is merely that, from the point of view of authenticity, it is not clear why a speakers’ right to hate speech necessarily trumps that of audiences’ and targets’. Moreover, equality of resources cannot be neutral towards the effects of racial and sexist prejudice⁶. In this respect, I argue that a fair distribution of resources must be sensitive to the ‘ecology of speech’. One could still give paramount weight to our expressive interests, but an alternative argument is needed. The next two arguments are attempts to find an alternative strategy of sustaining this position.

III

In contrast to political liberals, who think that political institutions must be justified independent of a person’s ethical convictions, Dworkin thinks that liberalism must be justified by appealing to some non-political values (Rawls 1996; Dworkin 2000). In order to do so, Dworkin thinks that we should find values at a sufficiently abstract level that most people would endorse. Once such values are found, we must show that certain political institutions are their best interpretation. Thus, Dworkin ‘tr[ies] to connect ethics and politics by constructing a view about the nature and character of the good life that makes liberal political morality seem continuous [...] with appealing philosophical views about the good life’ (Dworkin 1995: 191).

Critical and Volitional Interests

Dworkin distinguishes between two different kinds of interests possessed by people. On the one hand, a person has interests in achieving things she wants to achieve; interests she harbours *only* because she wishes to satisfy them. Dworkin terms this dimension of well-being ‘volitional well-being’ and the interests we have

⁵ This idea requires far more attention; however, it is out the reach of this paper.

⁶ Dworkin thinks that equality of resources might treat the disadvantages created by prejudice as handicaps in the sense that justice must be sensitive to those differences. Nevertheless, he acknowledges that in one respect, disadvantages created by prejudice are worse than handicaps (Dworkin 2000: 162).

in securing it ‘volitional interests’ (Dworkin: 2000: 242). On the other hand, a person has ‘critical’ interests in achieving certain things, not because she wants them but because their achievement will improve her life. The thought here is that these things improve one’s critical well-being *independently* of whether we want them or not: well-being in this sense is ‘improved by [a person’s] having or achieving what he should want, that is, the achievements or experiences that it would make his life a worse one *not* to want’ (Dworkin 1995: 230)⁷. Although ideally these interests match each other sometimes they also come apart: myopia, weakness of the will, and addictions all seem to be forms of a person’s wants and actions that do not serve her critical well-being. On the other hand, some people simply do not care about how well or badly their lives go. It is not that they are mistaken about their critical interests, but rather that they disregard the quality of their lives: according to Dworkin, ‘we think that [...] their lives are defective in a particular and demeaning way: they lack dignity’ (Dworkin 2006: 14).

Dignity

The idea of dignity is appealing because it embodies values that most people share regardless of their particular viewpoints on more concrete issues in politics. Dignity is bi-dimensional. First, it requires acknowledging that human life has an inherent value, and that that value is ‘axiomatic and fundamental. It is important for no further reason than that [people] have a life to live’ (Dworkin 2006: 15). Now, if someone’s life has intrinsic value for himself, then he must concede that everyone else’s life has the same intrinsic value. The first person’s perspective does not make his life more important than others’. If we accept this fact, then we ‘must also accept that this is equally important for each person because [we] have no ground for distinctions of degree any more than for flat exclusions’ (Dworkin 2006: 16; see also Dworkin 2000: 5, 240).

The second dimension of human dignity holds that

Each of us has a personal responsibility for the governance of his own life that includes the responsibility to make and execute ultimate decisions about what life would be a good one to lead. We may not subordinate ourselves to the will of other human beings in making those decisions... (Dworkin 2006: 17).

This principle of ‘special responsibility’ grounds the argument that people must be treated not only with concern, but also with respect, and will figure prominently in Dworkin’s defence of free speech.

⁷ Although the distinction is controversial, I will accept it for the sake of the argument.

Given that a person has a critical interest in living a good life, we can connect the abstract egalitarian principle with the idea of dignity. This principle implies that government's attempts to increase its subjects' critical well-being are constrained by two factors: first, in all its actions it must show equal concern to all people (the principle of equal value of life), and second, it must treat them with equal respect (the idea of special responsibility). A government that fails to satisfy these conditions loses, to that degree, its legitimacy⁸.

There are two avenues for defending free speech based on human dignity. The first is a direct argument premised on the idea of responsibility, the other emanates from a conception of political equality and democracy. I will briefly explore each here.

Free Speech and Political Equality

Dworkin defends a 'constitutive' version of free speech on the grounds that free speech is an 'essential [...] feature of a just political society' (Dworkin 1996: 199-200). In this respect, free speech is necessary to protect the responsibility each person has to determine their own values, to form convictions, and to communicate them 'out of concern for others, and out of a compelling desire the truth be known, justice served, and the good secured' (Dworkin 1996: 200). In other words, there is an intimate relation between a person's special responsibility and her leading an authentic life:

[P]reventing someone from speaking his conscience and conviction to other people is a particularly grave harm. [...] Speaking out for what one believes [...] is in any case for most people an essential part of believing; it is part of the total phenomenon of conviction. Identifying oneself to others as a person of particular beliefs or faiths is part of creating one's identity, part of the process of self-creation that is at the centre of our personal responsibility (Dworkin 2006: 153).

Free speech is, then, a condition government cannot fail to secure if it is to promote and respect its citizens' critical well-being.

The second approach by which free speech can be defended here is based on the idea of political equality, and is linked to the defence of democracy. Dworkin thinks that institutions are democratic 'to the degree that they allow citizens to govern themselves collectively through a partnership in which each is an active and equal partner' (Dworkin 2000: 362). Democracy, understood as such, is a system of collective decision-making that must satisfy certain conditions, conditions mainly aimed at guaranteeing that institutions treat citizens with equal respect and concern.

⁸ On legitimacy, Dworkin writes that citizens 'assume [...] political obligations only if and so long as the community's government respects their human dignity' (Dworkin 2006: 97).

Certain considerations need to be accommodated in order to understand the relation between democratic equality and freedom of speech. Some of these are captured by the idea of ‘moral membership’. First, in order to be a member in a community in which each individual is treated with respect and concern, an element of reciprocity is needed. Accordingly, Dworkin claims that ‘a person is not a member unless he is treated as a member by others, which means that they treat the consequences of any collective decision for his life as equally significant a reason for or against that decision as are comparable consequences for the life of anyone else’ (Dworkin 1996: 25). It is unclear, however, why we could not appeal to a more demanding notion of reciprocity: one that also includes the willingness to treat others as equals. Understanding reciprocity as a two-way relation captures better the manner in which democratic citizens should interact in a democracy⁹.

Second, democracy requires a space of discourse in which collective deliberation takes place. Citizens must be free to discuss and present their views as individuals before any collective decision is taken, ‘and the deliberation must centre on reasons for and against that collective action, so that citizens who lose on an issue can be satisfied that they had a chance to convince others and failed to do so, not merely that they have been outnumbered’ (Dworkin 2000: 364-365).

Finally, democracy also requires citizens to be independent from the collective decisions made by the community: dignity requires that a community does not impose their views on citizens but, on the contrary, it must ‘provide circumstances that encourage them to arrive at beliefs on these matters through their own reflective and finally individual conviction’ (Dworkin 1996: 26). A government that imposes the views of the majority on its citizens fails to secure that each can live authentic and integrated lives.

Another way to link the value of dignity with democracy is found in the idea that government must promote three different goals within a democratic society. First, it must secure ‘distributive goals’ that are fair: for instance, those recommended by equality of resources. Second, it must promote ‘symbolic goals’ in which the community asserts the equal moral status of its citizens, for instance allocating each person one, and only one, vote. Third, it must also secure citizens’ ‘agency goals’, because

[w]e cannot make our political life a satisfactory extension of our moral life unless we are guaranteed freedom to express our opinions in a manner that, for us, satisfies moral integrity. Opportunity to express commitment to our convictions is just as important, for that purpose, as the opportunity to communicate those convictions to others (Dworkin 2000: 201-202).

⁹ Cf. Rawls’s principle of reciprocity: ‘our exercise of political power is proper only when we sincerely believe that the reasons we offer for our political action may reasonably be accepted by other citizens as a justification of those actions’ (1996: xlvi).

It is clear why Dworkin believes that free speech is a necessary condition of political equality and why he gives such an important weight to our expressive interests: a person whose expressive interests are not protected is treated neither with equal respect nor with equal concern. It is important to note that, although this defence of free speech appeals to our deliberative interests, it asserts that expressive interests are *sufficient* to secure a free speech principle. This perhaps explains why Dworkin seems reluctant to categorise speech. In contrast to those who believe that some forms of speech warrant greater protection because they are better captured by the relation between speech and autonomy (Scanlon 2003b), Dworkin supports an extreme form of maximalism, according to which ‘the wrong [of censorship] is just as great when government forbids the expression of some social attitude or taste as when it censors explicitly political speech’ (Dworkin 1996: 200-201). In other words, even if speech contributes nothing to processes of deliberation, the fact that a person has an expressive interest in speech suffices for its protection.

This view, however, seems too strong. Autonomy defences of speech are distinctive due to the emphasis they place on deliberative processes and critical reflection. If speech does not serve anyone’s deliberative interests, then the autonomy-based reasons for its protection are weakened to a considerable degree. It would be unclear why our expressive interests carry any weight if they did not have any impact on processes of deliberation. As mentioned above, expressive interests are supposed to be beneficial for our autonomy and for the autonomy of others. Simply stating that autonomy requires being able to express our beliefs begs the question. In other words, self-expression alone is not sufficient to protect speech. There are many ways in which a person can express herself which are not best accommodated within a principle of free speech. On the one hand, in the case of harmless actions self-expression is usually best captured by a right to privacy. On the other hand, self-expression is not sufficient in the case of harmful actions: ‘Nero was presumably expressing himself aesthetically when he [...] spilled fresh human blood on green grass’ (Hurley 2004: 194).

The Model of Challenge, Ethics and Integrity

There is another argument that Dworkin employs to justify free speech, the one based on the idea of *ethical* integrity. Dworkin provides a controversial defence of liberal equality based on an ethical conception of the good life (Dworkin 2000: 239). Rather than justifying liberalism appealing only to political reasons, he thinks that his approach strengthens the case for a liberal political morality (Dworkin 2000: 241)¹⁰.

¹⁰ In contrast to this account, the case built on the argument from dignity is less demanding and less controversial. Dworkin does not believe it is necessary to accept this account of ethics to accept

Recall the ‘abstract egalitarian principle’, according to which government must make the lives of those under its command better, with the constraint that it treats everyone with equal respect and concern. A natural question is, then, how to measure the value of a human life? In answer to this question, Dworkin presents his ‘model of challenge’, which ‘supposes that a life is successful insofar as it is an appropriate response to the distinct circumstances in which it is lived’ (Dworkin 2000: 240). The model employs the idea of a skilful performance as a paradigm of what it means to live well, and claims that ‘living a life is *itself* a performance that demands skill, that it is the most comprehensive and important challenge we face, and that our critical interests consist in the achievement, events, and experiences that mean that we have met the challenge well’ (Dworkin 2000: 253)¹¹.

To assess the success of a performance, it is important to take into account the circumstances in which it was executed. Circumstances, however, vary greatly in importance depending on the challenge we face. Some, Dworkin claims, need to be considered as ‘limitations’ – others are ‘parameters’. Limitations are circumstances that do not figure in the description of the challenge people encounter. Essential for a circumstance to be a limitation is that it is an aid or a constraint on acting as we have a reason to, but it is not a component of the description of that reason (Clayton 2004: 102).

By contrast, there are other circumstances which necessarily are components in the definition of a challenge. Imagine a deeply religious person for whom his faith is not an aid or a limit for what his life means. When he ‘decides’ what challenge his life presents, religion occupies an essential role. For him, then, religion is a parameter of the good life. Some parameters are special, though, as Dworkin writes:

[m]any of our parameters are normative: they define our ethical situation not in terms of our actual situation but of our situation as it should be. Our lives might go badly [...] not just because we are unwilling or unable properly to respond to the circumstances we have, but because we have the wrong circumstances (Dworkin 2000: 261-2).

There are two fundamental normative parameters in relation to the model of challenge: one is the principle of ‘ethical integrity’; the other is justice. The former includes the idea that for an achievement to contribute to the ethical value of a person’s life, the person himself must value it. This leads to the ‘constitutive’ view of integrity. In this view, it is necessary for a person to identify with the value he has created if it is to contribute to his well-being at all. This, of course, does not imply

liberal equality, but there is, nonetheless, an important connection between the two. His strategy consists in defending his preferred account of political morality as the best interpretation of non-political values.

¹¹ The model has generated a number of controversies (Arneson 2004). For the sake of this paper I assume that it is sound.

that the achievement loses its value all things considered; it might still be valuable to *us* and improve *our* lives. But it will not improve *his* life.

Ethical integrity combines, then, a subjective and an objective aspect of living a good life: on the one hand, a life goes better only if an individual endorses her activities and plans; on the other, ethical integrity matters only in conjunction with *critical* well-being. Someone who pursues only her volitional interests cannot live a good life no matter how much she identifies with them. For Dworkin, ethical integrity ‘make[s] the merger of life and conviction a parameter of ethical success, and stipulate[s] that a life that never achieves that kind of integrity cannot be critically better for someone to lead than a life that does’ (Dworkin 2000: 270).

The second fundamental parameter of the model of challenge is justice. Dworkin argues that ‘if living well means responding in the right way to the right challenge, then a life goes worse when the right challenge cannot be faced’ (Dworkin 1995: 260). If we accept the model of challenge, then it is difficult to refute that the distribution of resources and liberties must be a normative component of the way in which the challenge is defined. In this respect, people who have less or more than is required by justice lead, *ipso facto*, worse lives than they would have done if they had the proper allocation of resources: justice is not only a moral concept, but an ethical one too.

IV – Hate Speech, Dignity and Integrity

An Internal Conflict

To what extent, then, is hate speech addressed by the ideas of dignity and ethical integrity? Remember that Dworkin has produced two arguments. First, he thinks that restricting expression is a violation of dignity. Second, he thinks that living a good life consists in encountering the right challenge, and that restrictions on speech distort this challenge. Free speech is, due to its intimate connection with conviction, a parameter of living well; if someone is unable to speak her mind due to governmental restrictions her life goes, for that reason (and independently of the consequences), worse.

The argument I defend here claims that both dignity and integrity fail to properly accommodate hate speech. In other words, these notions are compatible with the claim that speakers are not wronged when government restricts the expression of hate speech.

The idea of reciprocity is connected with the idea of dignity in a critical sense. One of the conclusions of Dworkin’s argument regarding the intrinsic value of human life is that there is no justification for categorical exclusions; believing that your life has objective value implies that every other person’s life has the same intrinsic worth. If

this is so, 'then it is impossible to separate self-respect from respect for the importance of the lives of others. You cannot act in a way that denies the intrinsic importance of any human life without an insult to your own dignity' (Dworkin 2006: 16). From this it does not follow that people can legitimately be coerced into not insulting their own dignity; this is a form of paternalism that Dworkin would reject.

It is also the case however, that dignity cannot be employed as a defence for *hate* speech. If a person loses her dignity by expressing racist views, then she cannot use dignity as a justification for this kind of speech. Given that dignity requires you to recognise that other people's lives have equal intrinsic value, if you deny this, then your own dignity is compromised. So, a person who is prevented from harming her dignity cannot offer the dignity defence to reject the regulation because, had she been at liberty to do as she wished, her dignity would have been compromised then too. Dignity provides the basis for a qualified defence of free speech but not a complete one. Notice, though, that the argument does not claim that people waive their free speech rights when engaging in hate speech (Christiano 2008). The claim is that a particular justification is undermined, to wit, the justification from dignity.

It is possible to recast the concerns of dignity and integrity in terms of audiences' interests. Because some forms of speech result in aversive racism, they jeopardise audiences' critical well-being. This is one of the possible ways in which the ecology of speech might compromise the integrity of citizens. Moreover, it may also be that a government, by its failure to neutralise the effects of hate speech, might show less concern for some of its subjects: citizens who are susceptible to aversive racism might feel that the government could do more to protect them (Moles 2007).

One could argue that the effects of speech, in terms of mental contamination, are similar to other impacts discrete actions have on people. As discussed earlier, according to equality of resources, we should not compensate Joe a brilliant manufacturer of clepsydras that he cannot sell because his talents are 'unmarketable'¹². Similarly, we should not compensate people who suffer from listening to other people's ideas (no matter how much they dislike them). As we have seen, though, disadvantages created by prejudice and those created by having non-sellable talents are different. Equality of resources is neutral only towards the latter but it cannot be towards the former.

Hate speech is unjust, then, in four respects. First, it fails to satisfy the minimal threshold of reciprocity required for political equality. Second, it has harmful effects on audiences by, for example, triggering processes of mental contamination which affect their ethical integrity. Third, these processes result from attitudes that liberal equality rejects. And fourth, it also harms victims by depriving them from certain goods and opportunities that they would enjoy had the prejudice not existed.

¹² He would be protected by a hypothetical insurance market (Dworkin 2000: 65-119).

However, it now seems that we have a *prima facie* conflict between the integrity of audiences and the integrity of speakers, for we have seen that a fully integrated life requires expressive freedom. The conflict is apparent: Dworkin thinks that living well requires that we face the right challenge. A person whose life is not integrated because of government's coercive action leads a worse life than he otherwise would. But someone who lives in an unjust society¹³ also leads a worse life for that reason. Now consider Dworkin's comments about Hitler: 'Of course it would've been better for everyone else if Hitler had died in his cradle. But on the challenge view it makes no sense to say that his life would have been better, *as distinct from no worse*, if that had happened' (Dworkin 2000: 268 emphasis added). This is so because both ethical integrity and justice are necessary conditions of living a good life. One cannot compensate a lack of integrity with more justice, or vice versa: if one fails, well-being also fails: 'trade-offs do not arise' (Clayton 2004: 104).

Notice that integrity reflects critical well-being, rather than volitional well-being. Someone who thinks that he needs more resources than he has is not entitled to more (at least for that reason). Whether or not he is given more depends on an objective account of justice. 'Someone has achieved ethical integrity [...] when he lives out of the conviction that his life, in its central features, is an appropriate one, that no other life he might live be a plainly better response to the parameters of his ethical situation *rightly judged*' (Dworkin 2000: 270 emphasis added). In similar fashion, someone who claims that not being allowed to express his views regarding racial superiority makes his life worse has no claim of justice. The question is not how many resources you believe you should have according to your convictions, but how many you should have according to justice 'rightly judged'. Obviously someone who claims that theft is a constitutive component of his doctrine of the good has no right to steal things, not because abstaining from theft is better for him but because there are reasons of justice that allow governments to forbid such actions. As Matthew Clayton (2004) argues,

[b]ecause justice is a parameter of the good life [...], the liberal view that justice should be enforced by the government has a clear justification. Not only is justice an important ideal in its own right that warrants enforcement, its presence is also a requirement of people pursuing successful lives. So, to the extent that government has a duty to act with concern for its citizens, it must enforce justice as a necessary part of enabling people to face appropriate challenges in their lives (103).

¹³ Notice that the parameter of justice applies to both people who commit injustices and people who live in unjust societies through no fault of their own. Although it is probably worse to actively create injustice than to be part of an unjust society, because justice is a parameter and not a limitation it is not clear how to 'balance' these two situations.

Avoiding Cultural Paternalism

Dworkin argues that his account of ethical integrity blocks paternalism. He thinks that the latter is made self-defeating; you cannot make someone's life better by forcing him to do something of which he does not approve. Regardless of whether or not this argument is tenable, it is irrelevant for my purposes here because I am not claiming that speech regulations are better for racists; just that their lives would not go worse. Dworkin has the following example regarding critical well-being. Imagine Franz, who wants to be a priest. Imagine also that we rightly believe that a religious life is worthless. There are three possible solutions: a) we convince Franz to become a cricket player (which is a better life), b) Franz decides to become a priest, or c) Franz becomes a very good cricket player but regrets it bitterly, he would rather have been a priest. Dworkin has no doubt that a) is better than b), and b) is better than c). In this case the only parameter involved is ethical integrity. Now imagine that instead the decision involved justice too (instead of the priesthood he wanted to be a murderer). In this case, option b) would not be worse than c) but it would also be no better (for him). And this is so because no life of injustice is a good life to live, regardless of its level of integration (Dworkin 2000: 271-272).

Dworkin also thinks that respecting ethical integrity blocks 'cultural paternalism', which is defined as the assumption that 'a political majority has a right to create a culture it wants to live in and raise its children in not for the sake of the minority who might protest but for their own sakes' (Dworkin 2006: 74). Is the argument I am presenting culturally paternalistic? First, it is important to recall that the argument is partly motivated by a concern for the automatic effects of environments on autonomy. Second, and more importantly, the regulation of speech is motivated by reasons of justice, not by concrete and controversial reasons regarding a conception of the good life. No one can complain about justice being done because justice is required to have a good life and to ensure everyone is treated with equal concern and respect. Regarding the public ecology of speech, it seems fair to make citizens bear some of the costs of maintaining an environment in which people can develop and exercise their sense of justice and autonomy.

There are different ways to distribute the ecological costs of speech. On the one hand, we might externalise the harmful effects of speech by employing 'more, better speech' to redress its costs. However, some authors have suggested that this strategy will not be very effective because speech can bypass rational control (Moles 2007; Hurley 2004). On the other hand, we might internalise these costs (by which I mean that non-racists should not bear the costs of racists' speech) if they are sufficiently weighty. Special weight could be given to speech which challenges (or speech in virtue of which there is a challenge to) the fundamental assumption of liberal equality. This challenge can be both direct (when racists deny equal

status to their victims) or indirect (through processes of mental contamination and aversive racism). The decision between these two might be ecological in the sense that neutralising mental contamination recommends avoiding exposure to highly contaminating speech. Nevertheless, some might argue that, even though there are reasons to internalise the costs of hate speech, we should compensate racists for not allowing them to express their views. This objection fails insofar as there is no reason to externalise the costs of actions which are unjust. In this respect, racist preferences are to be treated as expensive tastes, not as disabilities¹⁴.

Justice and Autonomy

There are two possible objections to the argument defended in this paper. First, one can follow Dworkin, who argues that the challenge of living a good life cannot be made more interesting or a better challenge by ‘bowdlerising’ some bad options. However, this claim is not obviously true: a person can think that the absence of certain choices has no detrimental impact on the challenge she encounters. She might deny that ‘our freedoms have value independently of the value we attach to the specific things they leave us free to do’ (Carter 2004: 33). For instance, a person who affirms the specific value of freedom thinks that having the option of playing football is valuable only in as much as playing football is. Being free to play football adds nothing to the activity in question. Similarly, this view seems to entail that by not being free to do something I would not do anyway my life is not worsened¹⁵. True, this is a general point, which *only* applies to people who do not want to express racist views and who would not make use of hate speech protection. It clearly does not apply to racists, because a ban would certainly affect them. I do not want to argue here that freedom has only specific value. The aim of these remarks is merely to rebut Dworkin’s suggestion that having some options eliminated is *per se* bad. The difference is ultimately dependent on the means by which choice is restricted. It is a bad thing if people’s choices are manipulated but it is not necessarily negative if people decide publicly and democratically to eliminate some bad options. If freedom has only specific value, restrictions on hate speech affect only racists and not, as it is sometimes argued, the entire citizenry. Nevertheless, the way in which racists are affected does not make their lives worse, because justice is a parameter of leading a good life and the former, in possession of rights to free expression, cannot hold the latter.

¹⁴ Racist preferences are similar to expensive tastes in the sense that justice recommends their costs be internalised. They are different in that pursuing expensive activities should not be restricted while racist speech should.

¹⁵ More contentiously, it could make my life better, by providing the means to do things I have an independent reason to do.

The second objection builds on the first one, but is more specific. It holds that an important component of dignity consists in having the opportunity to reject bad options. Accordingly, living with dignity requires that a person be exposed to racist ideas, and that she rejects them; that she comes ‘clean’. If the objection is successful, restrictions on speech are in conflict with the dignity of non-racists. The problem with this objection is that it overlooks the motivation behind the restrictions I support. The basis for such restrictions is not that those views are immoral or wrong, but rather that they affect us in ways that go against our integrity. In this respect, non-racists have an autonomy-based interest in not being exposed to speech that bypasses their autonomy and threatens the effectiveness of their sense of justice. The regulations defended here are instrumental to autonomy in the sense that they are preferred over other ‘remedies’ (such as having more, and better speech) because they are more likely to neutralise expression’s harmful effects, and do so in a legitimate and just manner¹⁶.

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If You Praise Equal Respect, How Come You're So Intolerant¹? Overcoming the French Republican Paradox

Sophie Guérard de Latour

Abstract: *In France, republicanism is the political tradition through which the French people interpret democratic and liberal ideals. Nevertheless, by contrast with other liberal democracies, the French model of integration, based on the championing of colorblind universalism, often adopts a critical stance towards manifestations of cultural and ethnic identities. Therefore, it is often perceived as intolerant, as suggested by the numerous critics of the 2004 law banning ostentatious religious signs from state schools. As such, French republicanism seems to be paradoxically praising respect for all citizens while practicing intolerance towards members of ethnic minorities.*

To analyse this seeming paradox, the paper designs a typology to disentangle the different theoretical positions concerning the relationships of respect and tolerance within French republicanism. It thusly proposes to distinguish four different families (communitarian, perfectionist, pragmatic and critical republicans) and claims that the last one offers the best way to solve the French paradox.

Keywords: *Citizenship, ethnic minorities, republicanism, respect, tolerance.*

Introduction

The Islamic scarf affair which have upset the French public opinion in the late 1990s and early 2000s were not only a national concern. Indeed, the law banning of the wearing of religious signs in public schools which was passed in 2004 by the French parliament ² and which somehow put an end to these passionate debates provoked both admiring and critical reactions abroad. In the field of contemporary political theory, it has generally been perceived at best as an intolerant law by some (Galeotti 2002) and at worst as a racist one by more radical critics (Scott 2007). Obviously, there is something awkward in seeing the democracy which praises itself as “the country of human rights” impose such a strong constraint on the expression

¹ I borrow this expression to G. A. Cohen (2000) *If you're an Egalitarian, How Come You're So Rich?*, Harvard, Harvard University Press.

² “The law of 15 March 2004 stipulates that ‘in primary schools and secondary public schools, the wearing of signs or clothes through which pupils ostensibly express a religious allegiance is forbidden’ (...) It was intended to put an end to the 15-year long affaire du foulard which started in the Parisian suburb of Creil in the autumn 1989 when two pupils came to class wearing headscarves” (Laborde, 2008: 7).

of religious beliefs. Indeed, it seems paradoxical to praise equal respect for citizens whatever their social, religious or cultural background, on the one hand, and to display outward intolerance for some religious symbols on the other hand, especially when such refusal of difference aggravates the situation of discrimination already experienced by the minorities involved.

The paradox lies in the fact that respect and tolerance, though analytically different, are nevertheless connected. Respect consists in the recognition of someone's moral value that can be generally defined as his or her dignity qua person or human being. By contrast, tolerance refers to an apparently less demanding principle. Originally, it was a political value forged for prudential reasons, in order to invalidate the will to impose religious truth through legal coercion (Locke 2003). More recently, tolerance has been promoted as a positive virtue (Galeotti 2002). As such, it generally refers to the behavior or mental attitude showing that someone accepts as legitimate that others, living in the same society, think, believe or act differently, even if these ideas, beliefs and practices hurt her habits, tastes or convictions. As Rainer Forst has shown, toleration involves three components : reasons to object to some beliefs or practice, reasons to accept them even so, and reasons of rejection which marks the limits of toleration. (Forst 2007: 293). One influential conception of the legitimate limits to impose upon tolerance has been Mill's "harm principle", which requires to accept contested beliefs or practices as long as they don't physically harm others or patently undermine public order.

Despite patent differences - toleration requiring a negative element of disapproval concerning the ideas, beliefs or behaviors at stake, while respect carries a positive element of recognition of the person's moral value, respect and tolerance remain connected in some way. Politically, equal respect of human dignity has been institutionalized through the status of modern citizenship. And, from a historical point of view, the progress of the civic project (through civil, political or social rights) is clearly intertwined with a regress of intolerance (whether religious or moral). Thus, analytically, one good reason to tolerate objectionable beliefs or practices is the respect that is due to each person: in such "respect conception of toleration" (Ibidem), recognizing someone as a moral being, apt to live his or her life autonomously, implies to accept his or her choices, whatever they are and as long as they don't go against the respect due to others.

Given these characterizations of respect and tolerance, it seems that the French law banning religious signs from schools is intolerant since it forbids a non harmful practice, which does not directly threaten the physical or psychological integrity of others and since, by doing so, it seems to infringe upon the French Muslim minority's right to religious freedom. However, the law was justified in the name of republican ideals which are explicitly based on respect. Indeed, republican citizenship

rests on the idea that universal laws create a specific community, the nation - understood on political and not ethnic grounds - where each individuals' dignity is acknowledged by the fact of being treated equally, whatever their gender, social class, race or ethnic origin are. How should we understand then the fact that explicit commitment to equal respect does not prevent but may even justify intolerant laws? Is it a contradiction, as critics of false universalism have shown? And as such, is it a proof that the republican model is not apt to provide legitimate answers to the fact of pluralism in culturally diverse societies? Or is it just a paradox that can and should be overcome? To answer these questions, I propose to build a typology of contemporary French republican discourses³ about tolerance or intolerance of cultural diversity⁴. Recently, due to the growing interest in multicultural issues, some theorists have strived to articulate more liberal or tolerant forms of republicanism. As a consequence, it is useful to analyse the different theoretical positions at stake by focusing on the way each position refers to the concept of tolerance and on the way it connects the practice of (in)tolerance and the discourse about (in)tolerance. Indeed, tolerant and intolerant attitudes are differently interpreted and justified by those who act accordingly. People can act in a tolerant way and justify their behaviour in the name of tolerance, while others who act similarly may not consider tolerance as an important value. Symmetrically, intolerant behaviours may be justified in two ways, firstly by those who find that their intolerance is legitimate and secondly by those who deny being intolerant and acting as such. Such analysis allows to distinguish different tendencies within French republicanism which might be otherwise confused. Hence, I propose to label four different positions as following:

- Traditionalist Republicanists refers to those who justify their intolerance towards ethnic minorities on behalf of the preservation of the French culture.
- Perfectionist Republicanists are those who support intolerant politics but deny being intolerant by drawing on republican ideals.
- Pragmatic Republicanists are those who consider that republican principles, if correctly understood, offer a convincing political model of tolerance.
- Critical Republicanists are those who deny that respectful attitudes towards ethnic minorities in modern republics should be defended in virtue of tolerance.

³ By "French republican discourses", I refer to different ideal-types of argumentations, in a Weberian sense. French republicanism being a "public philosophy" to use Sandel's term, it cannot be reduced only to academic discourses; it also informs the discourses of "media intellectuals" (i.e. people whose opinions have a wider societal impact than academic analyses) and through public discourses of politicians, bureaucrats, institutions.

⁴ In this paper, I will focus on political intolerance, understood as the legal use of coercion to forbid non harmful practices that go against the majoritarian norms and habits.

In the following, I will describe and examine each position in order to overcome the paradox mentioned above. More specifically, I will criticize the limits of the first three positions and suggest the desirability of the fourth one.

Traditionalist Republicanism

Generally, the 2004 law has been interpreted as evidence that French republicanism is a strong form of political communitarianism, since it displays outward intolerance to some values and practices that differs from the dominant culture. However, the fact that this law is intolerant does not imply that all the republican politicians, intellectuals or theorists who supported it are intolerant in the same way. By contrast with Cécile Laborde, I do not think that these people should be conflated within the same category of “official republicanism” but rather that we should draw a clear distinction between two camps in order to specify the nature of their intolerance. As Sandel has noted, the label of “communitarianism” generally refers to two different theses, a traditionalist one according to which “the way to think about justice or rights is simply to base them on the prevailing values of any given community” (Sandel 2003) and a perfectionist one which states that “the principles of justice that define our rights can not be detached from conceptions of the good life” (Ibid.). I will start with the first camp and come to the second in the next section.

The position typical of traditionalist republicanism can be found mostly in the French political and intellectual discourses which express the nationalist turn that occurred during the 1990's. Initially, in the 1980's, nationalist rhetoric was likely to be found in the discourses of the far right-wing party, the National Front, at a moment when immigration started to be perceived as a political problem⁵. If French ethno-nationalism was marginal in the 1980's, one must admit that the National Front's xenophobic themes have been largely mainstreamed in the 1990's. They have progressively seeped into public debates, in more or less softened versions, and can now be found in the mass media and in political discourses⁶.

The problem is that, while such themes were severely condemned as non-civic and non-republican a few years ago, they are now more and more considered as

⁵ Jean-Marie Le Pen was the one who made the distinction between “les Français de souche” and “les Français de papier” popular, thus suggesting that genuine membership to the nation cannot only rest on administrative criteria but also requires similar origins and a shared cultural heritage. In his perspective, to be French means belonging to an ethnic group, defined by a common history and embedded in a specific culture, which has to do with the Catholic and rural past of France.

⁶ This radicalization of moderate right-wing political discourses about immigration partly explains Nicolas Sarkozy's success in 2006 presidential elections. Since then, the intolerant use of legal power has been growing with the creation of the Department of Immigration and National Identity in 2006 and the law banning the wearing of the niqab in any public space in 2010.

genuinely republican, both by political leaders and by the public opinion⁷. Indeed, this nationalist turn has been repeatedly justified in virtue of the “republican model of integration” with a specific emphasis on political solidarity. It is well known that the concept of political solidarity has always played a central part in the republican tradition of thought. Aristotle was the first one to insist on the *philia* - i.e. the feeling of friendship and mutual trust - that was necessary to gather citizens within a common city. Later on, republicans such as Cicero, Machiavelli or Rousseau have praised the virtue of patriotism to make good citizens (Viroli 1995). In this perspective, there is nothing wrong with being truly attached to one’s political community, since the “love of country” only expresses the “love of freedom” and, as such, does not ground political membership on inherited ethnic features. In France, this tradition was brilliantly articulated by Ernest Renan in his famous discourse *What is a nation?* through the contrast between the “civic” and the “ethnic” conceptions of nations. Since then, it has become an unquestioned national belief that France embodies the civic model. Consequently, traditionalist republicans draw on this heritage to justify their concern about “problems of integration”, arguing that to impose a common culture, a “shared heritage”, is a legitimate civic requirement.

However, the problem is that these republicans conflate the political and cultural dimension of the integration process. Claiming that the sharing of political values also implies the sharing of a common political history, they tend to accept uncritically some historical practices that go against republican principles, while rejecting the same practices when they concern ethnic minorities. As Laborde has shown, this unfair double standard logic was clearly illustrated by the report of the Stasi Commission⁸. According to the report, ostensible religious signs such as the Islamic scarf should be banned from public schools because it undermines French *laïcité*, understood as a principle of religious neutrality through a strict separation between state and religion. But, at the same time, the report justifies historical situations that directly contradict *laïcité*, such as the exceptional status of Alsace-Moselle. The fact that, in this Eastern region of France, religious teaching is still available in public schools and that religious teachers are paid by the State (as it was the case in France before the 1905 law of separation between the state and religion) are justified by an “historical argument” (because the regions were not on the French soil in 1905) and a “communal consent argument” (because local populations are attached to it). One can see how unfair such arguments are since Muslim minorities could also ask for

⁷ For instance, the idea that the last generations of immigrants are experiencing specific problems of integration that the previous generations had not faced, due to their “cultural distance” with the majoritarian culture - i.e. distance between Muslim and Christian cultures - is now widely accepted, even if it is historically irrelevant (Noiriel 1988).

⁸ The Commission was convened by President Jacques Chirac in the Summer 2003 to give advice on whether Muslim schoolgirls should be allowed to wear headscarves in state schools. For details, see full report : <http://www.iesr.ephe.sorbonne.fr/index.html?id=3110>

religious accommodations of *laïcité* on the very same grounds (they were not there before 1905 and many of them are attached to the preservation of their religious traditions). Thus, the “neutrality of the status quo” defended by the Commission is definitely traditionalist since it legitimates the privileges historically granted to the cultural majority and institutionalizes a double standard of justice between the majority and minorities. This means that for traditionalist republicans, the 2004 law is legitimate as a tool of cultural preservation and it can be imposed upon cultural minorities on the grounds that “it is the way we do things here”.

Such cultural conservatism explains why political intolerance is not denied but rather endorsed in the discourses of traditionalist republicans. Indeed, it rests on a homogenous view of cultural identity that leaves no room for diversity. It appeared clearly in April 2006, when Nicolas Sarkozy, as the Ministry of the Interior, recycled one of the old slogans of the National Front “France, you love it or leave it!”. This slogan is but one example of the many uses in public discourses of the affective ties and collective pride that French citizens should share together in order to form a genuine community according to traditionalist republicans’ view. Here, the “love it or leave it” choice is hardly one. It has more to do with an explicit threat of political or social ostracism than with a liberal choice between two opportunities. This motto rests on an “in and out” logic which suppresses any space of negotiation and mutual accommodation between majority and minorities but which rather imposes on the former an attitude of cultural hyperconformism (Sayad, 1999). Discarding any politicization of religious or cultural difference as a symptom of political disloyalty, it implies that for minorities that membership in the nation goes along with their discretion or silence. In that view, there is no difference to tolerate because cultural assimilation is a legitimate political requirement.

However, because of its republican justification, this cultural intolerance goes beyond the case of mere xenophobic nationalism. Rather, it should be interpreted as a typical example of “false universalism”. As Max Silverman has shown, the intolerance displayed by the political class and the public opinion towards Muslim religious signs, during the Islamic scarf affair, is a symptom of the cultural bias that has perverted the project of universal citizenship since the origins of the French republic. From the beginning, the treatment of the Jewish question showed that only religious minorities which differed from the dominant norms were seen as “cultural communities” that should be integrated on an individual basis but not a communitarian one. Therefore, while the Jews had to reject their communitarian belonging to enter the community of citizens, the members of the cultural majority has no such effort to make. Today, the French reaction towards Muslim minorities reproduces the same logic. It suggests that some differences, namely the ones that differ from dominant religious norms, are overinterpreted because of French

republicans' cultural biases. To be sure, there is something excessive in considering non harmful religious symbols as dangerous political weapons which comes, according to Silverman, from an unconscious "fetishization" of exotic cultural differences (Silverman 2007).

Therefore, the traditionalist position appears as one where the tension between equal respect and tolerance is the strongest. However, in this case, the tension is not a contradiction, since traditionalist republicanism is no more respectful towards minorities than it is tolerant. Obviously, it negates equal respect both on moral and on political grounds. It negates equal respect on moral grounds, because it weakens the basis of self-respect, understood as a primary good, i.e. as "a person's sense of his own value" (Rawls 1999: 386). Self-respect is necessarily undermined as soon as the ethnic group to which someone belongs and the cultural references she may identify with are systematically despised in the public sphere. Moreover, it negates equal respect on political grounds, because, as I have shown above, it perpetuates historical privileges that contradict the equal treatment of citizens. Thus, to examine the French paradox, we need to turn to a more consistent form of republicanism, where equal respect for citizens is taken more seriously.

Perfectionist Republicanism

By "perfectionism", I refer to any moral doctrine valuing a certain form of human excellence. It refers to the beliefs, values and ways of life that contribute to develop such perfection. As I will show in this section, perfectionist republicanism refers to a dogmatic form of civic humanism which fosters unacknowledged intolerance. While articulated by intellectuals and academics, this position has a large social influence, just as traditionalist republicanism does. In many ways, its advocates seem to be as intolerant towards minorities as traditionalist republicans. But their suspicion rests on substantially different grounds. What they fear is not cultural difference but "communitarisme"⁹: they see ethnic and religious groups that differ from the majority as separate entities, fostering local solidarity among their members, and thus weakening loyalty to the national community. They criticize these local communities not for threatening French cultural homogeneity but for undermining French civism.

Hence their strong suspicion towards the public mobilisation of minorities and the proliferation of specific claims that they consider as the source of the depolitization of the French public opinion. In the manifesto "Républicains, n'ayons plus peur!" (Republicans, let's not fear anymore!), some of them typically complain that

⁹ I choose not to translate this word because it has a very negative meaning in the French context that the English word "communitarianism" does not carry. See for instance the famous headlines such as "Community, here is the enemy!" or "On the communitarian plague" (Taguieff 2004)

“nowadays, a social or corporatist group simply has to declare itself angry, and his anger, always legitimate, gives it absolution”, and conclude that “thus, a new kind of social philosophy emerges: the one of the consumer instead of the citizen, of the “cared of” instead of the “entitled to”, of the victim instead of the activist¹⁰”. They envision minority mobilisations as a way to promote group interests at the expense of general interest; in these new social movements, moral condemnation of injustice becomes pointless, because minority claims rest on an excessive fascination for victims (Bruckner 2006) and have lost any kind of political dynamics.

Such a process of depoliticization appears clearly in the “decline of law” that they see at works within French society: given that more and more groups gain by certain exemptions and special status, people tend not to respect laws anymore; they just strive to get as many benefits as they can from public authorities. By contrast, in a logic similar to Brian Barry’s criticism of multicultural policies, perfectionist republicans value the uniform application of laws: to treat people equally requires treating them identically, whereas giving specific treatment to minorities dismantles the civic community which is supposed to be “one and indivisible”, according to the French political constitution. Thus, a law-based republicanism contrasts in their eye with a right-based democracy, by expressing the French commitment to universalism and rationality:

The universal idea governs the republic. The local idea governs democracy... Reason being its supreme point of reference, the state in a republic is unitary and by nature centralised... Democracy, which blossoms in the pluricultural, is federal by vocation and decentralised out of scepticism¹¹.

The faith in the universal and in human reason is what motivated the republicans’ support of the law of March 15, 2004 concerning religious signs. But it is worth noticing that, when charged with intolerance, perfectionist republicans deny being so and defend themselves along two lines of argument. The first consists in reversing the charge of intolerance; the second argues that the legal constraints imposed upon minorities may be strong but are nevertheless the best way to neutralize the intolerant forces at work in social life.

Intolerance Feeds on the Ideal of Tolerance

The French historian and philosopher Pierre-André Taguieff has clearly articulated the first point. “Intolerance is back, with new titles, due to the strong appraisal

¹⁰ R. Debray, M. Gallo, J. Julliard, B. Kriegel, O. Mongin, M. Ozouf, A. Le Pors, P. Thibault, “Républicains n’ayons plus peur!”, published in *Le Monde*, 04-09-1998.

¹¹ R. Debray, “Etes-vous démocrate ou républicain?” (*Le Nouvel Observateur*, 30 November-6 December, 1989, 49–55).

of plurality and diversity of the human world, an appraisal which presents itself as actual toleration. Intolerance comes back as the offspring of tolerance (Taguieff 2006: 11-12).” The core of his argument is that intolerance paradoxically speaks the language of tolerance. Apparently, minority mobilisations are justified in virtue of cultural diversity and claim the need to respect it; they draw on the moral condemnation of past crimes, such as colonialism, the Holocaust and ethnic genocides and build by contrast the ideal of a multicultural society where people with different cultures could live peacefully together and take benefits from their mutual recognition. But their new moral imperative - i.e. to respect all cultures equally - is patently inconsistent. Such “*écoco-differentialisme*” (Kaltenbach - Tribalat 2002: 15-53) is a form of relativism, which ruins the ability to share anything in common, whether in terms of political principles or in terms of moral dignity.

Indeed, there is no continuum between equal respect of persons and equal respect of cultural groups. Indeed, how could we respect a culture that is theocratic and patriarchal without failing to show respect to its members whose basic freedoms are denied? The confusion here leads to relativism and nihilism, as Alain Finkielkraut argues: “Eventually, to satisfy everybody, one asserts the equal dignity of all life choices, of all life styles. One is totally absorbed by a logic of equivalence. Equivalence and particularism. (...) The logic of equivalence, it is the other name of nihilism. Everything is equal” (Finkielkraut 2004: 34-35).” This logic leads to what Taguieff calls the libertarian and anarchist “Why not?” attitude, a new form of barbarianism in his eyes: “Why not legalise incest, pedophilia, zoophilia, necrophilia? In what name should we refuse anything to anyone” (Taguieff 2005: 22)? Taguieff holds accordingly that the language of tolerance is deeply hypocritical and functions as a mere rhetorical device to legitimise illegitimate claims; in contemporary debates, it tends to be instrumentalised in order to promote fundamentalism and fanaticism in an acceptable rhetoric.

If relativism entails the loss of common political values, it has also a negative effect on common identities. The endorsement of cultural diversity encourages and justifies cultural withdrawal. People tend to give priority to their local membership groups of and become less faithful to the civic community. Hence, behind the benign discourse of Benetton, a new form of racism emerges that Taguieff labels a “differentialist racism”. There, “cultural difference” functions like the old-term “race”, as a mean to deny the equal dignity of human beings albeit in an acceptable manner: while traditional racism was vertical and organised the human races on the hierarchical scale of civilisation, differentialist racism is horizontal and confines people with their cultural differences.

For these reasons, Taguieff undermines the enthusiasm and optimism that generally surround the multicultural ideal. He analyses it as inherently intolerant political project:

The implementation of the multiculturalist project would create a society where individuals would be locked in their memberships, pinned to their origins in an authoritarian way, moved by excessive and insatiable group claims, where closed communities would compete with each other. The tribe war would replace the class war. The clash of ethno-religious groups would make intolerance a principle of social disorder (my emphasis). (Ibid.: 24–25)

The Formative Function of Republican Laws

The second argument asserts that hard legal constraints which look intolerant at first sight are legitimised by the “formative project” of citizenship, in order to fight against the social sources of intolerance. As Michael Sandel has stressed, “the republican conception of freedom, unlike the liberal conception, requires a formative politics, a politics that cultivates in citizens the qualities of character self-government requires” (Sandel 1996: 6). Indeed, in the republican tradition, autonomy is achieved through self-government; it is a collective virtue that arises once individuals, gathered in a civic community, decide together what norms they consider as legitimate. Autonomy understood as self-government means that freedom is not natural power, originally given to individuals. Rather, it is a public good that only exists under the rule of fair laws. Symmetrically, laws play an essential part in the formative project in that they incite people to consider the general interest instead of their particular interests, i.e. to act as citizens rather than as private individuals.

The formative function of laws may justify a very coercive use of legal constraint because republicans, especially in France, have a conception of the relationship between the state and society that differs radically from the liberal one, especially for historical reasons. Social life is generally seen as a the source of human evils, the place where inequalities and privileges blossom, where processes of domination get entrenched; this is where conformism prevails, where absurd traditions frame people’s lives and where superstition or religion may obscure their minds. This is why perfectionist republicans see French republicanism as an inherently combative creed: it rests on a “duty of insurrection” (Grangé 2008: 43) which requires the elimination of arbitrary traditions and rejection of illegitimate powers, in order to build a new society on rational and fair grounds. As such, “republicanism... is sharp: it endorses an ideal clearly and straightforwardly. ... it excludes compromises and demands opposition” (Ibid.:10).

Accordingly, the state is supposed to form citizens by fighting against social injustices, and laws are its main devices to achieve its goal. Typically, when the essayist and philosopher Régis Debray justified the 2004 law on religious signs, he insisted on its “expressive function” (Debray 2004: 24): according to him, a law was required, rather than a circular or a charter (i.e. a public decision without coercive power), not in order to repress but because it had “a virtue of symbolic refondation” (Ibid.: 25). Voting a law is indeed the only way for the community of citizens to publicly express the choice to be made between two sets of potentially contradictory norms (freedom of expression and gender equality - state neutrality and religious freedom); in this case, the law was a collective way to resist the “theocratic thrust on a wide scale, from East to West, and necessarily growing with unavoidable immigrations” (Ibid.: 27), thanks to the public reactivation of the *laïcité* principle. Debray acknowledges the coercive dimension of the law banning ostensible religious signs from public schools, since it entails the exclusion of the Muslim girls that would not abide by it. But, as he notes: “civil peace like republican synthesis has never been a holiday but rather a fight. And it disappears as soon as the willingness to face up does, with the weapons of peace” (Ibid.: 25). For him, even if republican laws may appear as intolerant because they carry an element of violence, they are nevertheless not so : they just make a legitimate use of the coercive power in order to prevent the spread of fanaticism and fundamentalism, which are the real sources of intolerance.

So understood, the 2004 embodies the maximalist understanding of the *laïcité* principle that these republicans logically favour. Indeed, they consider state schools as “a privileged locus for the inculcation of the habit of independence through the exercise of critical judgement” (Laborde 2008: 106). But here, to think critically about religious beliefs and traditions means to reject them. For instance, the Neo-Kantian philosopher Catherine Kintzler says that republican education should be “anti-social” (Kintzler 1996: 18, 88, 109), because it should help children to break with the influence of their family influence in order to access to individual autonomy. Regarding the Islamic scarf affair, she wrote that “children should forget their community and think of something other than that which they are in order to think by themselves” (Ibid.: 85). There the republican educational paternalism indicates how the value of respect can justify the rejection of tolerance: social habits, religious traditions are seen as potential sources of oppression which need to be overcome; this implies that education can legitimately force children to break with the influence of their community influence.

Therefore, while communitarian republicans are guilty of cultural arrogance, perfectionist republicans fall into moral dogmatism, a difference that may explain why the latter denies being intolerant. Perfectionist republicans are convinced that

their moral and political truth is universal and that it concerns everyone whatever religious or cultural backgrounds people have (while communitarian republicans are more sensitive to the specificities of the French culture and not bothered by the idea of excluding any citizen of foreign origins who would not adopt them). They consider that freedom only exists if people are raised as responsible citizens able to get involved in public life and to make collective decisions under the critical light of human reason. This refers to the position of civic humanism and it justifies, for perfectionist republicans, a strong state paternalism, the modern state being “the principal agent of the institution of truth” (Balibar 2004: 154). From this perspective, the French paradox does really exist: by contrast with traditionalist republicans, perfectionist republicans are genuinely committed to equal respect and consider that the best way to institutionalize it is a formative politics that may look intolerant but that is meant to prevent intolerance.

However, the dogmatic tone of perfectionist republicans remains problematic. It suggests the limits of a public philosophy which can now be considered as an ideal theory disconnected from social realities, as the republican justification of the 2004 law on religious signs showed (Laborde 2008: chap.1). Indeed, instead of taking seriously the problems of discrimination problems that the politization of the wearing of a religious symbol expressed, perfectionist republicans rejected the phenomena as simply un-civic. Hence the minorities' growing feeling that French republicanism sounds like “a conservative rhetoric” which discards and weakens their mobilisation against discrimination and racism (Wieviorka 1997). Accordingly, perfectionist republicanism appears more and more as a counter-productive position: it praises equal respect, but its dogmatic and uncritical attitude undermines the very achievement of this political ideal. Far from granting minorities the protection and equality they can legitimately expect, the republican dogmas increase their social difficulties and worsens their feelings of exclusion.

Pragmatic Republicanism

Recently, due to multicultural debates, some theorists have tried to rework French republicanism in a more liberal fashion. Here, I use “pragmatic” in a large and non-technical sense, in order to refer to a position which does not disconnect ideas or norms and the concrete effects they have on social life. Pragmatic republicanism therefore is characterised both by a finer sensitivity to social realities in ethnically diverse democracies and by a greater attention to the real effects of republican principles than it was the case for perfectionist republicans. It is no accident if it has been best articulated by sociologists, in particular in Dominique Schnapper's works on citizenship and interethnic relations.

By contrast with perfectionist republicans who explicitly express their distrust and hostility towards processes of social ethnicization, Schnapper endorses a tolerant attitude in order to “modernise” French republicanism and to adapt it to the fact of cultural pluralism (Jennings 2000). To begin, contra Taguieff or Debray, she fully grants the criticisms raised against “false universalism”: “it is true”, she says, “that the state is never truly neutral and that the common culture, elaborated and secured by public institutions, is imposed upon particular cultures” (Schnapper 2000: 487). Then, she understands the feeling of injustice that may arise from this matter of fact: “To a humiliated people, transcendence through citizenship appears as purely formal, having only the function of consecrating the dominance of the other under the guise of universality” (Schnapper 1994: 121–122). To avoid feelings of humiliation, “it is of vital importance that individuals have the sentiment that their collective dignity ... is recognised and respected”. Multiculturalism, defined as the “right” of citizens and of foreigners “to cultivate their specificities in their personal as well as social life should therefore be accepted¹².”

However, her sensitivity to the minorities’ right to be different does not imply any renouncement of universalism: even if the political public sphere is ethnically orientated, the integration within the political dominant culture should be accepted as “the price to pay for all citizens to fully participate to the national society” (2000: 487). Only, from the pragmatic point of view, cultural integration is just required in politics but not in the social sphere. Such integration is necessary to avoid the politization of ethnic minorities and the Lebanisation of the public sphere, where “individuals no longer exist as citizens but as representatives of a recognised community”. (1995: 153) On this view, the process of cultural integration is not understood as the expression of a political voluntarism but rather as the effect of a long-standing sociological dynamics. For sociologists, democratic nations are obviously a mix of civic and ethnic features. Even if nations are theoretically based on the free adhesion to abstract political principles, they concretely experience themselves as a community of fate, sharing a common heritage and culture. This comes from the fact that they were institutionalised in a specific historical context, supported by certain social groups and framed by a particular political culture. According to Schnapper, however, despite its historical idiosyncrasies, a nation should not be conflated with an ethnic group, because the nation carries “a principle of potential inclusion” (2000: 449) that lacks to the ethnic group lacks, which is, on the contrary, based on a particularist and exclusive logic. It rests on the project to form a “community of citizens”, i.e. on “an attempt through citizenship to transcend

¹² Hence Schnapper’s tolerant attitude on certain topics: for example, she publicly claimed that selling exclusively halal meat in some butcher’s shops (and this could be applied to burger shops) cannot be interpreted as a breach of the laïcité principle, because it would discriminate against non-muslim customers. see Jennings 2000: 590

particularist adherences” or membership, be they biological, historical, economic, social, religious or cultural, making the citizen “an abstract individual, without identification and without particularist characteristics” (1994: 48). Nevertheless the “abstract citizen” does not only refer to a theoretical reality, typical of philosophers’ wishful thinking. Rather, it can be observed, as a sociological fact, in the “real effects of the civic principle” (2000: 21), i.e. in the inclusive dynamics that characterize it. Indeed, Schnapper insists on the social norms that condition both ethnic mobilizations and sociological criticisms of racism, ethnic discrimination and cultural segregation: if such contestation has been growing and if it now appears as more and more appealing, it is because the civic principle of equal respect has become a social fact, in the sense that it has been socially internalized.

More specifically, drawing on Durkheim’s sociology, Schnapper envisions the emergence of modern nation states as the shift from “mechanical solidarity” based on “similarities” to “organic solidarity” based on “differences”: the progress of the division of social labour has made social functions more and more specialized, thus urging individuals to become more and more different from each other and to develop their own personalities. Consequently, the modern state turned out to be the basis of a new form of solidarity, by granting to individuals universal rights allowing them to emancipate themselves from their local and traditional communities. In this sociological view, the republican state is no longer seen as a missionary institution which can legitimately make use of legal coercion to achieve a political ideal. Rather, it expresses the social dynamics at work in industrialized and urban societies and the new type of socio-political bonds that stem from it, primarily for functional reasons.

On Schnapper’s sociological account, social life is not envisioned negatively, as perfectionist republicans see it. It is supposed to include dynamics of self-regulation, which do not imply that the state’s main mission should be to save people from the grip of greedy economic forces or conservative moral leaders. Instead “*communitarisme*” should be left to the individuals’ freedom and initiative, encouraged by a *flexible application* of the republican citizenship. (my emphasis)” (2004: 188). Indeed, once the cultural partiality of the public sphere has been acknowledged, it is easier to press civil servants and public authorities to act with tolerance towards minorities. For example, to qualify the rigid and dogmatic vision of *laïcité* in French public schools, Schnapper recalls its flexible application by republican teachers, who were used to allowing their Jewish pupils not to come to class on Sabbath days, without penalising them. Therefore, even if she considers the 2004 law on religious signs legitimate, because it reaffirms the discontinuity between the private and public spheres, she assumes that its application would not undermine the tolerant *ethos* that the political principle of *laïcité* is supposed to foster.

Hence, in pragmatic republicanism, republican ideals are not a way to endorse cultural domination, nor a moral credo to be preached and upheld despite social realities. Rather, they form “a principle, a horizon, a regulatory idea” typical of modern citizenship (Schnapper 1997: 10), which may be never completely fulfilled but which has nevertheless deep and real effects on social life. Tolerance is one of these positive outcomes. Correctly - i.e. sociologically – understood, the civic project leads to a “tolerant republicanism” (2004) that appears as the fairest way to deal with cultural and ethnic diversity in modern societies.

Critical Republicanism

Some may think that the analysis could stop here. The moral of this story would be that respect and tolerance need to be connected to each other eventually. The inconsistencies of traditionalists and perfectionists, on the one hand, and the sound position defended by pragmatists, on the other hand, would teach that the French paradox should be overcome by injecting a little tolerance in the moral principle of equal respect. However, the pragmatic perspective is not a satisfying solution insofar as it rests on a sociological form of optimism with no clear normative ground. Indeed, it is not enough to say that the republican model should be applied with more “flexibility”, unless standards of fairness are available. Some French teachers may be kind enough to let their Jewish or Muslim pupils leave schools on Shabbat or Eid days, but what if other teachers are not. Moreover, while the principle of *laïcité* allows for a tolerant interpretation, this need not always be the case, as evidenced by the 2004 law on religious signs which explicitly forbids specific practices – i.e. the wearing of ostentatious religious signs? In this case, even tolerant teachers have to abide to it and to exclude from classes their Muslim pupils who would not remove their Islamic scarf. Therefore, something more needs to be said to free French republicanism from the charge of intolerance.

Hence the interest of a “critical approach” to republicanism. This reworked conception of the republican tradition of thought, brilliantly articulated by Laborde in her analysis of the Islamic scarf affair, sheds original light on the French paradox, because it pleads for a liberal correction of republican principles without assimilating them to liberal principles of political legitimacy. The distance here between republicanism and liberalism lies in their opposite evaluation of tolerance as a political virtue. According to liberals who follow Rawls, ever since the European religious wars of the XVIth and XVIIth centuries, political liberalism has been historically grounded in the value of tolerance and it has stuck to it nowadays for normative reasons (Rawls 2005). Insofar as the fact of pluralism forbids the imposition of any moral truth on citizens in modern societies, it encourages accordingly the application of “toleration to philosophy itself”. This means that the principles

of justice should not be based on a general and comprehensive doctrine, as it was the case in perfectionist forms of liberalism, such as Kant's and Mill's, where individual autonomy is the best value to achieve in human life. Consequently, in political liberalism, autonomy should be defended as a political-public value but not as a moral/private one. Then, the principles of justice, far from imposing a liberal way of life on all citizens, offer a genuinely tolerant conception of justice that can be accepted as legitimate even by people who live according to traditional and communitarian standards.

By contrast, critical republicans think that we should be suspicious of liberal toleration, because it reveals an uncritical acceptance of the norms and beliefs that exist in social life. Indeed, many liberal theorists of justice, "tend to take people's existing identities or conceptions of the good as constitutive of the normal pluralism of social life: in the words of Brian Barry, the liberal state "should be the instrument for satisfying the wants that men happen to have rather than a means of making good men" (Laborde 2008: 236). On the contrary, republicans have traditionally been more worried about the customs and traditions that "men happen to have" and that put their freedom in jeopardy. Recently, such contrast has led to the revival of the republican tradition of thought in the late 1980's with the works of philosophers such as Pocock, Skinner and Pettit and with the defence of *non-domination*. This neo-republican concept, which refers to situations where people are protected from arbitrary powers (Pettit 1997), is supposed to improve the liberal definition of freedom. For neo-republicans indeed, it is restrictive to understand freedom as a situation of non-interference, according to Isaiah Berlin's term, both because one can be un-free even if no one interferes actually in our sphere of action (as in the case of the slave with a benevolent master) and because the state's interference in people's lives can improve their freedom (when fair laws promote social justice). Accordingly, neo-republicans tend to be more sensitive than liberals to the fact of "*dominium*", i.e. to the inequalities of powers at work within societies and to the social norms and practices that stem from these situations, through processes of internalisation and legitimisation.

This is why Laborde is dubious of the ability of political liberalism to deal fairly with ethnic minorities, especially when this "modestly political liberalism" is combined with "a postmodern sociology of subjectivity" (Laborde 2006: 368) which emphasizes individuals' ability to negotiate with their multiple memberships and to freely build their own identity. Concerning the Islamic scarf in France, even if such a practice can be associated with strategies of subversion, renegotiation or reconstruction of individual authenticity in a postmodern society, it remains that the negative effects of patriarchal and traditional values on women's autonomy should not be neglected. Though endorsed by the women themselves, these values

may be adopted through a process of adaptive preferences which has nothing to do with authentic freedom. The wearing of the veil, then, can be seen as a paradigmatic case of domination, when the girls wearing it have internalized the religious belief in gender inequality and thus become the agents of their own subjection. Therefore, to tolerate an alienating practice amounts to allowing or even to worsening states of domination. So critical republicans agree somewhat with perfectionist republicans about tolerance: for both, it is *a normatively underspecified concept*. Tolerance does not tell precisely how and why individuals or groups should accept behaviours that go against their own beliefs, values and practices. It calls for pacified relationships between social and cultural groups, but it fails to give efficient tools to criticise intolerant beliefs and supersede unfair *modus vivendi*. This is why republicanism should stick to the equal respect principle, provided that its political sense is clarified.

Indeed, even if tolerance is normatively underspecified, it offers the advantage of being politically sensitive. To speak of tolerance means to reflect on justice from a power-based perspective: it is the powerful group or person who tolerates the weak one, not the opposite. As such, tolerance requires one take into account the balance of powers within which individuals or groups are embedded. By contrast, the value of respect offers quite an abstract principle, as in the Kantian tradition where it refers to a feeling caused by the formal and universal moral law. The abstract dimension of respect is confirmed by its mono-valence: no one would say that equal respect for human dignity is a bad thing, except radical fascists and racists, while tolerance is evaluated in more contrasted ways (some consider it as a virtue, others as a flawed concept). Indeed, while it is difficult to rationally reject the principle of equal respect, it is easier to be unsatisfied with the idea of tolerance, because it directly raises issues about the costs and benefits each party gets from that attitude.

This is where critical republicanism has something interesting to say. By qualifying the meaning of equal respect through the concept of non-domination, this political theory gives to this moral principle a clearer political scope. It insists on the fact that equal respect requires not to be submitted to arbitrary powers and therefore it links the moral question of dignity to the context of social and political implementation. Therefore, critical republicanism can be seen as *a strategy to politicize issues of equal respect*. More concretely, it defends a politics of empowerment directed towards minorities in order to allow them to contest the domination they suffer from. As in the case of perfectionist republicans, the idea of fighting against social sources of injustice requires a formative project to make the status of “citizen” effective, through educational processes. However, critical republicans refuse to legitimize any kind of state perfectionism on these grounds. Indeed, when the

state uses its coercive power to impose a substantial conception of the good - i.e. a good life understood as rejection of religious beliefs and traditional values - it becomes itself a source of domination, namely the one called *imperium* by the Romans. To avoid such risk, Laborde purports that “schools should only inculcate autonomy-related tools, not impose a substantive view of what counts as autonomous behaviour” (Laborde 2006: 360). In other words, autonomy should be promoted for instrumental and not substantial reasons : it only requires that individuals are equipped with the critical skills that give them a “discursive power” over their life: it means that “republican citizens are entitled and capable to contest (or at least to ask for a justification of) the power that is exercised over them” (Ibid.: 370).

According to Laborde, such discursive control was precisely what was denied to veiled Muslim girls during the Islamic scarf affair, when the Consultative Commission decided not to invite some of them to the deliberations, on the grounds that the Commission would “not be sensitive to their arguments”, assuming that the girls were under the influence of religious leaders and not authentically choosing to wear the veil. Such an attitude entails a situation of *imperium*, because the state imposes public decisions on citizens without giving them the very possibility to contest them if they find them arbitrary. Moreover, by displaying explicit disdain towards the individuals involved, the state worsens the vulnerability of all French Muslims citizens : “Such domination deprives Muslims of minimum discursive control: they are not allowed to speak for themselves, they are subjected to demeaned images of their identity, they are made to feel vulnerable to the decisions and opinions of others. In other words, they are spoken about but not spoken to” (Ibid.: 374).

In sum, to politicize equal respect means to give to citizens the educational and institutional means required to contest all forms of domination, whether they come from social or from political sources of normalization. Nevertheless, if equal respect is made more sensitive to power-based relations, through the concept of domination, it might happen that the value of tolerance remains useful. Promoting non-domination concretely goes along with questioning social, political and cultural norms. For example, Laborde’s criticism of French “official republicanism” shows the limits of a laïcist and secularist understanding of the democratic principle of religious neutrality, which has been socially accepted for historical and cultural reasons. But a problem arises: if equal respect requires an ongoing questioning of shared norms, isn’t it an inherently unstable political value? When domination is contested and social norms criticized, people may not find easily an agreement for new ones. Therefore, they will have to accept each other despite these remaining forms of dissension. In other words, given the fact of pluralism in modern societies, it is not certain that equal respect can do without tolerance in order to ground a fair and stable society.

Conclusion

In this paper, I have proposed an analysis of the French paradox, understood as a political stance which preaches equal respect while practising intolerance towards cultural and ethnic minorities. Following an ideal-type methodology, I have identified four families in contemporary French republican discourses, which differ from each other in two manners 1) in their intolerant or tolerant behaviours; 2) in their endorsement or rejection of such behaviours. The conceptual mapping thus obtained allowed me to examine the tensions between the concepts of respect and tolerance in the French republican tradition. I have shown that the inconsistencies of communitarian and perfectionist republicanism point apparently towards a tolerant revival of French republicanism, an endeavour made by pragmatic republicans. I have argued that this tolerant view of French republicanism is normatively indeterminate and that there is a better way is to rework the republican view of equal respect, as critical republicans do with their theory of non-domination. Hence, my final point was the following: if tolerance is a normatively underspecified concept, it is nevertheless politically sensitive and allows for a repolitization of the equal respect principle. Equal respect should not remain an abstract principle. Instead, it should be understood as a political ideal of a non-dominating society, where minorities would have the power to contest the various kinds of injustices they suffer from.

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‘Grand-Mosque’ Projects in Copenhagen: Intersections of Respect, Tolerance and Intolerance in the Distribution of Public Space¹

Sune Læggaard

Abstract: *This paper considers the recent Danish mosque debate as a debate about distribution of public space to a religious minority and asks whether and, if so, how the case can be described in terms of tolerance and respect. Tolerance and respect are regularly advanced at the level of political theory as concepts and values relevant to the handling of minority issues. This paper will use the concepts of tolerance and respect in relation to the Danish mosque-debate as expressed in political assemblies and public debate in two ways: It will test the applicability of the theoretical concepts and in the process draw out some general challenges and lessons concerning the practical applicability of these concepts. At the same time it will use the concepts as an interpretative framework to present and evaluate the actual policies regarding the distribution of public space for the building of mosques played out in the case. One lesson drawn from the exercise in application is that the concepts have a narrower application than often assumed and that application requires differentiation between different potential subjects of tolerance and respect.*

Keywords: *Toleration, respect, public space, mosque, Copenhagen*

1 Introduction

This paper concerns the responses to recent requests by Danish Muslims to build two prominent mosques in Copenhagen. The paper considers this case as an example of how requests by minorities for use of public space are handled. A prominent position within the political theory on minority issues proposes to view such cases as cases of *toleration*, which ought furthermore to be handled on the basis of political

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values of *equal respect* (Forst 2010; Galeotti 2002). The theoretical proposal is thus both descriptive in that it proposes a certain conceptual framework for describing and understanding such cases, and normative. This paper is an empirical investigation of the Danish case through this conceptual framework of toleration and respect asking the descriptive and interpretative question about how the case can be understood as involving toleration and respect. The paper simultaneously uses the case to suggest that the concepts of toleration and respect have to be understood in ways integrating their vertical and horizontal dimensions, i.e. toleration and respect as expressed in formal relations between institutional authorities and citizens, on the one hand, and informal relationships between citizens, on the other. The study of the case reveals how vertical and horizontal issues of toleration and respect can be interrelated and intertwined in practice, which complicates the characterisation of the case as a whole. The paper is accordingly partly an empirical investigation of the case as seen in terms of toleration and respect, partly an inductive argument based on this investigation for a two-dimensional and intersectional understanding of the concepts as applied to such cases.

Muslims are the largest and most publicly visible and politically debated religious minority in Denmark but have no places of worship reflecting this status; there are only a couple actual mosques built as such in Denmark, none of which are big or prominent. Almost all active Muslims in Denmark practice their religion in converted factory buildings, warehouses or cellars. Since the eighties there has accordingly been a continuous wish for mosques constructed as such according to Muslims' own beliefs about how proper places of worship should be designed, reflecting the size of the religious group, and making it publicly visible to a degree comparable to other religious groups. Mosque plans have, however, been opposed on the basis that Denmark is a Christian, non-immigrant country, and more recently on the basis of fear and suspicion of, and outright hostility towards, Muslim and Islam as such, often couched in security terms. The present paper investigates the most recent phase in this Danish mosque-debate as it has played out in relation to two mosque projects in Copenhagen.

The paper proceeds as follows: The conceptual framework and the issues raised by two-dimensionality are presented in section 2. The vertical/horizontal distinction is used to focus the investigation and structure the description of the cases. Section 3 presents the political handling of the case in the City Council and the political debates in the council and parliament. Section 4 provides a theoretical interpretation of this process addressing the questions about vertical toleration and applicable sense(s) of toleration. Section 5 presents an empirical investigation of public debate in the media conducted to address the horizontal dimension. Section 6 concludes by discussing the understanding of the case gained by the application

of the conceptual framework and the need for an intersectional conception of toleration and respect that it is argued to demonstrate.

2 Conceptual Framework

Toleration is routinely taken to require the presence of two components (Newey 1999; Forst 2010): (1) an ‘objection component’ or ‘reason for interference’ consisting in some negative attitude on the part of one agent towards the beliefs or practices of another which disposes the former agent to suppress, prohibit or otherwise interfere with the latter; (2) an ‘acceptance component’ or ‘reason for non-interference’ consisting in some positive attitude on the part of the first agent which overrides the disposition to interfere. There are accordingly two contrasts to toleration: Intolerance (the acceptance component is absent or not strong enough and the agent interferes) and cases where the negative attitude is absent, subdividing into cases of indifference and cases where an agent only has a positive attitude towards some other.

The concept of respect is simpler than toleration, since it only involves one attitude, and of higher order, since respect may function as the acceptance component motivating toleration. Respect is a positive attitude but need not involve a specific valuing of another; *equal* respect rather consists in recognition of the equal status of others and the claim on equal consideration this implies. Respect in turn requires and may motivate certain forms of action (Galeotti 2010), one of which is toleration. Respect based toleration obtains if an agent has a negative attitude towards the beliefs or practices of someone but nevertheless respects him, e.g. as an equal citizen, and therefore does not interfere with the disapproved belief or practice, e.g. as a matter of religious freedom.

The concepts of toleration and respect are often invoked in normative discussions about how people or states *ought* to act. But toleration is a descriptive concept and respect may be used descriptively, i.e. in a way not taken a normative stand on who should be respected and what respect in fact requires. Normative discussions presuppose the descriptive applicability of the concepts and the descriptive use of the concepts is furthermore of independent interest, since characterisation of cases in these terms can provide an understanding of the types of relationships in place and the dynamics of controversies and conflicts. The present paper employs the conceptual framework of toleration and respect in this descriptive sense.

It might be objected that the concepts are inevitably normatively loaded. This is correct in the sense that one reason for considering a case in these terms is to pass normative judgement on it, e.g. along the lines of the sketched theoretical proposal. But the concepts *as such* are not necessarily normatively loaded. It is not in itself an evaluative judgement (of endorsement or condemnation) to describe an actor as

(in)tolerant (Cohen 2004). It is an open question whether specific acts or practices should be tolerated; sometimes intolerance is justified. And while ‘disrespect’ might imply a negative evaluation, it is also an open question what equal respect requires in specific cases. So here one might categorise reasons for action as reasons of respect without thereby taking a stance on whether the act or policy thus justified is correct or not. Furthermore, the positive and negative attitudes involved in the descriptive application of the concepts are simply those voiced by or plausibly ascribed to specific actors, not attitudes condoned by the theorist.

Anne Elisabetta Galeotti has proposed toleration as a theoretically fruitful description of minority groups in modern liberal states; in order to understand the position of certain groups, it is necessary to grasp the way in which they are seen as different and deviant from the norms and expectations of the majority (Galeotti 2002). To focus only on liberal state neutrality and the equal rights of members of all groups as individual citizens ignores the sense in which these groups are *minorities*, not just in a quantitative (numerical) sense, but in a qualitative sense having to do with asymmetrical power relations ascribing them an identity as different from the norm in a negatively valuated way (Lægaard 2008). Minority status may thus *explain* negative reactions to requests from minorities, e.g. for gaining a visible presence in public spaces, and that such cases are accordingly properly described in terms of toleration.

From a normative point of view, it has further been argued that toleration might be insufficient or defective in terms of justice if it leaves the asymmetrical power relations in place and merely concede certain permissions to the minority on the condition that it acquiesces in its minority position by not challenging the majority norms in place. The proposed antidote is to explicitly base policies of toleration on appeals to respect for the equal status of members of the minority, which is supposed to counter the repressive character of toleration as mere permission (Forst 2010) and to symbolise the full inclusion of minorities (Galeotti 2002).

Even this sketchy characterisation indicates that the concepts may be applied to cases along two different dimensions depending on who the subjects and objects of toleration and respect are: Relations are *vertical* if the subject is the state or some other public authority and the object are citizens or groups in society within the jurisdiction and regulative power of the authority. Relations are *horizontal* if both the subject and object are citizens or societal groups.

Vertical toleration is traditionally associated with absolutist confessional states only conceding qualified and conditional permission to religious minorities. According to Rainer Forst, however, a democratic form of this ‘permission conception’ of toleration is still relevant for understanding debates over what democratic rights to religious freedom mean in modern states (2010: 12). Even if liberal states

should in principle be religiously neutral in ways precluding official dislike of minority religions it is not obvious that even quite liberal states are in fact neutral. Liberal states might in any event still have other reasons for disapproving of beliefs or practices of some citizens (Læggaard 2010a). So there is still use for the descriptive concept of vertical toleration.

Vertical respect is usually considered to be a requirement of liberal justice; liberal states are supposed to justify their policies in ways expressing equal respect for all citizens. On some ideals of democracy, vertical respect may require citizens as lawmakers to set aside their own religious views when deliberating over how political power should be exercised. This is an expression of what Forst calls the ‘respect conception’ of toleration (2010: 11). This use of the concept shows that vertical and horizontal relations may be intrinsically interrelated: In such ideal models of democratic decision making, vertical respect presupposes and is a function of horizontal respect. I will call such interrelation *bottom-up intrinsic intersectionality*.

Conversely, intrinsic intersectionality is *top-down* when the vertical toleration of institutions concerns or addresses horizontal relations in society. The two dimensions are then necessarily in play simultaneously, e.g. if the state vertically enforces toleration in a horizontal conflict between citizens (Newey 1999). Peter Jones (2007) understands political toleration intersectionally as the upholding *by* the state of a regime of toleration *in* society. The state is then politically tolerant if it prevents social intolerance, even if it does not itself have negative attitudes towards the practices or beliefs in question. Galeotti’s idea of toleration as recognition (2002) is also a form of top-down intrinsic intersectionality: She argues that *states* should tolerate minorities and publicly justify toleration with reference to the equal status of members of minorities in order to include them as full citizens, which is partly a matter of the *social* perceptions that other citizens have of minorities (Læggaard 2008). These examples illustrate how the application of the concepts of toleration and respect sometimes has to be two-dimensional and that the intersection of the two dimensions is essential to understanding the applicable sense of toleration or respect, whether as descriptive characterisations or normative ideals.

Relations of toleration and respect may also be *extrinsically intersectional*. This would mean that there is a contingent connection between, e.g., the vertical toleration of public authorities and horizontal toleration in society. One example of such a connection might be when vertical toleration brings about horizontal toleration. But there are other possibilities of such intersectional dynamics of toleration and respect.

My claim now is that in order to apply the concepts of toleration and respect, we need to take two-dimensionality and intersectionality, intrinsic as well as extrinsic, into account. As part of a descriptive characterisation of a case, one does not

understand how the case is one of toleration or respect if one ignores intersectionality. I will use the Danish mosque case to illustrate the distinction between vertical and horizontal relations, how the adoption of this conceptual framework is empirically informative, e.g. in the way it reveals intersectional dynamics of toleration and respect, and how the characterisation and understanding of the case as one of toleration and respect requires attention to intersectionality.

3 The Political Process²

Since the early eighties, the Danish state has designated a plot on the island of Amager, just outside the city centre of Copenhagen, as a potential building site for a mosque (Jacobsen 2008). The site was formerly the location of an artillery battery as part of the city fortifications and is therefore referred to as the ‘Stationary Battery’. Since 1992 the plot has been regulated by a district plan designating part of the area for the building of ‘cultural institutions’, for instance a mosque. Several projects for building a mosque on the Battery plot never got off the ground, mainly because of lack of funding.

In 2006, the Battery plot was acquired from the state by a private investor and real estate developer who wanted to realise a spectacular building project involving several high rises. In cooperation with the municipal building administration the developer sought a partner to represent the Muslims who would use the mosque mentioned in the existing district plan, which the municipality required be built as part of the first phase of the project. In 2008 the developer reached an agreement with a newly formed organisation called the ‘Muslim Council’ [Muslimernes Fællesråd] allegedly representing a broad range of Sunni Muslim communities in Denmark, which was supposed to raise funds for the mosque. In 2009 preparatory work on a new district plan for the Battery plot began. The plans were discussed in November 2009 in the city council’s Technical- and Environmental committee because of disagreements between the developer and the Muslims’ Council over the plans for the mosque as well as apparent difficulties in raising the necessary funds.

But at this point the Battery mosque project had been overtaken by another project. On the other side of Copenhagen, the Shia Islamic religious association Ahlul Bait owns an old mechanical workshop. In 2009 the association applied to the municipality for permission to demolish the existing building and erect in its stead a proper mosque in traditional Shia Islamic style with dome and minarets (not to be used for calls to prayer).

² The description of the political process is based on the official agendas, minutes and annexed notes and documents for the meetings of the City Council and the Technical and Environmental Committee found (in Danish) on the homepage of the City of Copenhagen www.kk.dk These documents do not appear in the list of references but are on file with the author.

According to the Danish planning act, local councils are required to draw up district plans before large scale construction works take place, which set out the limits and requirements concerning use, access, plot ratio, building height, location and exterior, parking opportunities etc. Both the Ahlul Bait mosque and the Battery project require changes in the district plans. The drawing up of district plans is a practical planning issue, and therefore usually a routine matter. But when the draft proposal for a district plan for the Ahlul Bait mosque was approved by the Technical and Environmental committee in June 2009, the Danish People's Party (DPP) representative on the committee requested a full political debate about the case in the city council. She claimed that so-called 'grand-mosques' disturb the public order and attract extremist Muslims, obstruct integration and further segregation. The representative of the liberal party did not have any objections to the building of a mosque as such, but objected to the proposed project on the grounds that the traditional Shia style mosque would not fit architecturally into the area.

When the draft district plan was discussed in the city council in August 2009, the DPP representatives further argued against the mosque, claiming that Islam is opposed to gender equality and democracy and involves antiquated cultural norms concerning family patterns, upbringing and violence. The DPP representatives objected to permitting erection of a 'monument' allegedly publicly symbolising such views. The remaining parties represented in the council justified their support for a plan permitting the mosque to be built on a number of grounds including non-discrimination (other religious communities have their publicly visible places of worship, so why not Muslims?); the value of diversity (especially architectural); freedom of religion; integration; and the procedural point that district plans according to the planning act only concern strict planning issues and cannot take political broader issues, e.g. about Islam or funding, into account.

Although the city council approved the drawing up of a district plan permitting the construction of the Ahlul Bait mosque, this accommodating step at the local level provided an occasion for the DPP and other critics of Muslims and Islam to publicly oppose mosques. The most vocal expression of this development was a nation-wide advertising campaign launched by the DPP in September 2009, in which the party objected to both the Ahlul Bait and Battery mosques on the grounds that they were supposed to be financed from the 'terror regime' in Iran and the 'dictatorship' in Saudi-Arabia, respectively. The advertisements were illustrated by a manipulated picture of the blue mosque in Istanbul with crossed swords, symbolising the bellicose nature of Islam, placed on the roof, and demanded a popular referendum against mosques.

The DPP continued its campaign which gained unexpected momentum when a Swiss referendum in November 2009 called for a ban on minarets in that country.

The leader of the DPP called for a similar referendum in Denmark, with reference to the plans for ‘grand-mosques’ in Copenhagen.

The DPP pursued its campaign in the national parliament. In December 2009 the DPP asked the minister for integration to elucidate the challenges in terms of integration and security posed by the planned construction of ‘grand-mosques’. During the debate in parliament in February 2010 the DPP, with explicit reference to the two Copenhagen mosque projects, called for a vote on whether Parliament should encourage the government and local councils to prevent the construction of ‘grand-mosques’.³ The proposal did not meet with approval and the parliamentary majority instead adopted a resolution stating that religious freedom includes the opportunity to establish places of worship and denying allegations that big visible mosques obstruct integration or disturb public order as unfounded.

In January 2010 the DPP proposed a Swiss-style consultative referendum on whether construction of minarets should be prohibited in Denmark to parliament.⁴ At the first reading of the proposal in April, the minister for integration rejected it on several grounds, including freedom of religion. A representative of the DPP replied, with partial reference to an old quote by the Turkish Prime Minister Erdogan, that the Ahlul Bait mosque to be built in Copenhagen was not a place of worship, but ‘a barracks in a campaign of conquest’ and ‘a propaganda centre for the Iranian theocracy’. The spokesperson for the DPP objected to minarets as parts of a general ‘Islamisation’ of Danish society. The proposal was rejected at the second reading in May 2010 by all parties in parliament except the DPP.

Meanwhile, in February 2010, the Technical- and Environmental committee in Copenhagen had approved the drawing up of a district plan for the Battery project, including the Battery mosque. As in the previous case of the Ahlul Bait mosque, the DPP committee representative requested a political debate in the city council, this time voicing worries about the funding of the project coming from non-moderate forces such as Iran. The representatives of the liberal and conservative parties supported the Battery draft plan, but objected on neutrality grounds to the explicit designation in the draft district plan of one building as a ‘Mosque’ rather than as a building for ‘cultural purposes’.

When the Battery draft district plan was discussed in the city council in March 2010, the DPP representatives reiterated their objections to the mosque on the basis of concerns about Iranian funding, and denied that it was the job of the city council to facilitate the building of a mosque. The other parties represented in the council supported the inclusion of provisions for a mosque in the draft district plan on the

³ <http://www.ft.dk/samling/20091/forespoergsel/F18/BEH1/forhandling.htm#dok>

⁴ http://www.ft.dk/samling/20091/beslutningsforslag/B104/som_fremsat.htm#dok

basis of religious freedom and the value of diversity, and approved the drawing up of a district plan designating part of the Battery as a mosque.

Before the approval in the city council of the district plan permitting the building of the Ahlul Bait mosque in April 2010 a new voice appeared. This time the opposition to the mosque project did not come from the DPP or similar Islam- or immigration critical quarters, but from a group of Iranian exiles, who demonstrated outside the city hall against the links between the Ahlul Bait and the Iranian regime. The protest initiative ‘No to Iran’s prestige project’ documented institutional links between the transnational Ahlul Bait and the Iranian regime and the involvement of the Iranian ambassador to Denmark in the purchase of the Ahlul Bait property and warned against Iranian funding of the mosque leading to increased influence of the regime in Denmark. The protest initiative even got an audience with the Danish Parliament’s committee on immigration- and integration policy in May 2010. The protest initiative was publicly supported by local politicians across the political spectrum, but only swayed the vote of one representative on the city council from the socialist party, herself an Iranian exile.

4 Theoretical Interpretation of the Political Process

Can this political process be interpreted in terms of toleration and respect? Can the City Council and/or the Danish state be described as vertically tolerant or respectful in this case? Focusing first on the City Council as an institutional actor, note first that the fact that the Technical and Environmental committee in 2009 initiated work on district plans which would permit the building of mosques was not an expression of a specific *policy* on the part of the city council regarding mosques. The planning act requires local councils to draw up district plans when they receive applications for construction projects. Here the applications simply happened to involve plans for the building of mosques. So the council does not have a general ‘mosque-policy’; rather, a general procedure for handling building applications is in place, which was followed in these particular cases.

Secondly, the decisions reached in the building cases apparently cannot be described as either tolerant or respectful in the strict sense introduced in the beginning. This is so insofar as the objection and acceptance components required for toleration and respect do not obtain; the council *as such* does not have or express either a negative or positive attitude towards the mosque projects. The acts of the council as an institutional actor distinct from the individual members of the council can arguably only be described as *permissive*, not as either tolerant or respectful, insofar as toleration and respect require the presence in some form of attitudes towards the object of the permission ascribable to the agent in question (Læggaard 2010a).

Something similar holds at the state level: Since the proposals from the DPP to require councils to oppose ‘grand-mosques’ and for public referenda over minarets were both rejected, parliamentary debates did not lead to any decision to intervene or change the procedures. The state as such thus remained aloof in relation to the handling of the cases in the city council.

Some might describe the case in terms of toleration due to the constitutional role of the Evangelical-Lutheran church as the ‘People’s Church of Denmark’ supported as such by the state. Muslims might be in a relation of vertical toleration to the Danish state simply because the state is (in some, far from obvious sense) Christian. Without being able to argue the claim fully here (see Lægaard 2010b), this need not be the case. The state does not necessarily object to Muslims or mosques simply because it supports the Lutheran church, and in fact the Danish state is not only practicing non-interference towards Muslims but positively supports ‘approved’ Islamic religious communities in some ways. The official religious inequality rather contributes to the minority status of Danish Muslims; in addition to being a numerical minority (estimated 4% of the population), Muslims are both economically and normatively a minority. They are marked as different and divergent from the norm both officially (the Danish state supports the Lutheran church) and in public debate (which is dominated by discourses of immigration hostility, cultural assimilationism, and invocations of ‘Danish values’ supposedly difficult to accept for Muslims).

The *internal politics* in the council and parliament are better places to look for the articulation of objection and acceptance components characterising toleration and respect: Here there are clear articulations of objections to mosques from the DPP and partly from liberals and conservatives. Among the majority there are articulations of both objection and acceptance, the latter voiced as reasons for not diverging from standard procedure and for not allowing specific allegations (e.g. concerning Iranian funding) as reasons for withholding permission. Appeals to non-discrimination and freedom of religion might be interpreted as forms of equal respect insofar as they both explicitly acknowledge Muslims as having equal standing and publicly justify permitting mosques on this basis. One can accordingly describe individual members of the council and parliament as tolerant or respectful. But the aggregated attitudes of its members arguably cannot be ascribed to the council *as such* as long as it only approves of a district plan but does not publicly affirm reasons for objection or acceptance.

The council can be described as tolerant in Jones’ broader sense: Even if the council as an institutional actor is not tolerant or respectful, it *upholds a regime of toleration* by sticking to the standard procedure for district plans. The council thereby prevents forces demanding withholding of building permissions, e.g.

as represented by the DPP in the council and parliament, from backing up their objections with political power, e.g. in the form of denying building permissions.

Already at this level of political process, intersectionality makes its appearance: Insofar as the potential intolerance is located in society in a broader sense (as opposed to being a part of the formal constitution of the public authorities) the description of the council as politically tolerant makes implicit or explicit reference to horizontal intolerance of opponents of mosques towards these building projects. The description of the council as politically tolerant is only salient and informative in relation to the particular case in light of these potentially intolerant horizontal relations, which the council’s actions transform into relations of publicly enforced toleration. The political toleration in question is accordingly a case of top-down intersectional toleration.

5 Public Debate⁵

To assess the case in terms horizontal toleration and respect, an empirical investigation of the distribution of intolerant, tolerant and positive views on mosques in the public debate in the media about the cases was conducted. This empirical material provides an avenue for assessing extrinsic intersectionality in the case, since it makes it possible to investigate the relations between the public debates on the case and the political process, between the articulated reasons for views in the political and broader public debates, and how the dynamics of the debates unfold.

The investigation was conducted using the database *Infomedia*, which collects all written and electronic media in Denmark. The media survey covers the period from January 2009 to September 2010, i.e. the period where the political process took place as well as some time before that. Searches were conducted on selected key words, namely ‘stormoske’ [‘grand-mosque’], ‘moske’ [mosque], and the names of the two Islamic associations responsible for the two mosque projects, namely ‘Muslimerne Fællesråd’ [The Muslim Council] and ‘Ahlul Bait’ (all including derivatives and variations in spelling).

This survey does not address the issue of agenda setting. Although some of the findings reasonably can be understood as driven by the media, the findings of the survey do not in themselves measure the agenda setting effect of the media. The focus is moreover strictly on Danish media (local as well as national). This national focus does show that national public debates are part of broader international currents, both in terms of the reverberations of specific events in other countries (e.g. the Swiss referendum on minarets) and the more general concern with Islam, integration and security. The survey does not in itself address the place of the case

⁵ The data sets on which the account in this section is based are on file with the author.

in the international context or comparative issues about similarity or difference relative to other cases in other countries, since this is arguably not crucial to the interpretation of the specific case in terms of toleration and respect.

The public debate does not necessarily reflect attitudes towards mosques in society more broadly. The media are nevertheless crucial to the formation of public perceptions, which justified the choice of focus. It might be objected that public debate is likely to be dominated by more radical views and not to reflect the possibly more moderate opinions of a 'quiet majority'. Even if the public debate is skewed in the noted way, the survey can still be used to assess several forms of intersectionality: The description of the Council as politically tolerant in Jones' sense does not require any specific level of potential societal intolerance. Participation in public debate is arguably an important aspect Forst's 'respect conception' concerning citizens in their capacity as law-makers. And extrinsic intersectionality between the political process and the public debate will be of independent interest in understanding the case, whether or not the public debate reflects broader attitudes correctly or not.

The objection is further addressed by incorporating a partial test of the degree to which the public debate is skewed in the survey design: While the term 'stormoske' literally means 'grand-mosque', its use in the Danish debate does not necessarily signify anything about the actual size or the special status of the buildings in question. According to *Infomedia*, the term first appeared in Danish media with reference to a Danish context in December 1990 and February 1991 as part of the coverage of a proposal from the Progress Party, an anti-taxation and immigration-hostile protest party from parts of which the DPP later evolved. In November 1990 PP members of parliament, including the latter founder of the DPP, proposed a bill to parliament to cancel the lease of the Battery plot to a Muslim association for the purpose of building a mosque, which the bill referred to as a 'stormoske'. The term 'stormoske' makes its appearance in the public media as part of the subsequent news coverage of and public debate over the Battery lease. One might therefore hypothesize that use of the term reflects the PP's original view of mosques as inherently problematic and that the terminology functions as a discursive framing of mosque projects as more problematic and even threatening than the more simple label 'mosque' might suggest. For the DPP's part, this was confirmed during the parliamentary debate in February 2010, where the spokesman of the DPP admitted that they considered *any* visible mosque with dome or minarets as a 'grand-mosque'. The separate searches on uses of 'stormoske' and 'moske' provides a test of the hypothesis that the former is not a neutral descriptive term but a politically loaded label, which might suggest the minimal degree to which the public debate over-represents more radical views.

The results of the searches were sorted in several stages: At the first quantitative stage strict news coverage and opinion pieces were separated. The former (reports, news telegrams etc. not arguing a particular view) were counted and ordered according to date. The latter (letters to the editor, interviews etc. articulating a view) were ordered by date and sorted in to three categories: 'intolerant' (pieces arguing for not permitting the mosques), 'tolerant' (pieces articulating some negative view of mosques but nevertheless arguing that they should be permitted), and 'positive' (pieces articulating some positive view of mosques and in favour of permitting them). At this level of categorisation, 'positive' includes all views arguing for permitting mosques with no accompanying negative view, so it covers all reasons for permission, not just equal respect views.

At the second stage a qualitative reading was conducted of a subset of the entire sample selected on the basis of the degree of articulation of the views expressed and whether the author of the view was of special interest, e.g. prominent public figures, representatives of political parties, groups or organisations relevant to the case. The selected sub-set was studied to determine the more precise justifications for the more general stances, i.e. which objections to mosques informed intolerant or tolerant views, and which positive considerations were given as reasons for permitting mosques.

The survey shows the use in the public media of the key terms to be closely correlated with central dates in the political process. There are almost no occurrences in Danish media of the key terms in 2009 before the issue appears on the agenda for the meeting of the technical- and environmental committee on 24 June 2009. This first wave consists of 59 news items on 'Ahlul Bait', 'moske' and 'stormoske' on the day following the meeting. The first wave generates little public debate.

The second wave follows on the council meeting on 27 August 2009 approving the work on the district plan. The same day the media had 42 news items on 'Ahlul Bait', 'stormoske' and 'moske' and 41 the next day. Then, after a few days with only a little debate, things explode: 1 September 2009 sees 73 news items on 'stormoske', and the next four days 77, together with a barrage of opinion pieces all using the term 'stormoske' (over 30 the first week of September). The factor triggering this third wave is a news story about the funding for the Ahlul Bait mosque supposedly coming from Iran, a subsequent demand for financial transparency for any mosque project made by a prominent member of parliament from the Conservative party, which the DPP tops by a demand that all permissions to build 'grand-mosques' are withdrawn.

After a week of debate mostly about the Iranian funding of the Ahlul Bait mosque, the fourth wave is initiated on 9 September 2009 by the DPP's nation-wide campaign featuring manipulated pictures of the blue mosque, which is extensively

covered in the media (65 news items the same day using the terms ‘stormoske’ and ‘moske’). This generates a huge amount of opinion pieces (67 using the term ‘stormoske’ the next three weeks), which for the first time are polarised and mainly intolerant: Whereas the first week of September saw only 1 positive, 24 tolerant and 8 intolerant opinion pieces using the term ‘stormoske’, the three weeks after the DPP’s campaign generated 11 positive, 17 tolerant and 39 intolerant opinion pieces using the same term.

During fall 2009 ‘stormoske’ is mainly used in relation to news stories about the projected Battery mosque and disagreements between the developer and the Muslim Council. This phase generates relatively little public debate, but now with a clear tendency towards intolerance (1 positive, 3 tolerant and 13 intolerant opinion pieces using ‘stormoske’ in October and November).

The fifth wave is triggered by the Swiss referendum on minarets and the subsequent demand from the DPP leader for a similar referendum in Denmark: Over 100 news items use the term ‘stormoske’ on 29 November 2009 and the two following days. The resulting opinion pieces replicate the earlier noted tendency towards intolerance (1 positive, 6 tolerant and 9 intolerant pieces using the term ‘stormoske’ in the weeks following the referendum).

The sixth wave of news coverage and public debate ensues when the city council on 15 February 2010 publishes the first draft of a district plan for the battery project. A prominent tabloid paper, *Ekstra Bladet*, seizes the opportunity to launch a journalistic campaign about the projected ‘grand-mosque’ on its internet based popular opinion page ‘the Nation’. Unsurprisingly, given *Ekstra Bladet*’s immigration hostile record, the result is a new wave of debate with a strong tendency towards intolerant views.

The seventh wave is triggered by the council meeting on 15 April 2010 approving the district plan for the Ahlul Bait mosque, before which the protest initiative ‘No to Iran’s prestige project’ demonstrated outside the city hall. The debate focuses on the funding coming from Iran and criticisms of the Iranian regime and is mostly intolerant (only 1 positive, but 12 tolerant and 15 intolerant opinion pieces using the term ‘stormoske’).

At the general quantitative level, the survey suggests that the news coverage and public debate is a function of five factors: 1) The district planning process, 2) the story of Iranian funding, 3) the DPP’s campaign, 4) the Swiss referendum, and 5) *Ekstra Bladet*’s journalistic campaign. There is hardly any news coverage or public debate independently of these factors. The funding story and Swiss referendum furthermore mainly generate so much coverage and debate because they are taken up by national politicians (especially from the DPP). So the coverage and public debate seems to be directed by the political process at the local level

and the political debate at the national level. The public debate furthermore leans increasingly towards intolerance, the DPP's campaign apparently marking the tipping point.

As a methodological caveat it should be noted that the survey only demonstrates correlations, not causality. But this also points to an important qualification regarding the lessons that can be drawn from a study like the present one: Whereas the waves of intolerance mainly seem to be triggered by interventions of the DPP, and to some lesser extent by other political actors, it gives no reasons to believe that these interventions are either necessary or sufficient for the observed rises in intolerance. Most importantly, there may be further background preconditions for intolerant views that are merely activated or tapped into by political interventions. So one cannot, for instance, conclude on the basis of the noted correlations that the DPP is solely responsible for the documented intolerance in the public debate.

The distribution of intolerant, tolerant and respectful views displays some interesting features both when comparing the views expressed using different terms and the distribution of views between 2009 and 2010. The politically loaded nature of the term 'stormoske' relative to the term 'moske' is clearly confirmed by the survey. Of all the opinion pieces using the former term, 10% are positive, 32% tolerant, and 54% intolerant, whereas the distribution of those using the latter term is 30% positive, 36% tolerant, and 34% intolerant. So attitudes clearly correlate with choice of terminology. The development over time is also striking: In 2009, of all the registered opinion pieces (all four key terms), 15% were positive, 36% tolerant and 46% intolerant. In 2010, this had changed to 11% positive, 30% tolerant and 59% intolerant. This shift towards more intolerant views is also clear even within the category of opinion pieces using the more neutral term 'moske': Where 38% of these were positive, 35% tolerant, and 27% intolerant in 2009, this changes to 15% positive, 39% tolerant, and 44% intolerant in 2010. This shift is probably due to the greater saliency in 2010 of concerns about the Iranian funding of the Ahlul Bait mosque apparently shared by many who do not see mosques as such as problematic.

At the selective and qualitative level, the main picture is that the same reasons are advanced in the public debate as originally formulated by members of the city council and reiterated in parliament; with minor exceptions, no reasons for either objection or acceptance are expressed in opinion pieces that were not already articulated in the political debate.

The main reasons *against* the building of mosques are: 1) security (fear of extremism and radicalisation), 2) general anti-Islamicism (objections to political Islamism, gender inequality, undemocratic nature of Islam), 3) funding coming from Iran or Saudi-Arabia, 4) aesthetics (foreign architecture, size), 5) the neutrality of

the district plan (the reference to a mosque – this procedural concern is only voiced in the city council), 6) public presence (Denmark is a Christian country, Muslims are welcome, but should practice in private), 7) religious representativity (there should not be a shia mosque, since there are so few shias in Copenhagen – this is not voiced politically), 8) problems of integration (a ‘grand mosque’ will result in segregation and worse integration).

The reasons *for* permitting mosques are: 9) planning act procedure (the act does not allow decision on district plans to take controversial political and religious issues into account – this procedural point is mostly formulated politically), 10) freedom of religion, 11) non-discrimination, 12) integration and inclusion, 13) the value of diversity. All of these reasons for permission can be interpreted as forms of, or as based on concerns with, equal respect for Muslims. This is of course just a possible (although plausible) interpretation of the voiced reasons, which could also be pragmatically or strategically motivated. The analysis is concerned with the underlying intentions of actors, however, only with the views actually expressed in the public debate. Reasons 9-11 share the formal feature of treating all citizens equally in specific dimensions, which is what motivates the interpretation in terms of equal respect. Reasons 12-13 are more plausibly interpreted as expressions of the view that Muslims are valuable members of society.

The most prominent reasons voiced against mosques are reasons having to do with general criticism of Islam, e.g. for being undemocratic or oppressing women, and second to that concerns for security (radicalisation) and funding (from Iran and Saudi-Arabia). The objection having to do with funding is almost non-existing before the end of august 2009 and becomes much more prominent in 2010. This is especially the case for tolerant views, among which concerns about Iranian funding loom larger in 2010 than in 2009. Many who were not worried about mosques before the story about Iranian funding became so afterwards, and many who objected to mosques all along (e.g. the DPP) use the funding story as an additional reason or even translate their original dislike of Islam as such into apparently more publicly palatable worries about giving the Tehran regime influence in Denmark.

Among reasons for permitting mosques, freedom of religion seems to be the most prominent, although the reasons for acceptance are generally less clearly articulated than the reasons for objection.

6 Conclusion: The Intersectionality of Toleration and Respect

Respect, toleration and intolerance are central to understanding of the Danish mosque case. A description of the case that did not detail the articulation of reasons for acceptance and objection in the political and public debate would make it incomprehensible why such an apparently routine building permission case could be

so controversial and occupy so much space in the political process and media. One cannot understand the political debates unfolding in the case or why mosque building became a political issue at all without understanding how it involves questions about toleration and respect. Toleration and respect are thus central to any adequate description and understanding of the case. This is so whether or not one also adopts a normative perspective on the case, although the articulated reasons of objection and acceptance gain additional saliency if one approaches the case from the point of view of, e.g., religious freedom in general or concerns with the position of the Muslim minority in particular.

On the other hand, descriptions of either the public authorities as simply permissive or of public opinion as predominantly intolerant also seem inadequate or even misleading. The case is not simply one of unproblematic permissiveness on the basis of religious freedom, nor is it merely one of pervasive popular intolerance and Islamophobia. The development of the case can only be understood by taking both the permissiveness of public authorities and the articulation of increasingly intolerant views in public debate into consideration and by noting their interrelations.

One general finding of the paper thus is that attention to two-dimensionality and intersectionality seems crucial to an adequate description and understanding of the case, not just for the purpose of assessments of it in terms of normative ideals such as Forst's democratic respect conception or Galeotti's toleration as recognition. Normative ideals such as these can be shown at the purely theoretical level to turn on specific intersections of political and social relations not captured by one-dimensional calls for tolerance. This paper shows empirically how this kind of two-dimensionality and intersectionality is also required for descriptive and interpretative purposes. This is not a trivial point, since cases of toleration, and especially of intolerance, are often simple in the sense that the attitudes of public authorities correspond to popular attitudes; in many places where authorities have denied building permission to mosques or minarets, this reflects popular dislike or fear of Muslims or Islam. But the Danish case is different in that the horizontal and vertical relations do not correspond so neatly. So to adequately describe it, we need to introduce two-dimensionality into the conceptual framework, and to understand it we have to consider the various possible forms of intersectionality between the two dimensions.

The structuring of the data in terms of positive, tolerant and intolerant views provides a prism illuminating both the dynamics of the case over time and the relationships between the vertical and horizontal level; this interpretative perspective reveals to what extent the public debate is conditioned and even dictated by the political process and debate, both in terms of triggering factors, the distribution

and dynamics of views, and the reasons given for the views. This is an interesting example of what I have called extrinsic intersectionality. The investigation in these terms shows the agenda setting force of the political process in at least two dimensions: First, the public debate on mosque issues is apparently triggered by the political process and the meetings of the political bodies are among the main factors initiating the waves of public debate. Secondly, the reasons for objection and acceptance articulated in the public debate mirrors those formulated in the political process. These two aspects of intersectionality give a picture of the public debate as almost determined by the political process. A third aspect changes this picture, however, in that the majority view in both the city council and parliament is revealed as an increasingly embattled minority view in the public debate. The public debate is thus independent from the political process, but not autonomous, since it is apparently the skilful instrumentalisation of the mosque issue by specific political actors (especially the DPP) that propels the shift towards increasing intolerance in the public debate.

The survey further substantiates the description of Muslims in Denmark as a minority in the noted qualitative sense. The increasingly intolerant response supports Galeotti's hypothesis that the perceived divergence of minorities tends to transform issues involving requests by minority groups into problems of toleration despite the formal equality in liberal states; as soon as minorities make requests for public presence, they go from being more or less invisible to being a challenge to the majority's norms, which generates popular opposition (Galeotti 2002: 90-93). The survey supports the characterisation of Muslims as a minority in the normative sense. It further indicates that prospects of having visible mosques are considered as deviances from the norm in Denmark in a way triggering intolerant attitudes, at least when these deviances are instrumentalised politically for this purpose.

As further discussed in the introduction, there are prominent normative positions according to which toleration should not merely consist in permissions, but should be explicitly justified with reference to equal respect. If toleration is based on equal respect, it is not a way of entrenching power asymmetries between minority and majority, but a way of including minorities as full and equal citizens. The survey suggests that one way of understanding this claim might be overly optimistic: If the claim is understood as an empirical prediction of the effects of justifying permissions in terms of respect, then it is not confirmed in this case. Even though the majority in both the city council and the national parliament invoke freedom of religion, non-discrimination and similar reasons plausibly understood as expressions of equal respect as justifications for sticking to a planning procedure that results in permissions to build mosques, this apparently has no positive effects on public opinion – in fact, the opposite seems to be the case.

There are many qualifications to this assessment, however. First, the views expressed in public debate may not be representative, or the change in public opinion might take longer to materialise. There are weak indications that this is the case: The difference in views expressed using the terms ‘stormoske’ and ‘moske’ suggests an over-representation of intolerant views in the public debate. Further, two opinion polls conducted during the period may be interpreted as indicating a movement towards less intolerance.⁶ Second, the claim might be that it is not sufficient merely to stick to the ordinary procedure; perhaps the invocation of equal respect as a reason for permissions should rather be a distinct affirmative act infusing the permission with symbolic meaning (Galeotti 2002), e.g. in the form of public statements by prominent representatives of the council in their official capacities rather than by individual members of the council. Thirdly, even if no actual effect of the envisaged sort occurs, the respect view might still be upheld as a purely normative ideal about what justice requires in cases like this.

While the investigation does not in itself say anything about how such cases should be handled, it provides information that is strategically relevant if one is trying to figure out how to translate specific normative ideals into practice in similar cases. One apparent lesson is that public opinion, at least to the extent this is expressed in public debate, is both very much conditioned by political process and debate, but is far from an automatic function of official policies. Even if a political body invokes a given value as justification for permissions, there is no guarantee that this value will inform views in the public debate. The extent to which the public debate develops out of political instrumentalisation of both internal and external factors (e.g. the funding story and the Swiss referendum) indicates that symbolic invocations of the equal status of minorities as justification of public decisions is certainly not sufficient to remove minority status. Worse for proponents of multiculturalist policies of recognition, such invocations may actually further entrench the minority status and exclusion of a group requesting increased public presence.

So two kinds of intersectionality may work against each other in cases like this: Normative ideals of equal respect may be intrinsically intersectional in the sense

⁶ Immediately following the Swiss minaret referendum the research institute *Megafon* asked over 1000 people what they would vote if a referendum on banning or permitting minarets were to be held in Denmark? 51% answered that they would vote for a ban, 34% for permission and 15% did not know. In August 2010 the research institute *Rambøll* asked 970 people whether it would annoy them if a mosque with a minaret were built in the local area? 49,7% answered ‘yes’, 48% ‘no’ and 2,2% ‘don’t know’. These two representative polls are not strictly comparable, since the questions are different. But they indicate a less negative attitude towards mosques and minarets in 2010 than in 2009: the positive group is now almost as big as the negative group, and ‘being annoyed’ is arguably a less negative attitude than actually voting in favour of a ban at a referendum. One might be annoyed but still not be in favour of a ban, e.g. because of respect for freedom of religion, in which case one qualifies as tolerant. So the negative group in the second poll includes both intolerant as well as tolerant attitudes to minarets.

that they require public authorities to work (vertically) for an increased acceptance of difference in social (horizontal) relations among citizens (this is arguable part of the European Union discourse on ‘equal treatment’, which then prescribes a form of top-down intrinsic intersectionality). But such ideals can run up against extrinsic intersectionality, either in the form of bottom-up popular reactions to institutional impositions, or, more likely, against political instrumentalisation of the issues thus placed on the popular agenda. The latter may be what happened in the Danish case. The political response by the DPP to the prospects of building permissions for mosques did not succeed in halting the political process towards this result significantly. But it arguably prevented this political process from functioning as an occasion for fostering more positive and accepting attitudes towards Muslims and mosques in the public debate. Whether the Mosques will in fact be built is now primarily a matter of funding, which the political instrumentalisation of the issue has turned into a volatile subject that the media are certain to remain watchful and suspicious towards for some time. If the mosques are eventually built, this might move the debate and the broader popular and political focus on Muslims in new directions. But for the time being, the Danish mosque case is a peculiar one of political permissibility coupled with intolerance in the public debate.

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Spatial Marginalisation of Roma and Traveller Populations: A Comparative Study of Italy, Hungary, France and Wales

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Abstract: *Roma and Traveller populations are typically marginalised in contemporary Europe, both geographically and in terms of access to resources and opportunities. In this article we describe and compare patterns of such marginalisation in four countries: Italy, Hungary, France and Wales. Our particular focal point is housing. There are clear patterns across the four featured countries in terms of the treatment of these groups, the wider politics surrounding this, and the conditions in which they live. This, we argue, provides fertile ground on which to pursue normative debate about the contemporary place, scope, appeal and implications of tolerance in public policy.*

Keywords: *Social exclusion; Roma; Gypsy Travellers; Travellers; housing; camps*

Introduction

In everyday discourse, the term “marginalisation” has perhaps two main senses. One is physical. To be marginalised in this respect is to be pushed to, or kept at, the edge of things. It is to be distant from the centre – whatever the “centre” in question might be. This kind of marginalisation can be represented on a conventional two-dimensional map. The other sense is hierarchical. To be marginalised in this second way is to be socially excluded: to be denied resources, services or opportunities which are accessible to the majority, or to those in the mainstream. These two variations of the term are analytically distinct. Marginalisation in the first sense need not entail marginalisation in the second, and *vice versa*. Distance from the centre will, in certain cases, be an object of aspiration rather than a disadvantage. Sometimes, for example, the physical epicentres of cities – the best-connected, most easily accessed parts of town – are the least “desirable” places to live. Sometimes the powerful live further out of town, because they can afford to. So usually when marginalisation becomes the cause for sociological attention, or political concern, it is the second sense of the term – the sense in which marginalisation seems definitively disadvantageous – that is primarily at stake. The marginalised are not necessarily those who are a long way from the spatial centre of things: their simple physical location is not the point. They are

those who, for whatever reason and in whatever respects, have the least power, opportunities and resources.

There are cases, however, where spatial and hierarchical marginalisation intersect, such that they are mutually reinforcing in clearly evident ways. Such cases are not *by definition* the most extreme examples of marginalisation, just because both senses of the term apply. But even so, the coincidence of the two different aspects of marginalisation gives such cases a particular kind of salience and intensity. Two such contemporary cases are the treatment of the Roma, and of traveller communities. Our focus in this article is on the spatial marginalisation of such communities in contemporary Europe. We compare patterns of such marginalisation in four countries in different corners of the continent, with distinct histories in terms of their treatment of Roma and traveller communities. We do not seek to explain such patterns in any depth, or to address all of their normative implications: those would be tasks for larger-scale work. Rather, our purpose here is primarily descriptive: the mapping out of forms of marginalisation of these groups in contemporary Europe, and the comparison of these forms across different national contexts. We address this via the question of housing. The following four sections offer an overview of how the housing of Roma and traveller communities is currently addressed in, respectively, Italy, Hungary, France and Wales. The aim in each case is to convey what is distinctive about each national context, in this respect. As we shall see, there are points both of parallel and contrast. The most conspicuous parallels are in patterns of marginalisation which occur with remarkable similarity notwithstanding differences in treatment across the nations in question.

The right to adequate housing is recognised under Article 11 of the International Covenant on Economic, Social and Cultural rights, where it is described as being ‘of central importance for the enjoyment of all economic, social and cultural rights’ (UNHCR 1991, point 1). The wording of the Covenant is carefully couched so that housing is not understood simply as bare shelter, or as a commodity in itself. Rather, it is intimately linked with wider values such as security, peace and dignity. It endorses the position of the Commission on Human Settlements that “Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost” (UNHCR 1991, point 7).

Such statements reinforce the point that as an issue in social policy, housing itself sits at the intersection between the spatial and the hierarchical. That is to say, the allocation of housing involves decisions and implications concerning both the location of different social groups, and of their relative access to opportunities and resources. Housing is not simply a matter of walls, roofs and shelter; it is also

intricately bound up with social goods such as security, safety, and self-respect. It is political. How are our subjects – the Roma and traveller communities – and our object – housing – linked to the theme of “integration, tolerance and the risks of segregation”? As may be self-evident, and will anyway we hope become clear, approaches to the housing of Roma and traveller communities provide a particularly acute, pressing focal point for the analysis of how minorities are dealt with in practice. Such analysis also, as we shall argue, provides fertile ground on which to pursue normative debate about the contemporary place, scope, appeal and implications of tolerance in public policy.

It is often noted that the very term “tolerance” implies a putting-up with something (a practice, a way of life, a set of views) already classified in pejorative terms. To address the social issues surrounding Roma and traveller communities under the heading of “tolerance” may thus risk the presumption that such groups pose, or are, a problem. Such a presumption may itself be a source of, and in turn may serve to reinforce, the marginal status of such groups. Yet it is clear that in political terms, the issues connected with that marginal status do indeed pose questions of tolerance, in so far as the respective relevant authorities in Italy, Hungary, France and Wales themselves treat those issues in terms of challenges posed to “mainstream” social life and service provision by the “alternative” lifestyles manifested in Roma and traveller culture. Our analysis here is based on a survey of relevant literature on the topic. It will not resolve those questions, or draw normative conclusions about how best they might be tackled. Rather, it will focus on the treatment itself – and seek in the process to shed light on current practice in contrasting European national contexts.

Roma and Traveller Communities

At the outset, it is important to categorise and distinguish between Roma and traveller communities. The Roma are most readily defined in terms of their distinct language – Romani, spoken in the form of various dialects – and a particular culture which, as Bancroft puts it, is “distinct from that of the societies in which they live” (Bancroft 2005: 7). Anthropological evidence suggests that the contemporary Roma are descended from nomadic groups who were displaced from India from the 10th Century onwards (Ibid.). To some extent, Gypsy-Travellers may share aspects of these cultural characteristics and historical trajectories. Yet they comprise of a mixture of groups, some Roma in origin, others autochthonous – many of which, in turn, are not of Romani origin but rather originate in Western Europe, living a travelling lifestyle typically based around the practice of a particular trade. For various reasons, such groups have forged a strong cultural identity, transcending the mere sharing of occupations. “Over time,” as Bancroft remarks (2005: 8),

such groups “gradually developed the internal group complexity that came to differentiate them from the surrounding non-Travelling people as more than an occupational-positional grouping.” Very often, this process has been reinforced by the low-status labelling of the occupations with which such groups – including the Jenische of Switzerland, Dutch Woonwagenbewoner, the Scottish and Irish Travellers of Britain and Ireland and the Quinqui of Spain – were traditionally involved.

There are now an estimated 10-12 million Romani people in Europe, unevenly distributed but increasingly widely dispersed. Approximately 70% of Europe’s Roma live in central and eastern Europe, where they constitute between 5 and 10% of the population (Amnesty 2010: 6). Communities in western Europe have historically been smaller, but numbers have been swelled by the European Union’s freedom of movement laws (Thorpe 2008). Recent estimates put the figure at 600,000-800,000 in Spain, and approximately 300,000 in France and the United Kingdom (Amnesty 2010: 6). While generally regarded as nomadic, it is by no means the case either that all Roma live a “traveller” lifestyle, or (as we have seen) that all travellers are Roma. Thus when approaching the social and political issues surrounding the housing of Roma and traveller populations, we find these issues somewhat clouded at each level by a lack of transparency and consistency in definitions. As will become evident in what follows, complexities and inconsistencies surround both the categorization of the Roma as a group, and their relation to such other traveller communities as exist in each national context. We confront a series of interlocking questions and issues surrounding the particular treatment of the Roma and its relation to the wider politics of housing minority groups. For Amnesty International, the treatment of the Roma is a current priority in their European human rights campaigning:

On almost every indicator of human development, in almost every country, the Roma fall far below the national average. On average, they have lower incomes, worse health, poorer housing, lower literacy rates and higher levels of unemployment than the rest of the population. These are not, simply, the inevitable consequences of poverty. They are the result of widespread, often systemic, human rights violations. They are, in particular, the result of prejudice – of centuries of societal, institutional and individual acts of discrimination, that have pushed the great majority of Roma to the very margins of society – and which are keeping them there (Amnesty 2010: 5)

It is with capturing the nature of this marginalization that this article is primarily concerned. As we will see, there is often a merging in the public consciousness, and even in policy terms, between the Roma and other minority communities perceived as a threat, or linked with crime – in particular, traveller communities of various kinds. The assumption behind this study is that the marginality of these groups places them in a position of particular vulnerability, in terms of (to use Amnesty’s

own phasing) the potential for violation of their human rights – not just to housing, but in the wider, connected senses referred to by the Commission on Human Settlements.

Italy

The population of Roma and Sinti in Italy is composed of several diverse groups: Italian citizens and immigrants, arriving in different waves, and for various reasons, from Kosovo, Bosnia, Macedonia, Serbia and, more recently, Romania.¹ They do not constitute a single, homogeneous group. It is a widespread belief in Italy that the main, if not the only, definitive “cultural” feature attributed to Roma and Sinti is that they actually live a nomadic lifestyle and want to continue doing so. This idea of the Roma as “nomads” has shaped both the design and ongoing implication of laws addressing them as a minority, and consequently on public policies towards these groups, in particular those concerning housing. It is well-known that in Italy housing policies targeting Roma are generally implemented through recourse to so-called “camps for nomads” or “Roma camps”.

While Italy does not have national legislation directly concerning Roma and Sinti issues, since the late 1980s to 1990s a number of regions and provinces² have adopted laws for the “protection of nomadic culture” and the nomadic lifestyle. These aims have often been pursued merely by building new camps or legitimizing previously unauthorized ones. Most of the regional laws – those explicitly focused on Roma issues – were passed between the mid 80s and mid 90s (1985-1994, with the exception of Toscana, in 2000). However, in 2001, a decree law on building regulations was passed, which has had an impact on the Roma housing situation, by defining certain actions as an offense such as placing a camper on privately-owned land.

¹ For a detailed account of the presence of Roma in Italy, see Dell’Agnese – Vitale 2007: 130-3.

² Emilia-Romagna, Friuli-Venezia Giulia, Lazio, Liguria, Lombardia, Marche, Piemonte, Sardegna, Toscana, Umbria, Veneto and the autonomous Province of Trento. Marche has only provisions on ‘camps and halting sites for nomads’ (Enwereuzor – Di Pasquale 2009: 8). Where a reference is made to these groups in documents of national institutional relevance they are mentioned as nomadic minorities (see e.g. Decree M. I. 7.4.1989 and Decree M. I. 23.10.1989 “Individuazione dei Comuni interessati alla predisposizione di infrastrutture necessarie alla realizzazione di aree attrezzate per l’ospitalità delle minoranze nomadi”). In regional laws dealing with them, they are given several different labels: Nomads and/or semi-nomads (Lombardia, Marche), Sardegna, Umbria, gypsy (zingari) peoples/cultures, Piemonte, Trento), gypsy (Liguria) and nomadic (Liguria, Emilia Romagna) minorities, Roma and Sinti (Toscana, Veneto), Roma (Lazio, Friuli Venezia Giulia). For an overview of the legislation concerning Roma people and a list of the Italian laws, see Opera Nomadi sezione Lazio (ed.) (n.d.).

Roma housing conditions vary across the country. However, Italy has been justly defined by ERRC (European Roma Rights Center) as the *Campland*.³ Indeed, the most typical condition of living and housing for Roma is still camps, labelled in various ways: camps for nomads (*campi nomadi*); Roma camps (*campi Rom*); halting sites (*campi sosta*); transit areas (*aree di transito*); equipped areas (*aree attrezzate*); reception villages. Camps, halting sites and transit areas are different in terms both of size – camps are usually bigger than the other structures – and of the duration of stay allowed: whether years, months or hours (in the case of transit areas in Emilia Romagna).

Some regional laws provide that camps and halting sites are the only form of accommodation offered to Roma,⁴ while others also enable access to public residential housing – usually under the same conditions as the rest of the population – and sometimes facilities to buy or rent homes. Apparently, it is the conviction that “nomads” do not want to live a sedentary lifestyle in flats or houses which keeps governing housing policies, even against the widespread evidence that many, if not most of them, have lived stably in Roma camps for decades, despite their very precarious and deprived conditions.

The so-called “Roma camps” (the term, though widely used, does not appear in official documents) are usually places of segregation. They are as hidden as possible and isolated from the rest of the Italian society, by being “located far away from the city centres, and often close to motorways or railways or to an industrial area not inhabited by non-Roma groups and in some cases, even on former waste dump sites” (Enwereuzor – Di Pasquale 2009: 4). In such areas freedom of movement is highly restricted: camps are closed off, and going in and out is controlled (often by NGOs selected by local institutions). For example, under the regulation issued by the delegated commissioner for “nomad emergencies in the territory of Lazio region”, in all the villages (camps) “Electronic surveillance devices may be installed in order to reinforce control and security of the village (*article 2.4*) and surveillance around the external perimeter will be the responsibility of law enforcement agents as the Provincial Head of Police (*Questore*) may deem fit” (Enwereuzor – Di Pasquale, 2009: 15). Utilities that should be available by law in authorized camps are not always present; sometimes not even the most basic ones such as drinking water and electricity, not to mention fences, toilets and laundry areas, etc. Furthermore, unfortunately it is exactly this lack of equipped areas that can be used as a justification for forbidding those populations to stop in some parts of the country.

³ ERRC (2000). On the situation and history of Roma camps in Italy, see also Piasere 2006, Sigona 2002, 2005.

⁴ Lombardia, Emilia Romagna, Marche, Umbria.

Requirements for obtaining residence in authorized camps vary from place to place, and can be very demanding, especially for members of an alleged nomadic population. In general, among such requirements will be: valid identification documents, residence permits valid for work purposes, payment of rent for services and utilities, access to compulsory education for children and their regular school attendance. Regional laws require that there be governing or supervisory bodies to decide on internal regulations, access requirements and management of camps. However, in some cases Roma and Sinti are not members of such bodies and in other cases there are some Roma who act as representatives but are directly appointed by the institutions themselves.

At any rate the decision to locate a camp in a certain area or neighbourhood is almost always the occasion for an outcry from local residents. The result is that institutions seem to respond more often to the priority of tranquilizing public opinion rather than the needs and claims of the parties concerned – that is, the potential inhabitants. Thus, while on paper these sites should have the function of preventing urban marginalisation and facilitating access to social services (e.g. education, healthcare), they are mostly segregated structures and often overcrowded and lacking in facilities, services and/or infrastructure.

Hungary

There is a significant lack of data on the Hungarian Romani population, since the census uses the method of self-identification regarding nationality, and thus, due to the hostility against Romani people, only 190,046 people identified as belonging to Roma nationality at the last census in 2001 (KSH 2001). However, the estimation of sociologists is that approximately 600,000 Roma people live in Hungary today (Kemény et al. 2004). There are no significant traveller communities. The spatial distribution and housing of the Roma population have undergone significant transformations, in line with shifts in the purposes and interests of successive governing authorities. In Budapest 30% of Roma people lived in segregated shanty-towns until the 1970s (Kemény 1975). By the end of the decade however, targeted government programs had eliminated practically all these micro-segregated areas, and the large, unified ethnic ghetto of inner Budapest had started to take shape (Ladányi 2008). The state party nationalized the once heterogeneous apartment buildings of the inner districts. They were soon populated with the least well-off citizens of the city (mostly families from the eliminated shanty-towns and from the impoverished rural areas) and became highly segregated. The government could not maintain these buildings by means of the low rents paid by the low-income inhabitants and allocated most of its housing investments to housing estate projects in outer industrial areas where the upper strata of the working-class could obtain private flats.

Meanwhile the upper strata built apartment houses on the prestigious Buda side, which further undermined the heterogeneity of the inner city. Consequently, the inner-city became markedly under-maintained, leading to such negative social effects as the emergence of slums, racial⁵ and class segregation, and ghettoization (Ladányi-Szelényi 1997; Ladányi 2007).

After the transition to capitalism, as the capital's government took on a new form and different motives, urban developments and housing conditions also altered significantly. Segregation has persisted, but it now appears in different guises. In today's Budapest, segregation has increased significantly through gentrification. In what follows we demonstrate this transformation through the example of one particular inner-city neighborhood, the Central-Ferencváros. Until the mid 1990s this neighbourhood was a typical example of the downtown area described above. The transformation undergone by this neighbourhood in the past two decades is also paradigmatic of larger processes Budapest is experiencing. The results of state-socialist neglect of Central-Ferencváros were catastrophic: large dilapidated apartment houses, flats lacking bathrooms and toilets, under-maintained infrastructure and public facilities, and lack of public services such as schools, social and health facilities. Consequently, poor people inhabited the neighborhood, many of whom were unemployed and dependent on welfare and informal income. Furthermore these residents were often in debt due to the cost of public utilities. Due to the historical over-representation of Roma people among the lowest strata of the society (Dupcsik 2009), many of these impoverished residents happened to be Roma, and in this way the exclusionary municipality policies soon turned out to be highly ethnicized.

Let us consider now how such policies work and which financial and organizational circumstances made them possible. Two major characteristics of Budapest's government are its dual level organization and its strongly decentralized structure. The parallel operation of the municipal and the district levels and the unclear division of labor and responsibilities between the two levels along with the opaque operations of the district governments (in reaction to the centralized and bureaucratized government of the state-socialist era) made it possible for local governments to direct urban processes and populations in a way that serves their own purposes and interests often closely intertwined with local or other business interests. The "urban renewal" project launched by the Ferencvaros municipality at the beginning of the 1990s is a clear instance of the malfunctioning of the governance of Budapest and its segregating consequences.

⁵ Historically the most dilapidated and lowest quality housing sites have usually been inhabited by Roma people. Research shows that the housing environment of Roma people is clearly inferior to that of the poor non-Roma population – see Kemény (1975). In this way socio-spatial segregation in Hungary became highly racialized.

Obviously one main interest of the district council is that it be reelected. This interest motivated the attempt to carry out successful and remunerative reconstruction projects that enhance the prestige of the leadership and which might lead to future political power. It is also unquestionably advantageous for the municipality to attract inhabitants of a higher social status and income as this leads to higher tax income for the district, lower poverty rates, and a more powerful voting public. These interests fit in well with those of investors and entrepreneurs. The primary interest of private construction companies is a quick return on their investments achieved by attracting higher income residents with greater solvency, and by “slum clearance” restructuring i.e. demolishing old buildings and erecting new ones (Csanádi et al. 2007: 106). This technique requires a much cheaper and less sophisticated technology. Private entrepreneurs are also interested in attracting higher status residents, tourists and others with a demand for the services and products they offer. The rapid proliferation of fancy bars and restaurants and of trendy fashion and design shops in Central-Ferencváros is a clear manifestation of this intention. In this way the interests of the most powerful actors of the current urban transformation converge, making it all the easier to satisfy these interests by expelling poor or Roma inhabitants who do not pay high local taxes and do not consume the more expensive products and services.

Clearly, the former and current policies and practices of the municipality – such as the rapid and uncontrolled privatization of public housing, the lack of options for the former tenants with regard to the question of where they can move to (Dósa 2009), and the lack of political will to build public housing – corresponded to the interests of investors and wealthier residents. In any case, such practices have led to the segregation of poorer residents, many of whom are Roma. 30 to 50% were eventually moved out of the district (Aczél 2007: 158; Gedeon – Vajda, 2009) and into areas either at the outskirts of the city or in rural areas. In such new quarters public services (schools, social and health facilities) and housing facilities tend to be of lower quality. Furthermore, there is very little opportunity for different social groups to meet one another, while more affluent citizens moving into the neighborhood enjoy all the advantages of the newly rebuilt area – its cleanliness, security, green spots, and high quality services.

France

In France, the Roma population – originating mostly from Romania, Bulgaria and Hungary – numbers between 10,000 and 15,000, according to observers from the collective Romeurope (Romeurope 2010: 18, 55–7). Around Paris, 2000-3000 Roma live in slums.⁶ The French traveller population is generally considered to

⁶ Although there is no official evaluation of this population, this number is often mentioned by social workers, notably within the reunions of the collective Romeurope. Most of the Roma reside

number 300,000-400,000 people and despite having a culture of travel within France and countries in the neighbourhood, most of them also live sedentarily.⁷ March 2003 saw the identification of 189 functional reception areas for the traveller population, consisting of 3984 places – along with 264 others in need of renovation comprising 5343 places (Durousseau 2004: 118). Few additional such spaces have been built since then. The Roma immigrant population and traveller French population are two different groups in France, and it is important not to conflate them.⁸ The wider politic, revised on the s around both groups plays out on different levels, regionally and nationally. In the summer of 2010, following President Sarkozy's declaration overtly stigmatising both populations and the subsequent critical response from the EU (see Hewitt 2010), the intensity of media focus on the Roma increased. The perception of the Roma which arises is often bound up with two other factors: their national origin, and poverty, since they are living in the slums appearing over the past 10 years around Paris and other cities in France.⁹

In 2006, a new spatial device in the management of Roma populations appeared: the so-called “village d’insertion”. It was mainly defined through its opposition with shantytowns – often as a replacement or solution to them. An urban programme,

in the department of Seine-Saint-Denis. A Romeurope evaluation on 8 November 2010 identifies around 30 encampments in this department, varying in population from 2 families to 400 persons. Romeurope's annual report for 2010 estimates that at that stage there were also 1300 teachable children living in these slums. See www.romeurope.org.

⁷ In France, “ethnic statistics” are in principle forbidden under article 2 of the French Constitution, so there are no official data concerning the size of different ethnic groups. The numbers invoked here come from CSOs or sociological or ethnological field work, but should be treated with caution.

⁸ The Roma population (housed within the “villages d’insertion”) is immigrant, rather than “traveller”. They “travel” because the law requires that every 3 months they must leave the country and re-enter (they are the only European population with such an explicitly secondary status). On the other hand, the traveller population consists mostly of French citizens, and the “ethno-cultural” groups concerned are the gypsies, mostly Gitans from the South of Europe, Manouches, or Sinti (who are not Roma, at least not immediately or monolithically). The “law Besson” (May, 31st 1990, but subject to repeated reconsideration in 2000) concerns the implementation of housing rights for travellers (Durousseau 2004: 109-23). The law obliges every city that exceeds 5000 inhabitants to have their own area. Despite being conceived from the start in articulation with the law Besson, the law on internal security (March 18th 2003 – known then as the law “Sarkozy”) seems in important respects to be in opposition to the law Besson. It concerns notably illegal parking, so impacting directly on travellers who from that point on faced a fine (of up to 7500) and the confiscation of their vehicles. There is no mention in the legislation of Roma people: explicitly, it only concerns those travellers who would offend private property. But the events of summer 2010 – including the forceful repression of slums and the eviction of Roma back to central and eastern European countries – is partly a consequence of this law, since the decree specifying how the expulsion of “Roma” should be reinforced is a consequence of the situation and the perception of the confused “travelling/immigrant population” which ensued.

⁹ See Olivera, Martin (2008): ‘Dénoncer l’anti-tsiganisme sans s’attaquer à ses racines?’, *Le Monde* (August 10th): available at http://www.lemonde.fr/idees/article/2010/08/10/denoncer-l-anti-tsiganisme-sans-s-attaquer-a-ses-racines_1397684_3232.html (25th January 2011) where Olivera points out the presence of a Roma population described by William’s work, who have been living in Seine-Saint-Denis since the interwar.

(“Maîtrise d’Oeuvre Urbaine et Sociale”), i.e. a programme defined by a social team, co-funded at the municipal and national level, progressively provided a legal existence to the device.¹⁰ In 2007, a company that deals with hostels’ management, Adoma (formerly Sonacotra 2008; see also Bernardot 2008), was asked to establish temporary residences on pieces of land in Concerted Development Zones¹¹ (or on a former military fort in one case), i.e. often outside residential areas, where sufficient space is available. This is how three of the first “villages d’insertion” were officially set in place in Seine-Saint-Denis, aimed at the eradication of slums, within the limits of five towns at the north of Paris: Saint-Denis, Saint-Ouen, and Aubervilliers, Bagnolet, and Montreuil.

The building permits are temporary: allocated for a period of five years maximum.¹² The Urban and Social Organization programs, when they are implemented towards persons other than Roma living in shantytowns, usually last over a period of three years only.¹³ The “villages” do not host the entire slum-dwelling Roma population; in fact they shelter only a small proportion, about 700 people out of those living in slums built on wasteland. Housing is installed on land ranging from 3000 to 6500 square meters, around areas characterized by a strong urbanization. The land is often enclosed, either by pre-existing walls or by metal or concrete fences, thereby effectively limiting the entrance and exit of people. The number of residents varies from around 24 families (80 persons) in Saint-Ouen, to 350 in Montreuil (where they are divided into two larger sites and a third small one), i.e. about four times more than in other municipalities, representing about half of the Romani people arriving in the city from Romania.¹⁴ In Montreuil, the selection has taken place in two sites under the control of elected officials unlike the initial selection policy of Aubervilliers, Saint-Denis and Saint-Ouen, where it was conducted under no official supervision and according to contingent criteria.

Caravans have primarily been provided by the Abbé Pierre Association, sometimes followed by modular buildings such as “Algeco”, ground floor plus zero, or ground floor plus one when stacked upon each other; or wooden houses. They are set up lengthwise in the field, where the ground is often covered with gravel. These buildings provide a healthy environment, unlike muddy or rat-infested campsites.

¹⁰ According to the circular from the Ministry of Lodging n° 95-63, August 2nd, 1995. http://www.dguhc-logement.fr/infolog/droit_logt/mous_circ_02_08_1995.php

¹¹ The Zone d’Aménagement Concerté (ZAC) management procedure was created by the law of 30 December 1967 on priority development zones (ZUP), to reinforce the links in between private enterprises and public collectivities.

¹² As announced to the associations by the sub-prefect of Saint-Denis in July 2008, within a reunion which took place in the presence of J.B. Duez. The first village will come reach the end of its term in 2011.

¹³ Interview by J.B. Duez with the director from Association Housing Youth 93, 2 October 2010.

¹⁴ Interview by J.B. Duez with the Chief of Project for Association Housing Youth 93 (formerly responsible for the pole “help to the family” within the association Pact Arim 93), 7 October 2010.

In Saint-Denis, wooden buildings are set up side by side and equipped with small porches, surrounded by grass. In Saint-Ouen, the ground was cleaned and cleared after the presence of pollution was suspected by militants.¹⁵ In one site in Montreuil, residents were given more autonomy in the design and setting of the lodgings, resulting in curvier alleys and clusters of caravans. The setting and furniture are sparse: merely a few benches and trees; clothes hung on fences or flower pots hanging from the windows also contribute to the use and visual occupation of space.

Larger buildings are placed along the fences: a community kitchen and laundry, a room occupied by social workers near the entrance. In the first integration villages, at the entrance, some “guardians” or managers stay in a modular building, near a gate as tall as the fence which allows a motor vehicle to enter the site. In most of the sites, other modular buildings in the centre are used for administration, notably to collect the rents, and activities. In Aubervilliers and Saint-Ouen, there is a well-equipped function room with tables, chairs and a flip chart, in addition to the reception room. In one of the villages in Montreuil, the only managers are a Romani family, and social workers do not have any buildings within the village; they meet informally with the families.¹⁶

The caravans are small and there are no camper vans. Even though they are a temporary space, they are still in use in several villages, such as in Saint-Ouen and in Montreuil, where bungalows haven't been built yet. Removable steps with garden or folding-chairs are provided. There is space where children can play, given the limited space inside the caravans. Constructions that take over from the caravans provide a more decent and bigger living space, along the criteria of 9 square meters per person, for nuclear families of 7 persons at the most.¹⁷ All bungalows have windows. Within the bungalows, from left to right, is a bathroom with toilet, a bedroom and a small children's room, a small kitchen and a living room. The ground floor plus zero “Algeco” type bungalows also offer a small balcony. Ground floor plus one bungalows do not allow these small balconies given the metal stairs necessary to access the first floor; nevertheless these steps recall the steps that give access to the caravans and are used as small porches. One can consider it is so to remind everyone that the place is temporary.

Furniture, appliances, sometimes a washing machine, were provided by Emmaus and other organizations specializing in second-hand clothing and furniture, such as the Coup de Main Association,¹⁸ supported by the Fondation Abbé Pierre, which

¹⁵ Informal interviews by J.B. Duez, both with an elected official from the townhall in Saint-Ouen, and members of the collective Romeurope and Médecins du Monde, Autumn 2008.

¹⁶ Interview from J.B. Duez with Martin Olivera, Coordinator of action Tsiganes within the association Rues et Cités, 26 September 2010.

¹⁷ See p. 3 in www.recontres-tsiganes.asso.fr/IMG/ProjetsocialdesRoms.pdf

¹⁸ Interview by J.B. Duez with the director from the Coup de Main association, 9 November 2010.

works in the villages of Saint-Denis, Aubervilliers and Saint-Ouen, as well as in slums. Some integration villages are lit at night for better security. A lighting device is provided for this purpose, with light spots attached to poles that are the only things visible from the outside. Schooling of the children takes place in the public city schools. Men often practice the collect and sale of iron, women collect old clothes and beg.

These “integration villages” were at first promoted by the State, through the “Prefectures”, and were encouraged by municipalities, as in Aubervilliers, or were accepted, after a time of rejection, as in Saint-Ouen.¹⁹

Wales

While still of course part of the United Kingdom, Wales has since 1999 held substantially devolved powers through the establishment of a National Assembly for Wales – which means that in key areas, policy and practice will diverge between this region and the rest of the UK. The Assembly has law-making powers in 20 areas, including housing. Roma and Gypsy-Travellers (RGT)²⁰ in Wales are estimated to number around 2000 people.²¹ Most of them are concentrated, where there are settled populations, along the key transport routes in the north and south of Wales. Public perceptions of RGT-related issues are characterised by (a) a lack of accurate information and (b) the persistence of classical stereotypes about travellers, and their association with crime. Meanwhile at the political level, we find difficulties concerning how best to identify and characterise the groups in question. In public discourse in UK and Wales we find frequent reference to the “genuine” Romani Gypsies as the true nomads, in contrast to non-Romani “tinkers” and New Travellers who are identified as the “dropouts” of settled society and who are subsequently restricted from pursuing a nomadic way of life (Bancroft 2005: 9). This attitude feeds a perception of RGT culture as a “subculture of poverty” (McVeigh 1997: 13).

¹⁹ See Corcier Marjorie, “Le camp rom désespère Saint-Ouen”, blog http://lalignegenerale.typepad.com/press_citron/2009/09/index.html.

²⁰ The label RGT is intended to refer to an ethnically diverse group including Roma, Welsh and English Gypsies, Irish and Scottish Travellers and the so-called “New-Travellers” (people who live in caravans and adopt a (semi-) nomadic lifestyle but do not belong to any of the specified ethnic groups).

²¹ Most of the data presented here is taken from Niner (2006). This report was published in 2006 and represents the most comprehensive recent piece of research carried out on the RGT housing issue in Wales. When possible, the reported data have been counterchecked, and where necessary updated. Yet significantly, according to an informal desk based exercise carried out in January 2009 with local authorities, the total best estimate – albeit still only an estimate – would be around 4000 GT in Wales. Niner’s estimate included only those GT living on sites, while local authorities estimated also around 1800 GT living in “bricks and mortar” accommodation – see Welsh Assembly Government (2009). Thus we lack a fully reliable statistical account of the RGT presence in Wales. A census is due to be held in March 2011.

There are at least 30 RGT sites in Wales, providing around 440 pitches. Of these sites, 19 (with 379 pitches) are owned by local authorities and 11 (with 55 pitches) are privately owned. In addition, there is an unknown number of RGT living on unauthorised sites, i.e. on caravan sites not specifically designated for RGT. To give an overall description of the RGT sites in Wales, highlighting – where it occurs – the spatial marginalisation of these people, it is possible to classify RGT sites as comprising: (i) residential sites; (ii) transit sites, and (iii) unauthorised sites. After the exposition of some key characteristics of each of these types of site, there follow some more general remarks concerning the social and cultural dimensions of spatial marginalisation.

(i) Residential sites are those sites intended for long term or permanent accommodation and are the great majority (92%) of the sites owned by local authorities. All sites have water and electricity supplies. Most of the sites are overcrowded: the “doubling-up” of families on a single pitch is common. Sites are likely to be located next to industrial or commercial land-users; many of them experience problems of heavy traffic and/or litter/rubbish dumping in their locality and some of them are either on or near landfill sites. This of course often leads to environmental and health problems. Litter/rubbish dumping is one of the main problems complained by site residents. The others are: vandalism, evidence of rats/vermin, dog excrement, heavy traffic, vacant/derelict buildings, intrusive industry, scruffy gardens/landscape and lack of children’s play space. Most of these sites are located on the fringes of a town or village: only one site (in Swansea) is within an urban area. All but one of the sites is more than 1km from a primary school, all but two more than 1km from a post office and all but five than 1km from public transport. As for site boundaries, eleven sites (58%) are fully contained by clear fences or other barriers on all sides; eleven have some form of earth bank on one or more sides of the site; fifteen sites (79%) have trees and/or shrubs on the boundary and thirteen (68%) have some form of fence or wall along the boundary. Site residents have different opinions about site boundaries: some perceive clear fences as tantamount to prison perimeter fences, while others see them as a form of protective screening. The “outside world” itself is often seen as very hostile; in almost every case, indeed, settled local people express resistance towards sites.²²

(ii) Transit sites are those sites intended for short-term use while in transit. The main problem with this type of site is that usually they do not, in fact, fulfil this transit role. Due to the lack of residential sites, transit sites end up being used for long-stay residential purposes. These sites are characterised by minimal, poor facilities.

²² Typically, RGT will see themselves as a demographic group against whom it is still “acceptable”, in the mainstream, to make racist remarks (Niner 2006).

(iii) It is difficult to find precise data on the so-called “roadside” encampments. What can be said is that unauthorised encampments have very poor living conditions, but – in the absence of a network of transit sites – they often represent the only available transient accommodation. Most of the people living on unauthorised encampments are families waiting for a pitch on a residential site; some are families visiting local families for a special family event or a holiday; some are groups of RGT travelling from place to place for employment reasons. The difference between authorised and unauthorised encampments is even more evident since the issuing of the Criminal Justice and Public Order Act 1994, which gave powers to local authorities to act against unauthorised encampments.²³ Evictions are usually carried out so speedily that it makes it hard to get children into schools or to access other services. People living on unauthorised encampments usually live in a state of uncertainty: often they gain a “month’s grace” to stay, but this itself is entirely at the discretion of the local authority in whose boundaries they happen to have stopped (Bancroft 2005: 54).

It has been highlighted that RGT are going through a progressive process of “settling” in permanent sites or housing. Travelling is becoming increasingly difficult, as is finding a site – especially a transit site. Even if affected by this partially forced process of settlement, many RGT families maintain a travelling lifestyle and do travel for certain periods within the year, in connection with family or cultural events. It has also been argued that this process of settlement derives from a “sedentarist discourse” that constructs RGT “as a deviant with regard to the moral and social order” (Bancroft 2005: 4). There seems to be a widespread opinion that nomadism *per se* – that is, an exceptional way in which to live the social dimension of space – does not constitute part of the ethnic/cultural tradition of RGT. An arguable tendency of this cultural mood is that it “re-invents ‘Gypsies’ and Travellers as a subculture of poverty”. In this way, “the solution to the problems of nomads becomes assimilation, they must become sedentary in order to be helped” (McVeigh 1997: 17). What seems to be at stake here is the cultural and social construction of space, a construction that affects marginalised groups. This might be taken as an example of how, as Bancroft puts it (2005: 51), “Modernity creates spatial structures in which power relations are implicated” and establishes modernity’s other.

Conclusion

That such processes of “othering” are evident across our four chosen national contexts is evident enough, despite the variations between them in terms both of historical context, and current political practice. That they take place amid an explicit

²³ It has been argued that, without the provision of new sites, the 1994 act has effectively criminalized the RGT way of life, due to a lack of legal stopping places. See Morris 1999.

commitment to the universal, liberal-democratic norms definitive of modernity is striking. In none of these countries are Roma or traveller populations exempt *de jure* from systems of rights which apply to others. Yet in all of them, we find *de facto* versions of an exceptional, secondary status. What we have not explored here are the perspectives of key “players” in these processes. We have not traced the attitudes towards Roma and traveller populations of those working for relevant institutions. Nor have we explored the attitudes of Roma themselves, in order to calibrate their orientation towards the social mainstream, or the scale of their sense of injustice. Such a study would need to form part of any larger-scale explanation of the sources and impacts of the marginalisation of such populations. But we can see from the material presented here that such populations are especially likely to be victims of low-level everyday racism, that they are widely perceived as an easy political target, that they are subject to resentment from settled and non-Romani populations, that plans to improve their housing provision are typically met with resistance, that the existing housing provision itself is markedly below the standards of housing (public or private) available elsewhere, and that where designated camps exist, these work in ways which limit both freedom of movement and access to resources, facilities and opportunities. It is plausible to suggest that these marginalising factors are enhanced by the very marginality of Roma and traveller groups. It may be that there is a vicious circle at work, wherein the outsider status of Roma and traveller groups is both a result and a cause of hostility towards them in civil society.

What we have sought to address here are the features of current housing of Roma and traveller populations in Europe, and, in a limited way, to convey a sense both of how these housing provisions are “lived” by the populations in question, and of how this general issue figures in the political landscape. As stated at the outset, there is no simple relationship (of entailment or otherwise) between the phenomena listed in the second and third columns. It is not part of our case here to propose any causal process in the overall marginalisation of Roma and traveller populations. We would suggest, however, that in the treatment of these populations the place of spatial marginalisation is a key part of the wider inequalities to which they are subject.

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Czech Policies of Building-Up Roma Civil Society as a Vehicle for Combating Social Exclusion

Lenka Strnadová

Abstract: *There is a bulk of literature covering the conceptual debate over the issue of terminological specificities and social and the political consequences of the notions of toleration and respect. I argue that democratic theory dealing with the issue of social and cultural integration and the construction of democratic legitimacy in heterogeneous societies cannot but make use of the ideal of respect as a principle complementing toleration. In addition, I analyze how the idea of inclusion, promoted by theories of deliberative democracy, can serve as a revised and more up-to-date version of toleration. Building upon the summarizing theoretical argument, this paper uses the example of the strategies of integration and inclusion of the Roma community in the Czech Republic and their public representation.*

Keywords: *Toleration, inclusion, the Roma, public sphere*

Introduction

There is a bulk of literature covering the conceptual debate over the issue of terminological specificities and social and political consequences of the notions of toleration and respect. The perceptions of the bright and dark side of toleration and respect have left their substantial imprint both in political thought and democratic theory. For democratic theory, the main point of interest regarding the overlaps and tensions between these two notions lies in their relation to the modes of integration of different individuals and groups in the society, the provision for adequate representation and public voice for all individuals and groups considered equal, the protection of the rights of individuals and groups (including what is nowadays being labelled ‘cultural rights’), and the construction of democratic legitimacy of the public sphere vis-à-vis the members of civil society.

A common method in approaching toleration and respect is to view the former as the negative principle as compared to the positive substance of the latter. This corresponds with toleration usually requiring a rather passive stance as compared to the demand for activity which the value of respect is expected to place upon the individual (Parekh 2000: 2). In the following paper, I intend argue that toleration as usually defined is ill-equipped in providing a solution to the democratic integration of culturally and socially diverse groups and cannot as a principle form

a stable ground for the construction of a robust democratic legitimacy in diverse societies. The main reason for this argument lies in the rather narcissist nature of toleration which unilaterally perpetrates the liberal bias of the majority. The traditional concepts of toleration stay clear of the strong demands for change in the attitudes of the tolerating mass, they do not call for any self-reflection, and they reinforce the confidence about the superior status of the majority culture. Such toleration does not provoke discussion. On the contrary, in a way, it is a tool which can be used to prevent possible critical inquiry into the values and legitimacy of the public sphere, mainly by means of the privatization of matters which could incite doubt and controversy and undermine the self-assuredness of the majority of a given society.

As such, toleration cannot be the ideal which the marginalized, excluded, or under-represented individuals and groups should bestow their confidence in. I argue that democratic theory dealing with the issue of social and cultural integration and the construction of democratic legitimacy in heterogeneous societies cannot but make use of a revised notion of toleration, including the value of equal respect. To begin with, the notion of respect, forcing us to change our attitudes, to actively open them to debate with others, and to test them in discourse and public interaction is far more other-sighted than toleration. By requiring certain sympathy for differing values and attitudes, we are drawn into interaction in which each of the discussants ought to be respected while, at the same time, must be open to rational critique. Thus, out of its nature, respect is a far cry from the potentially monologic, supremacist character of toleration and puts equal demands on all participants in public discourse as to their activism, willingness to amend their attitudes, and readiness for self-reflection. It does not allow the self-imposition of the majority as easily as toleration tends to.

Building upon this theoretical argument from the point of view of the theories of public deliberation, this paper uses the example of the strategies of integration of the Roma community in the Czech Republic and their public representation to illustrate several points. First of all, the fact that the Roma in general cannot identify with so-called Roma representatives and publicly recognized leaders of the Roma community is a clear sign of the lack of respect for Romany values, culture, and differences, and the lasting supremacy of the 'white' majority despite the proclaimed aim to facilitate participation of the representatives of the Roma community in public discourse. The fact that the representatives are still recruited along the 'most-similar-to-the-majority' criteria proves that the state's strategy for integration is in its character still closer to toleration (as outlined above) than to respect.

Moreover, such a strategy cannot provide for true integration and cannot do away with multiple forms of marginalization experienced by the Roma, as it is not their

voice, but the voice of those of their representatives who are found most compatible with the essentialized, unchanging, and largely unreflected values of the majority that are formative of the culture of the public sphere.

Hence, if we should hope for the success of integrationist strategies, we must bear several crucial points in mind: a) to substitute the notion of toleration with its significant vices by deliberative toleration or inclusion, b) to open the public space equally to issues considered critical by different individuals and groups alike, including issues of culture, religion, and socio-economic status, and be ready to transform the public sphere in order to allow for a true inclusion, treating the minorities as agents in themselves, not mere objects of our inclusive policies, and c) in line with this argument to change the mode of selection and the approach of the representatives to the minorities.

The Challenge of Public Deliberation

Past and recent failures of integration programmes show that the aim of new liberal policies of multicultural integration must go beyond the limited possibilities of toleration, bypassing the failures of the politics of group recognition, ideally resulting in policies of political inclusion combining the adequate freedom of individuals, represented by a revised principle of toleration, and supported by enhancing public participation and involvement of members of minority groups. These policies would ideally target both axes of social exclusion – the cultural (or status) axis and the socio-economic axis, which tend to mutually reinforce their negative impact on certain groups and individuals. While a great deal of marginalization experienced by minority groups can certainly be attributed to their low socio-economic status, often resulting in the development of the ‘culture of poverty’, the question of discrimination cannot be reduced to the standard of material well-being. Such a status is always accompanied by a degree of cultural stigmatization which links certain socio-economic features of the group with a number of cultural or religious attributes. Even though we should avoid the great perils of essentializing the identity of the group suffering from exclusion that does not mean that the group identity can be neglected as inconsequential. Identity is a relational matter, as Young eloquently argues. Thus, oppression is a structural concept and as a fact it is a result of the majority construing strict lines of differentiation between Us and the Others, rather than substantive differences and shared features of the oppressed group. In the language of the dominant majority ‘[d]ifference here always means absolute otherness [...] The categorical opposition of groups essentializes them, repressing the differences within groups’ (Young 1990: 170). Group identity is not important because it could be a source of an essence of a human being. It is a source of experience of the surrounding world unique for the members of thus

constructed group. And as such, identity is both relational (non-fixed) and important particularly when the member of the group intend to articulate and stand up against their experience of oppression.

The capacity to ensure a greater inclusiveness of liberal democracy vis-à-vis all citizens, groups, and individuals is often cited as the biggest virtue of the conceptions of deliberative democracy. Thus, I will devote some further attention to exploring how valid and trustworthy their promise is, linking them, in the field of integrationist strategies, to the notion of deliberative toleration.

Partly thanks to the popularity and partly to the sometimes obscure character of the theory of deliberative democracy, the amount of literature reflecting the model has reached unprecedented dimension over the last couple decades. Of course, such a proliferation of writing on deliberation has been accompanied by an increasing internal divergence and variability within the general framework of the conception. However, for the purpose of this study, let me merely highlight a number of the most salient features of the model before turning to its critical evaluation.

The core of the ‘deliberative turn’ in democratic theory consists in the identification of the relative isolation of political systems from their citizens which does not allow for an inclusive representation of the interests of the society, weakens the control function of civil society with regard to the sphere of the political, and by this token, challenges the accepted notion of democratic legitimacy. Deliberative democracy is an ideal which is in general meant to improve, deepen, or strengthen the democratic quality and inclusiveness of contemporary democracies, conceptually quite often following a contractarian tradition (Weale 2004: 79).

Of course, the whole tradition has its beginning in Habermas’ foundational concept of discursive democracy. However, others took it further in a whole range of varying directions. Thus, there is a more critical strand in the current theory of deliberative democracy (Seyla Benhabib), there are feminist reinterpretations often called ‘difference democrats’ (like Young with her model of communicative democracy, or Anne Phillips), a Rawlsian branch (Amy Gutmann and David Thompson) which relies heavily on the basic premises of Rawls’s constitutional deliberation, theories of associative democracy (Joshua Cohen) and many others.

In general, defenders of the deliberative model of democracy argue that ‘it is a necessary condition for attaining legitimacy and rationality with regard to collective decision making processes in a polity, that the institutions of this polity are so arranged that what is considered in the common interest of all results from the process of collective deliberation conducted rationally and fairly among free and equal individuals’ (Benhabib 1996: 69). The process of deliberation is then regulated by specific principles of discourse which means the norms of equality and symmetry, the right of all to question the assigned topics of conversation, the rights for the

initiation of reflexive arguments about the very rules of the discourse procedure. There are no *a priori* rules limiting the agenda, the identity of the participants or the character of arguments employed with the exception of the requirement of being willing to look at things from the perspective of others.

The original Habermas' model of a unified public sphere has, nevertheless, been subjected to intense criticism initiated within feminist circles, the arguments of which were gradually adopted also by many defenders of minority rights. This is the point where this concept comes into the focus of this study. First of all, many theorists, including some feminist circles, blamed Habermas' conception of repeating the perceived inadequacies of Rawls's conception of the public sphere, only bringing them from the sphere of the political to the sphere of civil society. The idea of public reason, as drafted by Rawls, seemed to show too much of a resemblance to the rules of reasoning underpinning the workings of discursive democracy. In my opinion, Habermas has never been able to persuasively refute this kind of critique.

However, after the incorporation of the feminist critique, deliberative democracy began to change shape. At this point, with the publication of famous essays and texts mainly by Nancy Fraser, Young, and Benhabib, deliberative democracy, staying loyal to its basic principles, has been transformed in order to accommodate not one masculine, white, middle-class public sphere, with an exclusionary system of representation only mirroring the inadequacies of the sphere of the political, but a conglomerate of a number of separate or overlapping publics. These publics internally provide a hospitable ambience for individuals possessing different identities, socio-economic statuses, rationalities, and communicative styles to find adequate ground for the expression of their opinion. The groups, associations, and arenas of the civil society were to introduce internal systems of deliberation together with deliberating mutually, and from their midst produce not only opinions authoritative and legitimate enough to be reflected by the government but also civic leaders who would gradually enter the political sphere and enlarge it with their multiple identities, cultures, and values. Thus, the intervention of the feminists allowed for the differential yet equal inclusion of groups and identities traditionally marginalized in the masculinised and culturally exclusive concept of the public sphere into the process of democratic deliberation (see Fraser 1999; Young 2000).

What is the value of such model of deliberative democracy with regard to the inclusion of minorities? First of all, it invites all individuals and groups to take part in the critical public debate, challenge existing injustices and participate in the decision-making process. For this sake, the individuals and the groups do not have to become part of the political public sphere. This interference into the matters of public interest can happen from within the sphere of everyday life. Often lacking adequate resources of any kind, the disadvantaged groups are entitled to create

and utilize multiple arenas of public debate, without the necessity to encounter excessive burdens of operating in a sphere which is either structurally or culturally biased to their disadvantage. The individuals and groups themselves, by means of deliberation are now entitled to set the line between the public and the private, which then allows for the articulation of interests and issues that have been privatized within the liberal discourse despite their highly political character permeated by structural relations of power. Due to the openness of the civic sphere to difference and heterogeneity, minorities can reassert their position by means of civic participation and thus get involved in the polity from which the state's decisions draw legitimacy.

Accordingly, Bohman develops, in line with the trends attributed in this study to a group of theorists of toleration called 'beyondists', a matching revision of the notion of toleration, rejecting its traditional negative delimitation and proposing a new concept of toleration which by means of the inclusion of minorities into public discourse allows minority values and identities to challenge existing public identities. Bohman claims that democracies inclusive in their relation to minorities will neither unilaterally accept the difference nor merely tolerate it, but let the difference become an integral part of their open and internally diverse public identity. Of course, the limits of such deliberation are given by the individuals' and groups' willingness to abide to the principles of reciprocity and mutuality regulating any public deliberation (Bohman 2003). Again, such an approach to 'positive' or 'strong' toleration reflects attempts to join the regard for the rights of the individual with the necessity for equal respect, inclusion, and reflection of the importance of one's identity for human well-being. The advantage of deliberative theory is in its finding that real inclusion and integration cannot leave the identity of the majority untouched.

From the point of view of multiculturalism, I believe there are two projects of such a deliberative transformation of our contemporary democracies that should attract our attention – the model put forth by Iris Marion Young (with certain reservations and qualifications), and above all a related yet different model of 'multiculturalism without culture' suggested by Anne Phillips (Phillips 2007). I consider their models promising enough to be used as a tool for further analysis of the policies of integration of the Roma in the Czech Republic. Furthermore, both these two aforementioned authors and also Tariq Modood (the work of whom will also be object of reference) pass a number of useful comments and notes on the character of individual and group identity and the subject of group and public representation which directly fall in place with the analysis which follows.

To begin with, Young, Phillips, and Modood, despite the fact that they do not use the same terminology, all favour a specific model of integration of minorities which

goes far beyond the negative idea of toleration by demanding true inclusion based on equal respect. All of them maintain that such an inclusion will require a certain model of democracy characterized by a strong emphasis on citizenship, vivid civil society, and political inclusion of difference. All argue for a kind of deliberative politics, although Young prefers to call her model of democracy 'communicative' in order to highlight her critical stance towards initial conceptions of the public sphere. She raises charges of an exclusionary character against these conceptions caused mainly by the excessive unity both of the deliberative space and of the mode of discourse recognized as legitimate (Young 1996: 122-128). Modood does not specifically address the question of a specific model of democracy. Rather, he uses the term 'multicultural accommodation' as a process simultaneously creating new forms of belonging to citizenship and helping sustain the group's origins (Modood 2007: 48). However, the following statement confirms my conclusion that his perspective can easily be considered deliberative: 'As activists, spokespersons and a plethora of community organizations come to interact with and modify existing perceptions, practices and institutions, there is a two-way process of mutual education and incorporation: public discourse and political arrangements are challenged but adjust to accommodate and integrate the challengers' (Modood 2007: 50). Phillips then adds another important remark: democratic inclusion must not only be preceded by a change in public values of the majority but also by an interpretative shift in which the majority ceases to view their values as exclusive only to their group and admits that the boundary between 'us' and 'them' is far from impenetrable (the claim by which she comes very close to Young's insistence on the relational character of group difference). This was for a long time a construct that helped legitimize the idea of our own superiority over the Other. Thus, a change requires a reconstitution of national identity from what is negative and oppositional to Otherness to a more positive mode, searching for what we have in common (Phillips 2007: 23). This of course requires abandoning the old modernization idea of a culturally homogenous, ethnically hegemonic nation state and the logic of binary difference.

Another common point of reference for all three authors is their anti-essentialism. All three are explicit about their rejection of reified group identities and the consequences which essentialist interpretations of multiculturalism have for the segregation of societies and restriction of the rights of the individual. However, the emphasis and the point of view on this area differ. Young and Modood seem to be much more sympathetic to group recognition than Phillips, for whom the individual, though situated in an identity group, must always be the starting point, subject and object of all debates on multicultural integration. In defining social groups, both Young and Modood reject the logic of identity and rigid 'inside-outside' distinctions (Young 2000: 88). Social group differentiation is relational

(Modood, 2007: 41, cf. Young, 2000: 89), internally the groups are not homogeneous, group membership tends to intersect, and it is multiple but still meaningful to people who are ‘marked by “difference” – the latter being a product of exclusionary processes, of impositions from “outside” one’s culture, as well as cultures that are particularly meaningful as “mine”’ (Modood 2007: 35). Both Modood and Young admit that there might often not be an essence to a group, that group identity may be a defensive strategy of people who otherwise, if not oppressed or labelled by the majority of society, would not have much in common. All identities involve to a varying extent an element of construction. However, that does not diminish their importance or relevance, for example as vehicles for the groups to fight oppression via collective action (Modood 2007: 40). Modood’s assertion that equal dignity of individuals strongly relies on equal respect to their group identities (Modood 2007: 53) is ‘only’ a re-statement of Young’s well-known thesis that status inequalities of different groups often tend to have two axes – structural inequalities and the stigmatization or marginalization of the group’s culture. Thus, remedies for these inequalities merely on a structural front will not help in overcoming the general marginalization of the group as long as the cultural stigma stays in place, thus until the group gains respect and inclusion on the cultural front (Young 2002). Phillips does not seem to resent the gist of Young’s argument and concedes that axes of material and group inequality often overlap.

This said, Phillips’s anti-essentialism seems to be of a markedly more individualist nature. Already in the name, ‘multiculturalism without culture’, Phillips’s intention to de-reify the images of cultural identity and put the individual in centre of her multiculturalist design is revealed. However, it would be wrong to deduce that Phillips is a kind of libertarian. The title of her book is a symbolic gesture warning against exaggerated images of cultural unity and the irreconcilable character of cultural conflicts as some form of ‘clashes of civilization’ rather than rejection of the importance of a cultural background for individuals (Phillips 2007: 8). Individuals, according to Phillips, are neither defined nor determined through their culture and must be approached primarily as individuals without cultural and group stereotyping. Still, culture matters, and cannot be entirely bracketed; it involves both our self-ascribed identities and the identities externally imposed upon a group (Phillips 2007: 15) and is linked to the hierarchies of power in a society.

It is also true that all authors unanimously and explicitly defend the notion of agency, though of course with differences which have already resonated through their critiques of essentialism. However, contemplating the question of the relation between the individual and her identity, all agree that culture is not a fate. Identity is multidimensional. Individuals usually relate to a number of groups and are able to approach their identities critically and play an active part in construing

their social context. It is also true, particularly according to Phillips and Modood, that we do not have a shared conception of culture, its importance, and the way of experiencing it. Culture matters to different people in different ways and to difference extent. Thus, while we cannot generally discard it, on the other hand, it is not possible to design a completely unified cultural policy either (Phillips 2007: 52).

The question then remains as to what policies the state should adopt vis-à-vis minority groups and their members. Here, we can see Phillips keeps her individualist persuasion, Young focuses on redressing group inequalities, and Modood, while probably slightly closer to Phillips than Young in these matters, oscillates somewhere on the middle ground of the issue. Young, while insisting on her anti-essentialism, insists that the project of inclusion must be supported by active acknowledgement of social differentiations and divisions and encouragement for the groups to voice their demands (Young 2000: 119). I, however, see a problem intrinsic to such an approach. While originally, neither in theory nor in social practice, the groups must necessarily be apprehended in a reified fashion, any actions on part of formal institutions reproducing and at the same time necessarily delimiting the group within its boundaries will have such an undesired effect. The tendency toward essentialization of groups from above (or from outside) will be ever more present the more the state begins engaging certain individuals who speak on behalf of the group in dialogue. Therefore, while Young starts from a point which I find highly desirable (communicative diversity, multiplication of public space, anti-essentialism), her insistence on explicit political support of specific groups seems ultimately to fall back to multiculturalist positions she has intended to avoid. Modood's strategy is somewhat unclear. At some points, he seems to have sympathy for measures of political inclusion of whole groups and identities, represented in a kind of corporatist way (particularly discussing political inclusion of Muslims in Britain, Modood 2007: 145). In other parts of the text, however, he disclaims that, preferring a 'less corporatist, less statist and less churchy' approach to the inclusion of religious groups (Modood 2007: 81). Perhaps the latter approach prevails throughout the work, enabling Modood to stress the necessity for multiple forms of inclusion, interaction of minorities with the majority in different ways in different venues, and on difference levels, according to what seems to suit best given the context and the character of the minority.

Phillips seems to be much clearer preferring the government to adopt the strategy of dialogue with regard to discussing issues between majority and minority groups. For the sake of further analysis, let us consider her suggestions and criticisms in further detail. Phillips warns against the forms of public discourse in which public authorities approach groups as unified, talking to often self-imposed spokespersons of the groups, 'usually the more powerful [and male] members of a minority

community' (Phillips 2007: 161) who are granted exclusive licence for interpretation of interests on behalf of a group of individuals which they, in mutual accord with public bodies, chose to designate as members of the targeted group. Such a top down approach is considered deeply inconvenient as it has a power to compromise all outlined advantages of deliberative approaches to toleration as inclusion. It is again Young's account of the notion of representation which can help us organize our views on who is entitled to speak for groups in public and how should the system of representation work from the internal perspective of the group. It is indispensable to realize that the relationship of representation can never be a relationship of identity. In other words, the person who represents and her claims are never identical with the interests and claims of all the group members represented. There is nothing like 'authentic representation' in this sense. The authenticity, and thus entitlement to representation stem from more procedural factors, e.i. the process of authorization and accountability. For us to acknowledge that the representative of a group speaks for the true interests of the group it must suffice that such an individual has been authorized by the members of the group as free individuals in a kind of inclusive procedure. Moreover, within the group there have to exist intense and dense vertical structures of communication which allow for mutual exchange of information. The members of the group, as individuals and citizens must be able to hold their representative accountable for her actions. Thus, representation is not an enactment of some united will of the represented. A legitimate act of representation must rely on inclusive and civic practices within the group (Young 2000: 125-133).

This is why Phillips suggests that we intensely educate all members of society to virtues of citizenship, enhance their civic and cognitive capacities, and thus grow civil society organizations (including those representing cultural communities) from the grass-roots level. The purpose is not only to be able to oppose marginalization within the public sphere but also to build up enough civic capacities to be able to exercise control over the internal life and representation of their own group. The resultant thick network of civil organizations and the harmony/disharmony of their voices are who the majority should listen to, not the most vociferous, most visible personalities who claim universal representation. It is usually them who, for the sake of simplicity and their own sectional interests, tend to exaggerate the group's coherence. The relation between such leaders and public bodies is mutually beneficial. Public bodies, in their need to design policies of integration, search for a clear target of the policies and for a contact person who they could negotiate with. Now, the public sphere represents certain values and principles treasured by the majority, together with a cultural background also involving, for example, preferred modes of communication. It is hardly surprising that a conglomerate of reasons forces public bodies to establish dialogue with individuals who i) claim to speak for the minority, ii) fit into the stereotypes about the phenotype, behaviour

etc. of the members of the minority (which in the eyes of public bodies is enough to legitimize their right to speak for others), and at the same time iii) is able to adjust to deliberative practices, modes, rationalities, and even institutional structures the form of which is easily intelligible and familiar to the majority. The leaders, acquiring such a license from the state, gain inadequate power over the individuals, who are subsequently considered as part of their minority group and who often do not possess the instruments of democratic control over their representation. Such a course of development must be considered as a failure of the inclusion project, not its realization. To a great extent, in this scenario, the graver worries of the feminist philosophers who have warned about the exclusionary effects of the original project of discursive/deliberative democracy have come true.

Phillips is clear about the process of civic deliberation in which the articulation of interests must be approached from a bottom-up perspective. This means that she is generally supportive of measures like funding ethno-cultural associations. However, it is inadmissible for any of them to claim a monopoly of representation and powers over their minority group (Phillips 2007: 166). At the same time, civil society is not the only arena of inclusion in her eyes. She strongly supports the inclusion of the members of minorities in various political institutions. While she is sympathetic to measures introduced to raise the proportion of political representatives that belong to cultural minorities, she objects to the direct distribution of power to specific cultural groups. Hence, she rejects all types of corporatist representation and instead favours the incorporation of individuals (and their cultural background) into the institutional structure of political representation in a more dispersed way – as equal members of bodies such as parliaments, governments, and political parties.

In the following section, these findings will be applied to the situation of the projects of integration of the Roma population in the Czech Republic.

Deliberation and Inclusion in the Case of the Czech Roma

A Brief Report on the Situation of the Roma in the Czech Republic

In the Czech Republic, the Roma are a minority which enjoys the status of a national minority. While the act on the protection of rights of national minorities (adopted in 2001)¹ does include a very vague definition of what is meant by the term ‘national minority’, it does not list groups which are granted such status.² Thus, in order to find out which minorities do and do not have this status, we must

¹ Act no. 273/2001 Coll., on rights of members of national minorities.

² The act guarantees unrestricted choice of membership in a national minority, right of assembly, cultural rights, right of multilingual names and denominations, right of using the language of

look into other documents, for instance the statute of the Council of the Government for National Minorities, a special advisory body.³ Apart from the status of a national minority, the Czech state does not provide any other kind of formal recognition to minorities. The selection of currently recognized minorities depends more on minorities traditionally recognized and the tradition inherited from the communist regime than on current consideration of the strengths of individual minorities. Thus, even though there is a substantial Vietnamese minority in the Czech Republic, it does not enjoy formal recognition and privileges related to the status of the national minority or any other formal minority status. The decisions of the state in matters of granting a minority status thus seem to be a bit arbitrary. The state, as a *Deus ex machina*, selects which groups qualify and which do not, and thus, perhaps without any such incentive, helps constitute and stabilize some minorities and not others.⁴

In the Czech Republic, it is rather difficult to talk with any amount of precision about matters of national minorities. The reason is that all public institutions are prohibited from using any kind of ethnic or national criteria or carry out research that would (from an external point) provide quantitative data as to the size of minorities. Such regulation is obviously inspired by a liberal view of society. The purpose is to ensure that the citizens are not subjected to discriminatory practices and intolerance based on the official records of public authorities on matters of their group identity. The initial idea was to ensure the widest possible space of toleration of privately held differences. Thus, all data available as to the size of both officially recognized and other minorities come from two sources – the national census (in which individuals can claim nationality of their own choice, virtually even multiple nationalities) and estimates done by various NGOs, international organizations, public bodies etc. The effects of such an approach are ambiguous. While the rationale behind such a strategy might sound completely legitimate and reasonable, the missing data create a great amount of uncertainty, misunderstanding, and confusion among people (public officials, politicians, representatives of NGOs, INGOs, international organizations, and academics) responsible for designing policies of integration in regards to who the people who their studies and documents target are, how many of them there are, and above all, how to explain the huge discrepancies, particularly in the case of the Roma, between estimated numbers of Roma who are

a national minority in official documentation and discourse and in education, right of spreading information in the language of a national minority, etc.

³ Available at <http://www.vlada.cz/assets/ppov/rnm/statut-rnm.pdf> (accessed on 5th May 2010).

⁴ See f.g. ECRI (2009): ECRI Report on the Czech Republic: available at http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Czech_Republic/CZE-CbC-IV-2009-030-ENG.pdf (accessed on 15th September 2009).

citizens of the Czech Republic and the number who declared Roma nationality in the last national census.⁵

In last national census, out of about 10 million citizens of the Czech Republic, only 11,716 declared Roma nationality⁶. However, the estimates of the number of Roma range from 150,000 to 300,000. Interpretations differ radically as to why so many individuals whom the majority perceives as Roma and who share certain ways of life, values etc. which are attributed to the Roma do not declare this nationality, and will be the object of my following enquiry. First let me summarize the contemporary situation of the Roma.

After a long period of harsh assimilation pressures culminating under the communist regime, the Roma population of Czechoslovakia/ Czech Republic found itself in a state of complete disarray at the beginning of the 1990s. The Roma identity carried multiple axes of marginalization, exclusion, and stigmatization. The cultural attributes of their identity were more or less destroyed and forgotten, including their language⁷. Current Roma youth often do not speak any Roma dialect and know nothing about Roma history or traditional oral culture.⁸ The communist assimilationist regime approached the Roma merely as a socio-economic group with no cultural rights. This perception of the Roma primarily as a socially backward group of inhabitants survived the changes of 1989 (Barša 1999: 272) and generous redistributive practices of the communist government together with the lack of education among the Roma supported the rise of the psychology of dependency.⁹

In 1989, the Roma were officially granted the status of national minority together with all basic rights guaranteed by the constitution and the act on the rights of national minorities. The process of democratic transition and economic transforma-

⁵ See the (2008): Report on the situation of Roma communities in the Czech Republic in 2007, p. 5.

⁶ The 2001 National Census.

⁷ In the 1950, all plans of teaching Roma language in schools were abandoned. Official authorities did not see the future of Roma language, and later any traces of bilingual capacities on part of Roma children were considered socially pathological, and thus undesirable. Currently, the leading trend in the use of languages by Roma population is so-called 'language shift' which results in ever decreasing number of young Roma preferring the use of Czech to Roma language, and ever decreasing competence in Roma language. There are multiple explanatory factors of the weakening position of Roma language. On one hand, public authorities and educational institutions' approach to the support of the use of Roma for example in education is lukewarm, or even negative. On the other hand, for the sake of better integration in the society, the Roma often tend to prefer the use of Czech and do not see any value added in their knowledge of Roma language. Apart from these factors, the different, internally highly variant, fragmented, predominantly oral character of Roma language/Roma dialects defies all effective development of the language by means typical for language policies of modern societies. The development of Roma as modern language would be a demanding top-down process which in the eyes of Roma lacks any rationale and practical appeal (Červenka – Sadílková – Kubaník 2010; cf. Budilová – Jakoubek – Baudis 2006).

⁸ See the 2008 report on the state of Roma communities in the Czech Republic, (2009): Zpráva o stavu romských komunit v České republice za rok 2008, p. 15.

⁹ Many Roma rely on social welfare benefits.

tion had an asymmetric impact on the Roma population and exacerbated the civic/political, cultural, and socio-economic exclusion and marginalization of the Roma (Barša 1999: 273; cf. Kovats 2008). Currently, the Roma make up the core of so-called socially-excluded communities. Their social and spatial segregation, often called ghettoization, constitutes the largest problem for the majority of Romas.¹⁰ This is further related to disproportionate levels of unemployment, or rather a large part of the Roma population being out of the labour force, but also to low income as employed Roma usually work in short-term jobs and fulfil the role of unskilled, low-paid labour. These economic grievances are further deepened by widespread indebtedness of Roma households which in turn acts as a disincentive to formal employment. Another problem is the low quality of housing in socially excluded localities whose emergence has been substantially assisted by examples of the bad practice of the policies of local municipalities. One of the most serious challenges is the low level of education among the Roma.¹¹ While the relative poverty of the Roma constitutes a serious barrier to their integration and quite clearly results in the flourishing of the culture of poverty, quite in line with the theoretical arguments of Phillips and Young outlined above, it would be completely flawed to reduce (as the Communists did) the ‘Roma issue’ to matter of socio-economic exclusion. The Roma are oppressed as a group stigmatized and essentialized from the cultural point of view, no less than from the socio-economic one.

The Public Strategies of the Integration of the Roma

The year 1997 marks a milestone in the formation of an integration policy of the Czech State focused on the Roma. Since 1997, the Czech government has been producing annual reports on the state of Roma communities whose purpose is to evaluate the outcomes of integration policies. Furthermore, there exist long-term

¹⁰ Czech Government, ‘Informace popisující oblast institucionálního zabezpečení integrace Romů do společnosti v České republice a na mezinárodní úrovni včetně analýzy situace Romů v ČR a v EU 27’. Available at <http://www.vlada.cz/assets/clenove-vlady/ministri-pri-uradu-vlady/michael-kocab/tz/manual.pdf> (accessed on 5th May 2010).

¹¹ According to research done in 2009 by the European Union Agency for Fundamental Rights, ‘Roma children have roughly 50 per cent chance to graduate from elementary school with the peers they joined the school with. About 72 per cent of Roma children attend regular elementary schools. On average, 2 out of 10 Roma girls and 2.4 out of 10 Roma boys leave regular elementary school to join special elementary school (school for children in difficulty). The survey also showed that probability of Roma children leaving elementary school is 20 to 24 times higher than their non-Roma school-mates. Chance of a child joining special school right from the beginning is up to six times higher among Roma than among their non-Roma peers. However, this happens predominantly on the basis of their parents’ request. According to the survey, a significant role is played by pre-school preparation. 40 per cent of Roma children attend kindergarten while there are 90 per cent of non-Roma children. Possible reason for Roma children school failures might be their high absence rate, which is almost three times higher compared to other children’ (FRA ‘Complementary Data Collection Report 2010: Czech Republic’).

and mid-term conceptions of Roma integration which approach the problem of Roma integration from three interrelated perspectives. These are the perspective of human rights, national identity, and finally the socio-economic perspective.¹² Obviously, these perspectives are related to three differing approaches to integration – the perspective of human rights is obviously a liberal, individualist one, safeguarding negative principles of toleration and anti-discrimination (which since 2009 is guaranteed by a special anti-discrimination law). The second perspective recognizes the group identity of the Roma minority and the importance of culture and identity for their well-being. The third structural or socio-economic dimension is considered by the majority of society and by a number of works of research as the most salient one. It emphasizes the role of economic exclusion as a crucial factor in the general exclusion of the Roma minority to the margins of Czech society.

On the institutional level, the issues of the Roma population fall under the shared competence of several ministerial bodies. Furthermore, there are agencies and advisory bodies as the Representative of Government for human rights, the Council of the Government of the Czech Republic for the issues of Roma communities¹³ (in which representatives of the Roma sit together with politicians and experts), or the Council of the Government of the Czech Republic for national minorities (another venue for the representation of the Roma). On a local and regional level, there are institutes of Roma consultants and regional co-ordinators of Roma consultants.

What is noticeable from the beginning is the fact that among other minorities (not mentioning those who do not have the official status), the Roma minority enjoys a ‘privileged’ position. In fact, it is represented by two parallel bodies, the Council for national minorities and the Council for the issues of the Roma community. This ‘overrepresentation’ and asymmetry with regard to other groups then translates into twice as much grant schemes, subsidies etc. which organizations dealing with Roma, mainly numerous NGOs, may apply for. From the very beginning, it is quite clear that the Czech state has been determined to promote both Roma identity and Roma integration. Putting such an emphasis on the special needs of the Roma of course stems from their needs. On the other hand, many representatives of NGOs dealing with social exclusion criticize such an approach and blame the state that, especially by its programs of supporting the reconstruction and development of Roma culture (folklore, writing, standardized language, stories etc.), it not only contributes to the further segregation and marginalization of Romas (instead of investing finances into the economic and educational struggle against the culture of poverty which plagues excluded Roma communities, see Křištof 2006) but also in

¹² See ‘The Conception of Roma Integration for the period 2010-2013’ (Kocáb at al. 2009: 4).

¹³ Notice the plural form – Roma communities – which clearly indicates that the public bodies recognize that Roma in the Czech Republic do not form a single, homogenous group.

cooperation with Roma elites by authoritatively imposing upon the Roma a concept of a modern national high culture which has hardly existed and definitely does not have anything in common with the traditional values of Roma families and communities.

Such criticisms must be approached in a cautious and highly differentiated manner. On one hand, it is necessary to find a remedy for past injustices and allow for a process of a bottom-up rejuvenation of Roma culture. The right of the Roma, whose potential for upholding their culture has been systematically structurally undermined, must be strictly defended. On the other hand, the policies have to be designed very carefully in order to avoid several possible menaces. First of all, the obviously disproportionate emphasis on funding the organizations dealing with non-political, cultural, e.i. strictly private matters invites suspicion in all critical thinkers. The privatization cultural issues has far too often been an instrument of exclusion of minority groups from the public sphere. Secondly, enlightened by crucial theoretical findings of Phillips and Young, we must ask what is the motivation behind the majority's support for the Roma as to their zeal to acquire and highlight their cultural difference. One cannot avoid the pressing intuition that at the end of the day, the values of inclusion and respect might not be the real driving forces behind these policies. Deliberately or not, there is an uncomfortable feeling that the process of extensive support for all activities displaying the cultural difference of the Roma serves a less agreeable purpose – the purpose of essentializing, fixing the Other, drawing an impenetrable line between us and them which not only emphasizes the impossibility of inclusion but keeps the Other in a subordinate social position. Last but not least, we must ask what effect does such an emphasis on the reconstruction of the cultural features of the Roma community have on Roma as free individuals and citizens and their right to choose the identity of their own. This is of course again a matter of essentialization of identities. But it is also a matter of the Roma finding the right representation mechanisms and the majority thinking hard about what it means to truly represent the Roma.

Needless to say, the aim of the government is not just that of mere toleration, but inclusion of the Roma, achieving their integration, and overcoming both socio-economic and symbolic cultural marginalization. To this aim, the government in terms of the institutional framework adopts measures that could lay the grounds for deliberative processes delineated in the theories analyzed above. At the same time, this institutional framework providing arenas for mutual dialogue, Roma participation, and deliberation copies mechanisms functioning in many other (usually in generally more culturally heterogeneous) countries. Looking at the study of the instruments for participation of minorities in decision-making, the Czech Republic operates a number of minority representation tools encountered across Europe (see

Frowein and Bank 2000). Can we thus hope for the deliberative strategies to deliver desired outcomes?

I am afraid not, or at least not under the current mode of cooperation between the state and Roma communities and inside the communities themselves and with the current approach both to Roma identity and to the unchallenged concept of Czech national identity.

Let me then begin with the latter issue – the issue of the construction of Czech national identity, i.e. the national identity of the majority. Analyzing the principles of deliberative inclusion, I have emphasized that for the inclusion to be successful, it must be a two-way process of mutual adaptation. Thus, any ethno-cultural or typically modern conception of the nation state whose identity relies on the binarity and hierarchy of us and the Other is bound to undermine the deliberative zeal. The national culture, thus the culture of the majority, must be redefined in terms of culturally differentiated citizenship. Even civic conceptions of nation of French tradition still bear too many culturally exclusive symbols to suffice. However, in the case of the Czech Republic, there seems to be a lack of understanding for this requirement. Or to put it differently, Czechs tend to misconceive the basis of their own identity and wrongly presuppose that they are a civic nation which enjoys a lucky, yet natural internal homogeneity and historically has been able to eschew all elements of ethno-cultural exclusion. The prevailing self-image of Czech national civility then leads the majority of society to fall for a skewed vision of the civic inclusiveness of Czech society.

The myth of Czechs (and Czechoslovaks) as a civic nation, not an ethno-cultural one, was established with the foundation of the independent state in 1918. However, all informed historical accounts disprove this narrative.¹⁴ Thus, Czechs live

¹⁴ Being part of the Austro-Hungarian Empire in the 19th century, Czech civil society found a unifying, common feature in their opposition against the state. Thus, alienated from Austro-Hungarian politics and institutions, they availed to common language and collective memory of a history of the perennial struggle against German oppression as principles upon which to build an independent Czech future. The objective of independence required the nation (together with Slovaks) to create an artificially homogenous Czechoslovak nationality (more political than ethno-cultural) which appropriated the newly independent Czechoslovak Republic. While the democratic constitution of the state guaranteed rights to minorities, the very unification of Czechs and Slovaks into one nominal nation was politically instrumental so as to out-weigh the leverage of a large German minority of about 3 million inhabitants. The strategy was to achieve the greatest possible Czechoslovak national homogeneity in order to defend the young state against the claims of the Germans, Hungarians, and Poles. Czech nationalism of the period was Janus-faced. On one hand, the ideal of Czechoslovakianism had roots in civic/liberal nationalism and ideas of equal respect toward individuals. On the other hand, the exclusionary, pre-1918 cultural roots of Czech identity did not allow for full and equal acknowledgement and integration of German, Hungarian, Roma, or Jewish minorities into Czechoslovak polity, and produced either assimilationist pressures, or (particularly in the case of the German minority) the feeling of alienation, or even hostility. Such tendencies have only been exacerbated by the development pre- and during World War II.

in the false myth of their universalism which does not allow them to reflect the barriers which the culturally structured public sphere places in the way to the successful inclusion of Romas, no matter how many deliberative arenas we establish. According to Barša, ‘if we [...] automatically presuppose the civic character of the majority of Czech society, we are running the risk that in the name of the assimilation [sic!] to universal values of citizenship we will in reality assimilate all minorities to particular values of ethnicized Czechness’ (Barša 2004). The origins of the values and norms crucial for the Czech public sphere can be traced back to these ethnic and cultural biases which, never being questioned and constantly misrepresented, tend to survive without attracting much undesired attention. That which is in the Czech Republic generally thought of as a culturally neutral civic institutional design conceals a whole bulk of prejudice and disproportions which ultimately tend to structure the arena of the public sphere and constantly make it work so as to reproduce the exclusionary discriminatory mechanisms vis-à-vis minority group participation. The extent of the inclusiveness of Czech public discourse bears limitations quite similar to the Habermasian model of a unified public sphere permeated by structurally and culturally reproduced relations of power. There are two roots of the problem, one of them lying in the ethnicized background of Czech identity, the other in the traditional idea of a civic public sphere and its norms and forms themselves. However, both of these challenges to real inclusion of minorities remain rather neglected by public authorities.

So, where does this leave us? Public authorities, quite sure that they are well-prepared for an inclusive deliberation with the representatives of Roma, then pursue two aims: i) to find representatives of Roma who could become partners in deliberation within public institutions, and ii) to strengthen the capacities of civil society, particularly the Roma-related NGOs. With regard to the former, the unsound deliberative basis and the continuation of the feeling of superiority lead exactly to the consequences foreseen by Phillips. Searching for a partner in discussion, they lean toward Roma spokespersons, representatives, and leaders who are as close to their own mirror image as possible. These are several of the desired qualities: i) the way they look and behave matches our stereotypes of Romas, ii) they can support their claim to speak for the Roma by membership in a civic association or a political party proclaiming to represent all Roma, or by any kind of formalized position which at least on the surface resembles the majority’s structures of representation, and iii) they are able to articulate their claims and arguments as those of a modern ethnic or national group sharing an identity using arguments and vocabulary that the majority find familiar including the vocabulary of modern national movements, and they are able to tell clearly who the Roma that they represent are and thus affirm the identity that we have decided to attribute to certain individuals. This realistic scenario raises several questions about the image the representatives of

Roma construct in the face of public authorities. Discussing them will also allow us to reflect on the challenges of the latter aims of public authorities (building up the capacities of the civil society).

Firstly, who are these representatives and who do they represent? That is, where do Roma elites come from? In the Czech Republic, Roma representation or so-called 'Roma leaders', i.e. persons who mobilize, inspire, and organize the civic and political life of the Roma community recruit from a number of sources. This could be, for example, members of a small group of Roma intelligence. However, individuals of Roma origin who achieve high levels of education are most often alienated from the issues of the Roma community and are not interested in publicly speaking for the Roma either as they do not feel a strong attachment to Roma identity or out of fear to stand up and embrace such a stigmatized cultural identity. Neither do the Roma activists recruit directly from traditional family structures which constitute the basic organization unit of Roma culture. The reason is that these hierarchical family structures, due to their traditional character, do not know principles of the public and the private sphere, public representation, democratic legitimation etc. As such, they can produce strong leaders. However, these do not fit the requirements for the representatives of the Roma community. First of all, their identity is primarily attached to the institution of wider family, and they can only vaguely relate to other Roma families. The relations between clans tend to be beset by constant tensions and mutual animosities, despite some amount of shared values and culture. Secondly, families or clans are organized by patrimonial principles of leadership inconsistent with the system of modern political or public representation. As the majority expects to lead dialogue with modern representative structures of the national group, the Roma tend to recruit their political representation from amongst the leaders of groups and associations promoting Roma identity as an identity of a modern nation, characterized by a democratically elected legitimate representation, shared standardized national language, written high culture, its history, media, symbols such as a national anthem, flag, and even national cuisine.

Most of these leaders preside over large Roma civic associations or political parties. Research done by Pavel Pečínka explains that none of these allegedly overarching associations or political parties which claim to represent the interests of all Roma have been able to collect enough members or at least supporters to be able to legitimately claim the monopoly of representation (Pečínka 2009: 63-83). On the contrary, nationalist mobilization attempts of these organizations usually attract much more attention on the side of public authorities than amongst Romas themselves. To an extent, these organizations only pretend to be modern civic organizations. Despite the familiar modern bureaucratic structures and procedures, in practice the leaders often tend to employ the principles of patrimonialism as

are common in Roma clan structure. This can be partly explained by the fact that while the heads of traditional families do not enter public life *qua* heads of families, influential figures of Roma clans nevertheless utilize their membership in the ethnic group and their privileged position within internal group structures as cultural capital and a resource in the struggle for representation (Okely 2003: 133). Thus, there might be a substantial personal overlap between the distinct functions of Roma public elites and representatives of particular clan structures. Patrimonialism then leads to high levels of corruption especially within larger transnational organizations. The relations between these associations are hampered by clashes between greater families. The organizational bases are neglectable, which makes the organizations dependent on the subsidies by the state. The democratic controlling process inside the organizations does not function; election of the leader is often substituted by self-appointment (Pečínka 2009: 68) in line with the patrimonial conception of social organization (Pečínka 2009: 95). Nevertheless, at least formally these organizations fulfil the role of a partner for public negotiations and public authorities recognize their representative role and their authority as representatives of the Roma as a singular group, now working on the transnational basis as well. For instance in 2001, the International Roma Union led by Czech Roma activist Emil Ščuka issued a joint memorandum with the Czech Ministry of Foreign Affairs including the proclamation of the conception of the Roma nation. Thus, the Union once again officially achieved the recognition of the Roma as a non-territorial nation.

Referring back to Young's account of representation, current modes of Roma representation in the Czech Republic are troubled and inadequate. There is substantial lack of authorization and the system of holding the representatives accountable is blocked both by the family/like structures of Roma organizations and by the lack of civic competence on part of the Roma. Moreover, the Roma leaders hand in hand with public authorities work on the construction of a differentiated Roma nation which, without being accompanied by transformation and deconstruction of rigid identities of both majority and the Roma, can only result in further exclusion of the Roma. Such process may in the end bring fruits both to the majority and its public representatives, who will keep their dominant position of a tolerating mass, and to the handful of entrepreneurial Roma representatives (not necessarily of Roma origin). Unfortunately, I am afraid that the Roma in large are not the ones who will benefit.

Despite the difficulties, public authorities and grant schemes continue in their active support of the Roma civic sector. While in general I must insist on the crucial role which grass-roots organizations play in the process of deliberative inclusion, I cannot help looking at the proliferation of the number of registered Roma organizations in the Czech Republic with suspicion (see also Cohn 1993). Firstly, the state

authorities have not yet realized that not only is there no single representation of some single Roma identity, but their search for one single and correct representative of all Romas has detrimental effects on the position of the Roma in general, by reifying their identity and confirming their segregation. Moreover, they equip Roma activists with excessive powers over the matters of the Roma which should more adequately be shared among a number of local, diversified grass-roots groups who ideally should be the partner in deliberation which the state endeavours for. However, due to their aforementioned cultural bias, this is what the authorities are not able to understand. The proliferation of the number of associations is simply not accompanied by their inclusion into the process of public deliberation, and the fact that large amounts of funding go toward purely 'cultural' 'folklore' activities plays a crucial role here. Moreover, the motive behind the establishment of such associations is often the willingness of the state to provide funding. Both among Roma and among the members of the majority there has evolved an ever stronger phenomenon which is often called the Roma or Gipsy Industry (Pečínka 2009:112).

Let me now proceed to my last question, i.e. what in fact is the Roma national minority that we speak of and which public authorities support by numerous schemes of cultural recognition? What is the character and extent of their shared identity? Drawing on Phillips' theory, I have already warned against the dangers of essentialization of identities. However, as we have seen, the Czech majority has not been able to resist answering the call of such essentialist approaches (not surprisingly if we take the essentialized character of the majority culture into regard). With respect to the negative consequences of such reification of identities, a further exploration of the 'real' content of the Roma national identity would not be necessary as the question of whether it is a 'reality' or a 'construct' imposed from a top-down perspective upon the Roma by the conglomerate of their elites and public authorities does not in fact make much difference. However, I also argue that culture definitely matters to individuals and should be supported, though more carefully and in a more nuanced way attentive to the varied expressions of cultural needs and differences inside the group. It is unfortunate to impose a culture on a people who do not identify with the culture despite the fact that from our perspective they are part of the targeted minority. Some Roma simply do not want education in the Roma language. Some are not interested in Roma history and do not want to read Roma newspapers (Djurišičová 2003: 108; Rácová 2000: 37). That is completely legitimate and we should acknowledge such internal variance and be wary of reification of cultural groups at the expense of the rights of the individual. Hence, it will subsequently be most useful to take a slightly closer look at the 'Roma national identity'. The intriguing issue is this: let us suppose that the Roma identity exists. Let us also suppose that it is rather an identity of an ethnic group of a culture which does not possess the public attributes typical for national cultures. Under such conditions,

would not both the Roma and the Czechs be better off had they got rid of the idea of the construction of a modern Roma nation and focused on the civic deliberative inclusion of the Roma in the revised public sphere accompanied by measures protecting the traditional cultural difference of Romas?

So, what characterizes a national identity? According to Miller (1995: 22-27), national identity is constituted i) by a belief of the members of a group that they share certain characteristics and mutual commitment, ii) by its historical continuity, iii) by its active character, iv) by its connection to a particular territory (and not just a place of origin), and by a common public culture compatible with their belonging to a diversity of ethnic groups. According to this definition, the Roma cannot be characterized as a nation. Alternatively, we could say that they are only at the start of developing their national identity. Nations are quite often formed from above, either on an ethnic or some other basis. This seems to be the case of the Roma 'national movement' represented by activities of those who have been labelled Roma activists in this study. They are aware of the lack of the 'imagined community' among Romas, whose only idea of having something in common is often given by their shared experience of external stigmatization and marginalization. They also know about the weak awareness among Romas of their common history (see Okely 2003). Their activities also try to mobilize the Roma as a nation. Most Roma leaders however clearly avoid any project of the search for their own territory. As to the common public culture, Romas traditionally lack a conception of the public and the private. Nowadays, Romany nationalists devote much attention to the development and popularization of symbols typical for modern nations (an anthem, a flag, an idea of political order etc.).

Thus, the Roma simply are not a nation. At best, they can be characterized as an ethnic group. This is not to say that despite the fact that most of the Roma embrace the national project, from an 'objective' point I conclude that the Roma do not qualify for a nationality. Needless to say, there is something such as Roma national culture. It is the object of promotion both by Roma elites and Czech public authorities. The development of "high culture" backed by a standardized national language taught in schools, the publishing of Roma books, journals, Roma radio broadcasting all belongs to the developing Roma national culture. Alas, there is something missing – the group of individuals who would publicly embrace such identity.¹⁵ As was

¹⁵ Some critics who come from inside Roma communities claim that a single standardized Roma language is an artificial, useless construct. The Roma language is traditionally, in terms of oral culture, made up of a great number of gipsy dialects. Introducing education for Romas in a standardized national language would only impose an additional burden on Roma children who not only do not know the standardized version of the Roma language but quite often do not even speak a gipsy dialect at all. Moreover, learning the Roma language would be rather useless as there is nowhere to actually use it. It is neither a language of public administration nor a language of everyday communication among Romas (see Ferko not dated).

already mentioned, only a small part of Roma actually declared Roma nationality in the national census. In Czech academic discourse there are two polarized opinion groups providing different views on Roma identity and integration. These groups differ on a number of issues, including the explanation of the low number of official Roma nationals. One group claims that despite the fact that the status of a nation may be instrumental to the Roma in their debates with the majority, the Roma are simply not a nation. They share certain cultural qualities which allow us to think of them as of a very loose ethnic group. And, even as a single ethnic group, they are rather more constituted from outside by stigmatization, exclusion, and social stereotypes attached to the shared elements of their culture than from the inside. The internal divisions are built into the very basis of traditional Roma culture which puts the institution of great families and clans, not the ethnic group as a whole, into the centre of attention as a primary object of loyalty. The other group of explanations of the low interest in official Roma nationality work with the premise that the conception of the nationality generally accepted in the Czech Republic is an ethnicized one. Thus, for Romas to publicly embrace Roma nationality is to declare their Roma ethnicity. Since the category of the Roma ethnic group has always been construed by the majority as a stigmatizing one, we cannot find it surprising that Romas are not over-zealous in reinforcing their marginalization by calling attention to their perceived difference and/or inferiority.

In my opinion, there is actually no need for a debate as heated as is the one existing between these two standpoints, as the explanations are not mutually exclusive. Simply, in the current state of affairs, the Roma nationality is simply not appealing to Romas no matter how we define it. Should Romas understand it in nationalist terms, they can hardly relate to it. Should they understand it as an ethnic category, they can hardly be expected to make any positive use of it.

I have already partly explained why I think Roma elites feel the urge to legitimize their claims for inclusion by the idea of a Roma nation. The reason is that Romas understand that 'Czechs are not capable of another understanding of the Roma population save for looking at Romas as just a variant of themselves. Since they [Czechs] have transformed from illiterate farmers into bourgeois and substituted the culture of rural communities for the construction of an ethnic and national identity (preserving the original way of life merely in a false form of folklore festivals and ethnographic exhibits), they require Romas to do the same' (Barša 2004: 3). Thus, Roma elites realize that for the Roma there is no readily available concept of their own nationality, and this will be taken by the majority as a sign of their inferiority; a marker of difference which will facilitate the reproduction of the binary difference between the Czechs (universalist, modern, developed, inclusive civic community) and the Roma (particularist, traditional, backward, exclusive). What they do not

understand quite clearly in my opinion is that this process of the nationalization of Romas will not lead to their inclusion in our open, civic, culturally varied and flexible public culture, but – as long as the Czechs do not give up the myth of the civic construction of their nation – either complete assimilation and further exclusion.

The Roma are an internally extremely varied and multifaceted ethnic group. What qualifies me to claim that they do actually constitute a group? First of all, this is the way in which they are approached by the majority of society which either stigmatizes them as a group or to a lesser extent admires their shared culture and tries to protect its distinctness via different public cultural subsidies and programs. Secondly, even across different clans and families we can distinguish a set of features common to all. These are: the dichotomy present in the modes of thinking of all Romas, dividing people between Gipsies/Roma and Gadjos, the norms of ritual purity and honour, the priority of family as a basic organizational unit and the complete incorporation and subjection of the individual to hierarchically organized family or quasi-family structures, and the knowledge and use of a Gipsy dialect (Salo 2008: 220-221). Still, it is important to repeat that in traditional Roma culture, ethnicity is not a familiar concept, and the Roma have different quasi-familial structures of their internal organization and identities. These structures create groups which are far from inclusive, mutually encapsulated, and internally highly patrimonial. Thus, a sense of shared ethnicity which Romas possess is partly externally imposed. The Roma utilize it more or less to mobilize and unite against an external enemy. However, no matter what the source is, we must not deny that the Roma have something in common. And their identity, for various reasons, is of great importance to them. The point is not whether to support their opportunity to be differente, but how to do it and at the same time overcome the threats of essentialization, diminishing the power of individual agents, and further reification of differences between the dominant majority and the stigmatized minority.

Conclusion

We have seen that Phillips' preoccupation with the improper realizations of her deliberative project of inclusion was not mistaken. On the example of the workings of public debate over the inclusion of Czech Romas, I have demonstrated how salient the issues not only Phillips but also Modood and Young raise are. How can we then make best of the existing deliberative structure in the Czech Republic? Basically, we should follow the good advice of these researchers.

Firstly, we must re-assess the closed, ethnically exclusive notion of the Czech nation. Second, we must stop practices which lead to the view of Roma as the reified Other. This means mainly, instead of supporting the ethno-national projects of their leaders and accepting their quasi-corporatist role in the representation of Roma,

embarking upon serious projects of education, education to citizenship, fighting socio-economic exclusion and the culture of poverty and at the same time inviting the Roma to keep and protect their specific traditions and cultural differences which they value. The aim should be to deconstruct reified barriers between the majority and the Roma, explore to what extent the differences really are irreconcilable, and at all levels embark upon deliberation including local, regional, and particular representations of numerous groups and civic organizations. Building the civic capacities of Romas must be the primary aim together with fighting structural inequalities. To this end, it is indispensable by means of education and other means of support to encourage the groups to create and uphold their own deliberative spaces and subaltern communities (Fraser 1999) which feed into the general public discourse. At the same time, it is equally crucial for these communities to encourage the overlapping and intersecting of membership which prevents segregationist tendencies within the society and opens up the groups to both internal and external criticism to allow for a deliberative inclusion and extension of our identity.

The process of inclusion of Roma should not be a process of the integration of an ethnicized national minority to the birth of which we have largely contributed in order to reify the Other and make sure that power inequalities stay in place. On the contrary, what we should aim for is a change in the concept of what it means to be a Czech citizen and strive to include the Roma in this identity which nevertheless respects the cultural context each individual values to a different extent and in a different way.

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