Minority Claims in Multicultural Societies: A comparative study of case law

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SECTION I

Deliberative democracy: a bad choice for multiculturalism?

«The judge is the interpreter of justice»

(T. Aquinas, Theological Sum)

«If men were angels, no government would be necessary»

(J. Madison, The Federalist, Paper N. 51)

«Imagine a world in which there are no significant political and wealth variations among bounded membership units. In such a world, there is no motivation for change and migration»

(A. Shachar, Birthright)

1. Introduction

What is the best way for democracy to deal with multicultural clashes? Against the unilateral “assimilation solution” supported by many European leaders, some scholars have recently argued that the Habermasian public sphere is particularly receptive to multicultural issues, proving a platform where parties can concur to a peaceful agreement. By drawing parallels from Perekh (2005)’s analysis of the debate between Liberals and Muslim groups on the “Satanic verses” in UK, and the tendency of Confucian ethics and other cultures to foster social harmony, I argue that several problems undermine the neutrality of the Habermasian concept of deliberation in relation to multiculturalism. And the same problems can affect models of deliberative democracy that are primarily based on an ideal of verbal communication.
In the first lines of this paragraph, I briefly explain Awad’s adaptation of Habermas’ model of deliberative democracy to the multicultural question. Then, I will try to reject the habermansian model of deliberative democracy, as it is presented by Awad.

2. **What is the best way for democracy to deal with multicultural clashes?**

The multicultural question - that is, how different groups can coexist in the same society - is a challenge not only for national identity but also for current political institutions and political deliberation[1]. The problem is that people of the same pluralistic society disagree not only on questions of morality, but also about social justice[2]. For instance, different communities within the same society may hold diverse views on the limits of freedom of speech, education, public holidays, what social behaviors can be tolerated, and what must be forbidden. Given the increasing flow of people in this globalized world, it is reasonable to assume that our societies will become more and more multicultural. And the multicultural question, namely “How can we live together?” will be one of the most pressing and the most important one.

In recent years, multiculturalism has been a central topic of several philosophical debates. Kymlicka[3] - for instance - famously defended the claim that a liberal society needs to accommodate the most important concerns of its cultural groups by giving them special rights. Whereas, Berry[4] rebutted that any multicultural policy that allows minority groups to associate in pursuit of their distinctive ends poses a threat to the social justice of the whole society.

If the academic world hosts more or less friendly views on multiculturalism, things seem to be different in the political realm. Several heads of Western democracies have recently expressed their strong disapproval for multiculturalism. In 2010, we all know that Angela Merkel claimed that Germany’s attempts to create a multicultural society have “utterly failed”[5]. Addressing the young members of her Christian Democratic Union party, Merkel said the idea of people from different cultural backgrounds living happily side by side is not working. Needless to say, Merkel’s speech acted as a fuel on this fiery topic in the country with the third-highest number of migrants. One year later, the former French president, Nicolas Sarkozy, joined Merkel. In a TV debate, Sarkozy declared that: “We [French people] have been too concerned about the identity of the person who was arriving and not enough about the identity of the country that was receiving him.” According to Sarkozy, multiculturalism in France is a failure too. “Of course - Sarkozy said - we must all respect differences, but we do not want a society where communities coexist side by side”[6]. Even more recently, David Cameron made a more worrisome statement. In 2014,
David Cameron claimed: “Adhering to British values is not an option or a choice. It is a duty for all those who live in these islands, so we will stand up for our values, we will in the end defeat this extremism and we will secure our way of life for generations to come”\cite{vii}. The British Prime Minister’s recent statement is not his first attack at multiculturalism. On the occasion of the the Munich Security Conference four years ago, Cameron declared that “multiculturalism has failed in Europe” and emphasized the need to straighten the respective national identities\cite{viii}.

Despite their provocative tone, the recent European leaders’ statements cast doubts on the effectiveness of democratic, social and political systems to deal with multiculturalism, and induce us to ask ourselves what a good democracy should be like. Is a democracy based on “assimilation” – as recently suggested by some European leaders – really the only way to solve the multicultural question, or are there other better options?

The relationship between multiculturalism and democracy raises fundamental and pressing questions for our times. In particular, it is unclear whether our democratic institutions are suitable to balance the interest of majority and those of minority groups. When the majority shares the same culture, the democratic political system tends to favor the interests of the dominant culture, augmenting the disenfranchisement of the minority groups. If that is the case, how can democratic societies cope with the tension between the socio-political structure of one society and the aspiration of social recognition of minority groups?

Some scholars took the challenge and proposed an alternative way to deal with multiculturalism in a democracy. Awad\cite{ix} (in 2011) and other scholars – such as Correira\cite{x} (in 2008) – have recently argued that Habermas’ conception of deliberative democracy is particularly receptive to the demands of multiculturalism. According to these authors, the habermasian idea of public sphere – a noninstitutional dimension through which different ethnic groups can deliberate and develop mutual understanding – offers a better way for democracy to deal with the multicultural question\cite{xi}.

In the present section, I argue that some drawbacks prevent Habermas’ deliberative democracy from solving the multicultural problem, and the same difficulties can undermine the soundness of similar deliberative models that are characterized by a strong verbal communicative component. I argue that a democratic model that is primarily based on a verbal communicative ideal is not neutral in respect to all cultural groups, since it disregards different linguistic abilities or cultural predispositions of some minority groups that influence their participation into public debates.
3. **Habermas’ deliberative democracy ideal and multiculturalism**

Deliberative democracy is perhaps the most popular position in democratic theory at the moment, and the debate hosts a large variety of deliberative theories. Deliberative democracy stretches from any form of communication to more sophisticated consensual forms of rational discourses, such as Habermas’ ideal of public sphere or Cohen’s Rawlsian deliberative debate among reasonable, equal and free citizens.

Generally, deliberative arguments in defense of democracy emphasize the importance of a reasonable and fair debate which encourages democratic political decisions. According to deliberativists, what is unique about democracy is the fact that political decisions in democracy derive from communicative and transparent decision making processes within its people.

Deliberativists usually argue for the intrinsic importance of public deliberation and its power to lead to governments with strong public participation. In this sense, deliberation is generally seen not only as the source of the intrinsic value of democracy, but also the source of its legitimacy and political authority. According to Cohen for instance, deliberative democracy is an ideal political justification. The latest Rawls thinks that in order to have a stable and right political system, the public debates should not only produce right conclusions, but the citizens must also “carry on” in accordance with them. Similarly, Cohen argues that the public debate is how citizens arrive at collective decisions, and therefore the fundamental and most valuable feature of democracy.

### 3.1. A Habermas’ deliberative democracy

In *Three Normative Models of Democracy*, Habermas presents his model of deliberative democracy in opposition to the liberal and republican form of democracy. Habermas discards both republican model of democracy and liberal one. According to Habermas, the liberal model fails to account for the complexity and variability of the individual nature. Moreover, Liberals fail to see that since communities have collective interests, the democratic bargaining process is likely to favor the most powerful and numerous groups, penalizing the minority groups.

According to Habermas, the republican model of democracy is slightly better-off. Democracy, for Republicans, is a process of self-understanding by which citizens recognized their shared identity of demos. The Republican metaphor for democracy is therefore the dialogue, not the free market. Thus, Republicans acknowledge that the sense of belonging
to groups or community “constitutes” the individual. Moreover, contrary to Liberals – who conceive citizens’ interactions as mere trades – Republicans emphasize on the strong relationship between democratic ethos and the communicative interaction among citizens. Despite its advantages over the liberal view, Habermas argues that the republican conception of democracy ends up being too idealistic. By attributing the primary ethical goal of self-understanding to public dialogue, Republicans presuppose an ideal of common-identity that people should achieve through debate[xvi]. Moreover, Republicans fail to understand that political debate is not exclusively ethics oriented. Many collective debates in a pluralistic society seem to rather point to balance parties’ different interests[xvii].

In order to overcome the problems of both the liberal and republican forms of democracy, Habermas proposes a model of public deliberation that is both a procedural and participative. The habermansian model of deliberative democracy shares the republican concept of citizenship and the metaphor of debate for democracy. For Habermas, the public sphere is “a network for communicating information and points of view”[xviii]. The public sphere is the non-institutional platform where civil deliberation takes place. Nevertheless, contrary to the republican democratic model, deliberative dialogue lacks a predetermined ethical goal. Thus, if on the one hand the public sphere allows citizens to develop their common-identity through dialogue, on the other, norms and common-will emerge from participative process of the public. In this sense – similarly to the liberal conception – political decisions in a deliberative democracy depend on a determinate procedure. But in the public sphere, the norms are the outcome of deliberation and are not established a priori. Thus, the communicative structure of the public sphere specifies “the fair terms of participation in which everyone has equal standing”[xix] (as said Bohman, in 1996).

Habermas’ thick discursive model of deliberation is characterized by several aspects:

- It is a collective process. All citizens participate to the public discourse.
- Persuasion is the main way through which citizens develop their arguments and influence each other.
- It is a respectful communication process. The public sphere gives equal hearing to all sides.
- It is a dialogue among equals. The public sphere provides equal opportunities of participating into the deliberation process.
- Critical self-examination: all parties are willing to regularly scrutinize their beliefs,
Minority Claims in Multicultural Societies: A comparative study of conventions, practices.

3.2. The public sphere as multicultural arena

According to Awad (2011), the conceptualization of deliberative democracy developed by the latest Habermas offers an ideological apparatus to the critical multiculturalism problem\[xx\]. That is, the relation between the interest of the majority and the interests of minority groups, and the tension between the socio-political structure of one society and the identity of its minority groups \[xxi\]. When the majority shares the same culture, religion, or “social prospective”\[xxii\], the democratic political system tends to favor the interests of the dominant culture, augmenting the disenfranchisement of the minority groups. Let’s call this problem: “the rule of the majority’s culture” problem. In this respect, argues Awad, the inclusion requirement of the public sphere meets the demands of minority groups that usually lack visibility, because it can provide not only the consideration of groups’ interests but also facilitate their active participation through the involvement into the public sphere and the critical self-examination by all parties. The public sphere in turns promotes groups’ reciprocal understanding and paves the way to a new social ethos and a common civic goal\[xxiii\].

Furthermore, the active participation into the public sphere can also guarantee to minority groups sufficient visibility to shape the public agenda\[xxiv\]. As Habermas explains: “From the perspective of democratic theory, the public sphere must, in addition, amplify the pressure of problems, which is not only detect and identify problems but also convincingly and influentially thematize them, furnish them with possible solutions, and dramatize them in such a way that they are taken up and dealt with by parliamentary complexes”\[xxv\]. Thus, thanks to their visibility into the public sphere, minority groups could influence the voters and consequently the parliamentary discussion. This is possible, because – according to Habermas – “Naturally, political influence supported by public opinion is converted into political power – into a potential for rendering binding decisions – only when it affects the beliefs and decisions of authorized members of the political system and determines the behavior of voters, legislators, officials, and so forth”\[xxvi\]. Thus, thanks to the deliberative process into the public sphere, the minority groups can influence the political parties and therefore defend their demands in view of an adjustment of the institutional apparatus.

In conclusion, in opposition to the assimilation solution, Awad thinks that Habermans’ conception of public sphere is able to solve the two aspects of the critical multiculturalism
Minority Claims in Multicultural Societies: A comparative study of case law

problem. In response to “the rule of majority’s culture”, it provides the foundation for an inclusive communication and reciprocal understanding among cultures and social groups. And a fruitful public sphere in turns fosters the development of a stable and cohesive socio-political democratic structure, in which groups have equal opportunities to pursue their interests and recognize themselves with the main basic social institutions.

4. A critique of habermas’ deliberative democracy from a multicultural prospective

Habermasian deliberative model has the merit of identifying deliberation as useful decisional procedure to deal with multiculturalism. Nevertheless, its conception of public sphere makes it an idealistic model that hardly applies to complex reality of our pluralistic societies. Beside the parties’ intention to engage in the debate, Awad presupposes that groups are equally able to actively contribute to the public sphere. In this regard, the presupposition that the parties share the same language is crucial for deliberation, since this latter is an essential requirement for any form of communication. However, the condition of a common language might be a significant problem in multicultural society. In a multicultural society, indeed, different communities do not share the same language, or at least do not have the same proficiency in whatever is the dominant or official language. This can make it hard for minority groups to communicate their dissatisfaction –supposing that they are willing to engage in deliberative process. Moreover, beside a common language, efficient communication requires sound communication skills. As Habermas puts it: “Publicity is the common perspective from which citizens mutually convince one another of what is just and unjust by the force of the better argument”[xxvii]. But, in the case of a multicultural society, it is unclear whether minority groups have these skills. Moreover, what is “persuasive” or “reasonable” for the majority’s culture might not be so for the others.

Parekh’s analysis (2005)[xxviii] of the debate after the publication of Rushdie’s “Satanic verses” supports my objections. Parekh thinks that the communicative difficulty of the Muslim to articulate their reasons was one of the main causes of the debate and violent incidences. “Muslims” – says Parekh – “attempted to articulate their reasons in a liberal language but found it extremely difficult to do so both because they had few bicultural literate intellectuals, and because no such conceptual translation will ever be accurate”[xxix].

Thirdly, an affective public multicultural discourse can be undermined by lack of mutual understanding of the other cultures. According to Parekh, after the publication of
the “Satanic verses”, most British writers understood the Muslims questioning of why free speech should include untrue and deeply offensive remarks about religious beliefs as “an opposition to free speech, whereas Muslims failed to understand the grounds of the liberal emphasis on free speech and the depth of British commitment to it”[xxx].

Given the potential communication problems and cultural barriers among groups, it is hard to see how Habermas’ public sphere could provide a solution to “the rule of majority’s culture”. Consequently, this also undermines the possibility for the habermansian model to solve the second part of the multicultural problem. That is, the tension between the socio-political structure of one society and the identity of the minority groups within the same society. That is because in Awad’s view the development of a cohesive sociopolitical structure can derived only from a fruitful public sphere.

A fruitful public communication can be also damaged by the cultural differences among groups within the same society. As we have seen above, Habermas – as well as Cohen (1996) – argues that the only force that matter in public deliberation is the one that is exercised by arguments and persuasion. In this sense, the model seems to presuppose not only the equal technical skills of the parties (such as language proficiency and communication skills), but also their equal cultural predisposition to public debate, defending their points and persuading others in similar way.

However, not all members of a pluralistic society can be equally predisposed to public dialogue of this sort. People from cultures prioritizing social harmony and the cultivation of peaceful social relations may feel uneasy with public argumentation. For example, let us consider Confucian ethics, whose influence is not only ingrained in Chinese culture, but also in other East Asian societies, such as Japan, Korea. In Confucian ethics, human flourishing is constituted by harmonious social relations – whether in the family, the society, the world, or with nature. This is one of the main reasons why Confucianism traditionally emphasizes that a good life is first and foremost characterized by rich and diverse social relations. Harmony, at minimum, means peaceful order (or the absence of violence). Conflict is of course unavoidable, but it should be dealt with non-violence approach and with the aim of establishing a peaceful order. For this reason, Confucian traditions tended to prioritize social harmony over public verbal confrontations, using also non-verbal ways of communication. Nowadays, this attitude could potentially affect the predisposition of the members of societies with Confucian traditions to participate into a deliberative process which is predominantly based on communication. In this sense, such a model could be biased towards groups who are culturally and historically more predisposed towards public argumentation.
Social harmony is not a unique commitment of Confucian cultures. Together with communal peace, social harmony is a central aspect in Ubuntu, the main ethical tradition in sub-Saharan Africa. For the Ubuntu, a disagreement among the members of the clan can be overcome only by reaching at a “harmonious agreement” in which everybody agrees on the decision taken, and equally participates in the discussion. “BuenVivir (“Good Living”), an idea rooted in the worldview of the Quechua peoples of the Andes that has gained popularity throughout Latin America, emphasizes living in harmony with other people and nature”[xxxii]. For the Yumbo – Quechua speaking Indians of the Orient of Ecuador - social harmony is one of the most important social values, compared to discord and argument that are negatively valued.

Thus, if the value that some cultures traditionally attribute to social harmony conflicts with the principal practices of the public sphere, such as public verbal confrontation, then these Confucian and non-Confucian cultures would be potentially disadvantaged if multicultural issues were handled exclusively by a public communication platform. Indeed, a conception of public communication strongly dependent on the ideal of argumentation and persuasion could significantly penalize minority groups that are culturally and historically less predisposed to actively engage into public argumentation.

For this very reason, contrary to Awad, Habermas’ idea of deliberative democracy seems to be unsuitable to answer the multicultural issue. The inclusion requirement of Habermas’ public sphere could give to minority groups more visibility, but it could hardly provide the necessary conditions to assure their active participation into the public sphere.

**SECTION II**

**Separate but ... equal opportunities? A sedentarist mistake**

«Religion is the hiccup of an oppressed creature,
the feeling of a heartless world,
the spirit of a spiritless condition.
It is the opium of peoples»

(K. Marx, Criticism of the Hegelian philosophy of public law)
Minority Claims in Multicultural Societies: A comparative study of case law

1. Introduction

In recent theories about justice in immigration, two egalitarian theses become increasingly popular. The first is that restrictions on immigration should be compensated by development aid. In a world less unequal than ours, we often hear, the rich countries’ restrictions on immigration would cause less harm to the poor, and would thus be less, if at all, objectionable. The second thesis is that such material compensations would further equality of opportunity at a global level. But insofar as development aid mitigates the effects of birth on people’s level of opportunity, compensation for immigration restrictions will further equality of opportunity at a global level.

Let us call “separate but equal opportunities” the conjunction of the two theses above. It implies that global equality of opportunity can be achieved in a world where opportunities are separate (through the nation-states’ policies of restricting entry to their territory), but equal (equality being realized through redistributive schemes or otherwise).

The aim of this paper is to explain why “separate but equal opportunities” is an incoherent view. The explanation has two parts. The first section is built on a conceptual analysis of the notion of “opportunity”. Its aim is to show that equality of opportunity is not compatible with territorial segregation. Those who think it is, are mistakenly using the word “opportunity” and confuse an opportunity with its value. Based on this conceptual analysis, I argue that opportunities cannot be equalized by borders which produce at best equal discrimination. In the second section of the paper, I try to explain why this confusion occurs. Part of the explanation is of course nationalism, but another part is what I call “sedentarism”. I argue that research on migration –whether empirical or normative – is frequently biased by a sedentarist presupposition. I define sedentarism as a researcher’s preference for sedentary conduct over mobility. The sedentary conduct is conceived of as an unproblematic and “normal” feature of “human nature”, while mobility is understood as an exceptional conduct in need to be explained. Sedentarism explains many mistakes, including the assumption that segregation can engender equality of opportunity.

2. Why ‘separate but equal opportunities’ is self-contradictory

“Separate but equal opportunities” is the view that equality of opportunity can be realised in a world of separate nation-states provided that opportunities are equal between territories. As such, the aim of promoting equality of opportunity is rarely defended at a global level, and many global justice theorists argue in favour of a decent, rather than equal,
set of opportunities[xxxiv]. But the language of opportunities is widely used, thus confirming that equality of opportunity is still a popular approach in contemporary political theory[xxxv]. However, regardless the popularity of the ideal in theory or practice, one may ask a more general question: can equality of opportunity be achieved in a world of states controlling the entry on their land. In other words, is “separate but equal opportunities” a coherent goal?

One should take this question seriously and not succumb to the rhetorical effect of the slogan “separate but equal”. Indeed, that slogan reminds the doctrine “separate but equal” upheld by the United States Supreme Court in the 1896 decision, Plessy vs. Ferguson. At that time, the Court reaffirmed Louisiana’s racial law giving “equal but separate accommodations for the white and coloured races” and convicted Homer Plessy who had boarded a “whites only” railroad car. The Court had justified its decision by maintaining that separation alone neither abridges one’s privileges, immunities or property, nor denies the equal protection of the law. As it is well known, that ruling was quashed by the 1954 Supreme Court decision in Brown vs. Board of Education. The Court did not contest the existence of material equality, but argued that separate educational facilities are “inherently unequal”. It maintained that in the field of public education the doctrine of “separate but equal” has no place because separate educational facilities have detrimental effect on children, who interpret them as a sign of inferiority.

The argument in this paper is drawn neither on the legal analysis of the doctrine “separate but equal”, nor on its rhetorical effect. Such a strategy would be inefficient since nowadays, not everyone is troubled by the resemblance between that doctrine and some popular views about “global justice”. For instance, Eric Cavallero explicitly maintained that “in effect, I am endorsing the legitimacy of a ‘separate but equal’ doctrine for national citizenship groups. This seems acceptable and even accords with the logic of the Court in Brown v. Board of Education. There, the Court found that in public education ‘separate educational facilities are inherently unequal’ (emphasis added) because of the intangible expressive force of segregation, which was plainly intended to denote the inferiority of ‘the negro race’. It seems unlikely that separate, but equal arrangements would carry that expressive force in the international context”[xxxvi].

As a matter of fact, Cavallero is inaccurate in claiming that segregation was then “plainly intended to denote inferiority”. In 1896, the Court explicitly argued, as Cavallero does nowadays, that “laws permitting, and even requiring, separation do not necessarily imply the inferiority of either race to the other” and claimed that it is the “fallacy of the plaintiff’s argument” to associate separation with inferiority[xxxvii]. But however Cavallero understood the Court’s arguments, the historical and legal analysis of the doctrine of
“separate but equal” does not fall within the scope of this article.

The aim here is rather to check whether “separate but equal opportunities” is a coherent goal. To do so, let us imagine a segregation scheme that is immune to the above criticisms. Its basis is not racial, but territorial: people born in separate territories are bound to live in them for the rest of their life, but each territory provides accommodations and facilities of a strictly equal value. Such equality might have been achieved by development aid or by other means. Most importantly, equality has strengthen the feeling of membership so that, unlike African-American children in the past, nobody in this imaginary world interprets segregation as a sign of inferiority and some even take pride in belonging to separate nations. Would segregation be a policy of equal opportunity, then?

One might answer in the affirmative: if available opportunities in each territory are of equal value and are unanimously regarded as such (i.e. no one interprets separation as a sign of inferiority), the policy must be one of equal opportunities. But to answer this way is to understand the question “can segregation be a policy of equal opportunity?” as simply inquiring “are the available opportunities in each territory really equal and perceived as such?” In what follows, I argue that the meaning of “opportunity” explains why these two questions are different. Two features of the concept of opportunity press us to set apart the above questions. The first is related to the distinction between opportunities and their value; the second is that opportunities are conceptually linked to actions.

2.1. What does ‘opportunity’ refer to...

Despite considerable research on equal opportunities, too little has been done to clarify the meaning of an opportunity tout court[xxxviii]. My aim here is not to provide a definition of the word “opportunity” but to clarify two of its aspects useful to my argument.

The first is the distinction between opportunities and their value. The idea that segregation between equally rich territories respects equality of opportunity seems to conflate opportunities and their value. But a closer look at the way we use the word “opportunity” reveals that having an opportunity is in no way equivalent to possessing the wealth associated with it. On the contrary, that one has an opportunity implies that one lacks something that one values but can get it by doing something[xxxix]. In other words, an opportunity firstly refers to an uncertain gain. As Hansson put it, “if I am certain to receive payment to my bank account for this month’s work it would seem unnatural to say that I have an opportunity to receive my salary”[x]. If Hansson’s linguistic intuition is right, it
seems that opportunities cannot be redistributed by merely redistributing wealth through development aid. Money redistribution is neither a necessary, nor a sufficient, condition for the distribution of opportunities. Why is this so?

Giving someone the money or the value of an opportunity is compatible with depriving that person of an opportunity. For instance, if I were to apply for a job for which I am perfectly qualified, but you refused to consider applications from people with disabilities, you would deprive me of a job opportunity; this would still be the case if you asked me to stay home while offering to pay me the entire amount of money I would have earned if recruited. In this sense, redistributing the value of opportunities is not a sufficient condition for distributing opportunities. But receiving money is not a necessary condition for having an opportunity, either. If your hiring procedure was irrepachable, but I had changed my mind and did not come to the interview, I had had a genuine opportunity even if I derived no money from it. Having an opportunity is having only a chance to get something valuable. Since money can buy many valuable things, including the means facilitating the access opportunities, it often stands in as a measure of the level of opportunity. But opportunities are not synonymous with money, and development aid is compatible with depriving people of opportunities.

The distinction between opportunities and their value thus suggests that the proper distribuendum of an equal opportunity policy is neither money, nor the value of opportunities, but opportunities themselves. Though, the distribution of opportunities, unlike that of garden plots, cannot be achieved by boundaries.

To see why boundaries cannot equalize opportunities, let us imagine a policy dividing professions: half of them being set aside for women and half for men, so that no woman is entitled to exercise a profession reserved for men, and vice versa. The distribution is equal in all respects: remuneration levels in each category are the same (i.e., the best job for men is as highly-paid as the best job for women and this holds for any wage level), distribution profiles of jobs within each group are the same (i.e., there are as many men as women occupying well-paid jobs, a proportion strictly observed for lower-paid jobs), and the symbolic value of jobs is equivalent (jobs for men have as much social dignity as jobs for women). Shall we call this professional segregation an equal opportunity policy? One would more appropriately call it a policy of equal discrimination: men and women are equally discriminated when they are given separate, though equal, opportunities.

Why are equal opportunity and equal discrimination different policies? To answer this question, let us move on to the second feature of the concept of opportunity: opportunities are conceptually linked to actions. As a matter of fact, English language dictionaries define
Minority Claims in Multicultural Societies: A comparative study of case law

an opportunity as “a favourable juncture of circumstances” and, more precisely, as “an occasion or situation which makes it possible to do something that you want to do or have to do, or the possibility of doing something”[xli]. Therefore, opportunities are circumstances. They are favourable circumstances, in the sense they fit our ends, what we want to do or have to do. But the way they favour us is not the same as the way digestion and nutriments’ absorption favour good health. They are favourable, provided that we choose to act and achieve our ends. The fact that opportunities are linked to actions is recorded by the word’s grammar: one cannot have an opportunity period; “opportunity” is an unsaturated expression, it is always an opportunity to do something. By its link to action, an opportunity becomes a favourable juncture, not of circumstances but of circumstances and choices to act. The conceptual link between opportunities and actions is recognized by luck-egalitarian theories, which provide equality of opportunity with a philosophical justification and whose core-distinction is that between choice and circumstances.

2.2. ... and why does it matter?

So far, I have argued that there are two features of the concept of “opportunity”: one presses us to distinguish between opportunities and their values; the other highlights the connexion between opportunities and individual actions. In what follows, I will show three consequences of that conceptual analysis.

Firstly, the above conceptual analysis explains how equal opportunity differs from equal discrimination. Equal discrimination is a scheme which seeks to distribute opportunities of equal value to separated groups. But if opportunities are linked to actions and to the individuals’ ends, one cannot decide that something is an opportunity, or that two opportunities are of equal value, without considering the agent’s ends. To see why, suppose a man’s objective is to work as a lawyer, but according to the professional segregation scheme described above, only women can be lawyers. To claim that giving him the possibility to work as an accountant (an equally worthy and well-paid job) is to give him an (equal) opportunity is to assume that he was looking for whatever job secures him a specific level of welfare. Of course, the man could have defined his professional goal in a broader-grained way and, in this case, equal discrimination and equal opportunity policies have similar effects on him. But, if he had not, he would be astonished to learn that he has been given, and not deprived of, a job opportunity. The fact that what is an opportunity depends on the men’s and women’s own objectives explains why equal discrimination and equal opportunity should not be confounded. While discrimination implies removing opportunities to some people (on the grounds of their actual or supposed belonging to particular group), a
policy of equal opportunity implies granting opportunities to all, regardless of their specific membership. Therefore, while discrimination can be equalized by erecting boundaries between groups and between opportunities, equal opportunity requires opening everyone’s access to all the opportunities.

Secondly, the conceptual analysis sheds a new light on the argument from cultural differences. Cultural differences are sometimes viewed as challenging equality of opportunity. While some scholars argue that equality of opportunity “needs to be interpreted in a culturally sensitive manner”[xlii], others believe that global equality of opportunity either would undermine[xlii] or is incompatible with the existing cultural differences[xliv]. David Miller derived his conclusion about the impossibility of global equality of opportunity from premises about the value of opportunity: as different cultures assign different values to the same opportunity, he argued, there can be no single metric to compare people’s access to opportunities across cultures. By contrast, a national society which shares, according to him, “a common set of cultural understandings”, allows for such comparisons since it makes some opportunities “naturally substitutable”. He explained that: “we have cultural understandings that tell us that football pitches and tennis courts are naturally substitutable as falling under the general rubric of sporting facilities, whereas schools and churches are just different kinds of things, such that you cannot compensate people for not having access to one by giving them access to the other”[xliv].

Miller’s example may look convincing. To many academics, including the author of the present article, sporting facilities are all naturally substitutable. But if Serena Williams is given the football pitch and David Beckham the tennis court, they will both complain of being equally deprived of, rather than equally given, a sporting opportunity. The reason why they complain and why some of us do not is not that Williams’ and Beckham’s “cultural understandings” are different from ours. They are not. The reason is that we all have different preferences and ends even if we live in a supposedly homogeneous society or, indeed, in a harmonious family. More than “cultural understandings”, we have “individual understandings” which tell us that some sporting facilities do constitute opportunities (while others do not), and that some of them are of equal value (while others are not). Therefore, opportunities cannot be “naturally substitutable”. And they cannot be naturally non-substitutable, either: for instance, if our end is literacy tuition, we may regard schools and churches as substitutable opportunities. As a matter of fact, opportunities are substitutable precisely inasmuch as individual ends are. A Department of Equal Opportunity deciding, without considering the individuals’ ends, that some opportunities are “naturally substitutable” is not only illiberal but unaware about the meaning of opportunity[xlvii].

The argument from cultural differences is usually stated in terms of opportunities’
Minority Claims in Multicultural Societies: A comparative study of case law

values, and not of opportunities themselves. Its strategy consists firstly in imagining cultures (which oddly enough, are often constructed to coincide with the administratively bounded nation-states) as sources of very different, if not incommensurable, values. Then, the second step is to assume that attaching different values to opportunities undermines equality of opportunity. But this assumption is false. If it was true, it would follow, at a domestic level, that the more a society is liberal and recognizes the fact of value pluralism, the less it is committed to equality of opportunity. A simple look to the current nation-states shows that rather the opposite is true: the states where equality of opportunity is better respected are also the more liberal, the more respectful of value pluralism. The reason why equality of opportunity is still on the agenda in liberal societies is that equality of opportunity is a matter of, firstly, opening access to opportunities to everyone, and then, equalizing the means to achieve it. But such a rather trivial understanding of what equality of opportunity requires in first place looks unacceptable to some tenants of the argument from cultural differences as it implies unlimited rights of move[xlvii].

To conclude, the conceptual analysis presented in this article sheds a new light on the argument from cultural differences. Taking into account the link between opportunities and individual ends makes cultural differences inoffensive for equal opportunity. Let us imagine again that after denying Serena Williams access to tennis courts, we discover that her understanding of what is a sporting opportunity has been influenced by her culture. For her, playing tennis, but not football, is an opportunity because she belongs to a small community worshiping face-to-face confrontations between two individuals as an occasion to meet the Otherness. What difference does that discovery make? If opportunities are always, as I argue, sensitive to the individuals’ ends, discovering that some individuals’ ends are shaped by some factors (be they cultural, social or otherwise) doesn’t change the moral qualification of our action: we either granted, or refused to grant, access to a sporting opportunity. When differences between individual ends are taken seriously, the argument from cultural differences (as well as from social, familial, psychological differences) becomes inoffensive. Not only equality of opportunity is not undermined, but it doesn’t “need to be interpreted in a culturally sensitive manner” either. The reason is that genuine equality of opportunity is already sensitive to cultural differences but it is in a derivative sense: because and insofar cultures (as other factors) do shape the individuals’ ends.

Finally, the third consequence of the conceptual analysis, linking opportunities to individuals’ actions and ends is that it helps us to understand why “separate but equal opportunities” results in an incoherent political agenda. The common feature of the two segregation scenarios described above (territorial segregation and professional segregation) is that they limit the available opportunities according to individuals’ circumstances of birth
Minority Claims in Multicultural Societies: A comparative study of case law

(birthplace in the first case, sex in the second). What is so wrong with dividing opportunities according to the circumstances of birth? Perhaps the fact that no matter how favourable the opportunities a person encounters throughout her life, and no matter how much effort she is willing to make, she can do nothing to go beyond the bounds set at birth. Yet, this is just the opposite of equality of opportunity.

In a sense, any philosophy of opportunity is built on a Promethean ideal. Its core idea is that individuals should (be able to) act and transform circumstances according to their objectives. This idea is widely shared by people of different political preferences. On the right, conservatives emphasise everyone’s responsibility for one’s own wealth, thus suggesting that everyone acted, or should have acted, to convert opportunities into wealth. On the left, luck egalitarians stress that unfavourable and unchosen past circumstances impose unfair disadvantages, which make people less able to manipulate present circumstances as they wish. Hopefully, no one denies that circumstances of one’s own birth are not chosen and that people cannot be held responsible for them. So, if opportunities are about transforming circumstances, how can one claim that a policy which separates people at birth, and prevent them to go beyond their birth circumstances, is a policy inspired by a philosophy of opportunity? As I have argued, the doctrine of “separate but equal opportunities” is at best a doctrine of equal discrimination based on birth rather than a doctrine of opportunity.

The conceptual analysis, by highlighting the connexion between opportunities and individual actions, helps to better understand the difference between discrimination and equality of opportunity. To see how, let us rank policies depending on the degree to which they allow individuals to transform circumstances according to their objectives (see Fig. 1 below). At the left end of the spectrum, nothing can be done to go beyond birth circumstances: it is the extreme form of a discriminatory policy. As we advance on this continuum, discrimination weakens as the imposed limits become less insurmountable (like a policy conditioning access to jobs based on marital status, which is discriminatory but whose limits are not as insurmountable as birth circumstances are[xlvi]), up to a point where policies can be properly considered to offer some form of equal opportunity. At this point, of open access, the competition is open to all. However, when «all individuals have at least the same legal rights of access to all advantaged social positions»[xlix], as Rawls put it, the equality of opportunity is formal or minimal. Beyond this point, there are policies which increasingly facilitate access to opportunities already open to all. They provide supplementary means, such as education, health care, welfare benefits, etc. But the meaning of redistributive schemes in an equality of opportunity approach is to enable people to act according to their ends, and not simply to achieve material equality.
Figure 1 Opportunity policies

The above figure illustrates why the “separate but equal opportunities” scheme is incoherent. If equality of opportunity minimally requires opening all positions to all individuals, then any form of discrimination is incompatible with it. The worst form of discrimination, territorial segregation decided at birth is situated at the extreme left of the line. Global redistribution of resources, including development aid, if inspired by an ideal of fair equality of opportunity, would be situated somewhere at the right of the line. However, one may not be both on the right and on the left side of this line. Those who believe that a compensation for the worst form of discrimination promotes equality of opportunity misunderstand what equality of opportunity minimally requires. But why does this misunderstanding occur?

3. Sedentarist mistakes

In the previous section, I argued that believing that territorial segregation is compatible with equality of opportunity is to misunderstand what equality of opportunity minimally requires. Two biases explain why this misunderstanding occurs. The most obvious one is the nationalist bias: the idea that equality of opportunity can be realized only within a nation-state. As nationalism is currently under attack in most social sciences[1], it will not be discussed here. This section is rather dedicated to clarifying a second bias that I call “sedentarism”[li]. Simply stated, sedentarism is the idea that it is always preferable to stay than to move. While all opportunities cannot be located in a single place, sedentarism makes us believe that equality of opportunity can be realized without moving from a place to another. When it is combined with nationalism, the sedentarism bias makes us to under-evaluate restrictions to cross-border mobility.

3.1. What is sedentarism...

Sedentarism is the idea that staying is always better than, or preferable to, moving. While both staying and moving incur costs and benefits depending on the context, the sedentarist
bias makes us to focus on the costs of moving and on the benefits of staying. Staying is given more value than moving; the longer one stays in a single place, possibly her birthplace, the more she is associated to moral values (rootedness, commitment etc.). In a social choice, sedentarism will favour preferences of people who stay over those who move.

As sedentarism is reinforced by nationalism, it is easier to see sedentarism bias at work, when international movement is considered. It covertly dominates research methodologies in social sciences, while being overtly defended in political theory.

In the social sciences, sedentarism remains dominant despite the “mobility turn” launched a decade ago. Sedentary conduct is often supposed to be the “normal” condition, while migration always needs an explanation. Migrants are classified, sedentary people aren’t. Migrants’ motivation is analysed, their conduct is described, not that of sedentary people. Even when sedentary conduct is overtly suboptimal (as when for instance, an employment area doesn’t drain people from a neighbouring unemployment area), few studies try to explain it. Most research focuses on 3% of global population who migrate – a rate estimated as high – and few studies enquire about the sedentary conduct of the remaining population, especially when half of humanity is living in extreme poverty. In sum, there is great asymmetry between the number of studies trying to find out the causes and motivations of the people’s movement and the number of studies trying to explain sedentary, though suboptimal, conduct.

Moreover, most research evaluates the costs imposed by those who move to those who stay, while the opposite is rare. In migration studies, questions such as how migration of the skilled affects people who remain behind, or as how migrants’ arrival alters the job market, wages, redistributive policies, opinion and culture at destination – are recurrent. Too few studies estimate the costs imposed by those who stay on those who (would) move. Questions such as how passports affect people’s wealth, education, careers and family life, how borders decrease global GDP – are understudied.

While in the social sciences, sedentarism is an implicit bias, in political theory, it is overtly advocated. Thus, mobility and migration are depicted as an “abnormal” conduct, uncharacteristic for “human beings” and explicable mainly by catastrophes. Thus according to Walzer, “human beings move about a great deal but not because they love to move. They are most of them inclined to stay where they are, unless their life is very difficult there.”

Since mobility is rarely viewed as a genuine choice, preferences that are satisfied though mobility appear eccentric and lacking a real purpose. Cavallero illustrates this misunderstanding: “Persecution, oppression and lack of economic opportunity are surely the
principal migration incentives. An individual might seek to migrate in order to get as far away from his family as possible, to master a foreign language or to live in a country where people take siestas. For simplicity, I will assume that such preferences can be expected not to favour one country over another”[lv].

Ideal world is often depicted as sedentary and unchanging. As Shachar put it: “Imagine a world in which there are no significant political and wealth variations among bounded membership units. In such a world, nothing is to be gained by tampering with the existing membership structures. In this imaginary and fully stable world system, there is no motivation for change and migration”[lv].

3.2. ... and what kind of mistakes it leads to?

The sedentarist bias may lead to morally arbitrary conclusions often through logically invalid reasoning. I will give two examples of each.

First of all, invalid arguments. A widespread logical fallacy is hasty generalization. As sedentarism may come as a difficulty of figuring out movement as a choice, many arguments go from the observation that presently, most people’s movement at the international level is forced by persecution and poverty, to the conclusion that movement is generally coerced by persecution and poverty[lvii]. Such reasoning is implicit by those who claim that in a less unequal world, motivation for change and movement would disappear. Hasty generalisation leads also to reduce claims about mobility to claims about redistribution. As Thomas Pogge put it, “if this [persuading rich countries to admit more needy foreigners] is a worthy cause, it is so in virtue of the protection it affords to persons who are very badly off”[lviii]. Such positions neglect that needy people have rights and needs other than those related to their economic condition.

A second common form of the sedentarist mistake is a deontic version of the fallacy of the inverse of the following form: since poverty causes migration and reducing poverty is a worthy goal, then reducing migration must be a worthy goal[lix]. For instance, Eric Cavallero argued that if poverty causes migration and if rich countries should fund development of poor ones, then “funding should aim at a near-term target of immigration-pressure equilibrium”[lx]. In each case, premises about inequality and forced migration are converted in a conclusion about migration. Acknowledging that mobility can be a choice (even for the poor) would have avoided the sedentarist mistake.
Let us turn to normative conclusions derived from sedentarist premises. The first example is given by the common view according to which in a world less unequal than ours, restrictions on immigration would be less, if at all, objectionable. This conclusion neglects that people, including the poorest ones, have interests other than those derived from their economic condition and are harmed by the restrictions on freedom of movement. Such restrictions prevent people who live in separate nation-states from moving and meeting each other and are a serious violation of individual rights. Since mobility conditions a wide range, if not all, of our actions, restrictions on mobility result in limitations on freedom that go far beyond economic aspects. Preventing people—just because they are born in separate territories—from visiting or receiving friends in their homes, marrying people of their choice or developing new relationships is a serious violation of human rights. Generally, we would describe any political regime which deprives people, even a minority, of such civil liberties as highly oppressive. However, when it comes to the international level, we tend to have more clemency with such rights’ violations and forget that freedom of association and the rights to fund a family and to lead a meaningful life are still recognized as universal human rights. A regime of segregated territories, insofar as it imposes restrictions on movement, harms both outsiders and insiders. And contrary to the commonplace, closed borders do not harm only outsiders from poor countries: poor and rich countries’ insiders and outsiders have their fundamental freedoms curtailed.

The second example of questionable normative conclusions is the abandonment of liberal neutrality. Let us assume that the sedentarist view is correct: the ideal world is one where “there is no motivation for change and migration” and where only a very small minority of people would move “for idiosyncratic reasons”. Could a liberal approve of the fact that the remaining majority imposes its preferences for immobility to everyone? A liberal mind committed to the ideals of neutrality and persuaded that it should refrain from exercising political power without people’s consent, would prevent a majority, however large, from forcefully imposing its sedentary preferences on others who are willing to move. It would do on the basis of neutrality ideal and would simply emphasise that this majority violates those individuals’ rights. And wealth alone cannot change their harm into freedom, just as golden bars do not make cages a liberty symbol. To avoid the possibility of such harm, a liberal would disconnect separate nation-states from the power to control movement and entry into the land.

To sum up, the idea that redistributing wealth or the mere value of opportunities makes restrictions on immigration unproblematic is based on sedentarist assumptions according to which mobility does not characterise human nature. Sedentarism is dominant in social sciences and it leads, in political theory, both to logical fallacies and questionably
SECTION III

**Equal respect, cultural differences and minorities**

«L’Etat est une chose,
et la société civile une autre».

(E. Berth)

«All religions are beautiful,
and it is indifferent to approach
the Christian Eucharist or go on a pilgrimage to Mecca»

(H. Hesse)

1. **Introduction**

Is there a difference between a request for a menu which is compatible with halal slaughtering precepts and an apparently similar request for a vegetarian one? Is the former a cultural claim while the other is not? What can a comparison of this kind tell us about minority rights? Let’s assume, for argument’s sake, that the appropriate response to both requests is the same, either positive or negative. Would that mean that those cases are to be considered as instances of the same issue? The answers to these questions are not obvious.

Non-mainstream dietary preferences or habits might be based on different reasons, and they could be treated differently, depending on the reasons provided. It might be the case, for example, that those who follow halal prescriptions do so for religious reasons, while vegetarians refuse to eat the meat of non-human animals for several different reasons – ethical or religious beliefs, considerations about human health.

In this section I will provide a tentative interpretation of what answering similar questions can tell us about how we should conceptualize minorities. I see this definitional
task as a particularly important one since some criteria of definition enabling us to specify who should be legitimately considered a member of a specific minority are in some cases necessary to implement the possible targeted policies. It is indeed through the application of such a concept to the real political and social world that differential rights or treatments can be accorded. So my analysis is about the notion of minority in the first place.

The problem seems to me that examples like those concerning requests of dietary pluralism should be intuitively interpreted as cases where a social standard is put into question and the idea that such an issue should be addressed in different ways, according to whom the claimants are, might seem unsound at glance. Thus, I will try to check whether it is possible to give a single account of what can or cannot justify such minoritarian requests.

I will try to explain some difficulties in the task of defining minorities the solution to which seems to require an appeal to the liberal value of equal respect rather than a mere request for recognition of differences. The solution to such difficulties will show that the idea of equal respect might work as a justificatory device not only for borderline cases but for standard cases as well.

I shall also argue that the notion of equal respect can provide the justificatory basis for mutual accommodation between majority, longstanding minorities, but also those who, while not being a member of any officially recognized minority, might still strive for minoritarian issues.

2. The definition of minorities

As a matter of principle contemporary democracies presuppose the presence of internal pluralism and dissent, and thus presuppose the fact that majority rule creates minorities in a loose sense most of the time, except in the rare cases of unanimity on some decisions. Put in such extremely simplistic terms, the existence of minorities is not a problem to be solved but a permanent feature of democratic life. Obviously enough, however, a problem arises when some groups of members of the polity happen to constitute systematically and permanently a minority in democratic decision processes.

Some groups, as it is well-known, have been historically subjected to some sort of exclusion from full participation on equal footing compared to the dominant majority. Similar cases, according to some theorists, should be tackled by recognizing the unfair disadvantage suffered by them and by granting specific rights (e.g. special representation)
or differential treatment concerning ethical-sensitive issues (e.g. exemptions). Apparently, the sort of remedies to such disadvantaged conditions might differ from group to group, according to the nature of the group itself, i.e. the nature of the disadvantage suffered by its members. Here one can stress a first problem: what comes first, in the conceptual analysis of the issue? Minorities or disadvantage? Should we identify minorities and then evaluate what is their specific disadvantage or, on the contrary, define minorities by grouping disadvantaged individuals on the basis of some objective criteria?[lxiv] The redistribution/recognition distinction might be helpful to clarify such a question.

3. Redistribution and recognition

According to a possible analytical distinction, there are two main kinds of injustice individuals can suffer as members of groups: economic and/or cultural injustices[lxv]. For each kind of injustice diverse remedies seem to be in order, given the different nature of the disadvantage.

On one hand, redistribution of wealth and social positions have been traditionally considered the appropriate means for redressing economic injustice – social and economic unjustified inequalities (e.g. unequal salaries) and lack of equal opportunities (e.g. Career and access to public positions). However, there are problematic issues connected to differences which apparently cannot be resolved by mere redistribution, being due to structural features of the social, economic and cultural system, preventing some citizens from exercising certain political and social rights on equal footing as others, and to participate and compete under fair conditions. For such issues policies of recognition seem to be necessary: i.e. symbolic policies aiming at the revaluation of the public image of those who are unjustly disadvantaged by the social models of the dominant representation, interpretation and communication[lxvi]. Standards of social success, organization of the work and cultural models, implicit in some institutions – public or not -, are indeed almost calibrated on the needs, the ends and sometimes also the taste of a dominant group and while presenting themselves as neutral they are based on a standard image of the citizen. Models of education, family conceptions, dietary options, dress codes are examples of such standards which are relational and structural and cannot be modified by redistribution alone. On the contrary, when mere redistribution policies seem to be ineffective, they risk becoming counterproductive exactly by reinforcing social and cultural stigmas[lxvii]. Multiculturalism and more specifically multicultural policies can been seen in part as the attempt to remove precisely this kind of injustice. In the next section I will sketch Kymlicka’s influential contribution to a liberal theory of minority rights focusing on the
definition of minorities.

4. Cultural minorities

Multicultural issues and more specifically the idea that to recognize minority rights is just and legitimate are still controversial questions in both public and academic debates. It is a fact, however, that several national and international institutions recognize such rights in some way. According to Kymlicka’s account of minority rights [lxviii], this change rather than putting into question the universal idea of human rights appeals precisely to it. What would be questioned, indeed, is the relation between minority rights and universal norms of justice by holding that minority rights are a precondition for the equal opportunity to exercise other rights.

Despite this state of affairs and notwithstanding the research aiming to show the success of multicultural policies, and their positive role in terms of peace and democracy [lxix] as well, the notion of cultural minority is still controversial. According to Kymlicka, modern multinational and/or polyethnic states are confronted with two main patterns of cultural diversity corresponding to two different kinds of minorities: national minorities or indigenous people who claim forms of self-government and autonomy in order to preserve their culture as distinct from the mainstream one; and immigrants or ethnic groups that negotiate polyethnic or accommodation rights in order to integrate into the larger society, while trying to make its institutions more accommodating to some traditional aspects of their culture of origin.

Such claims would be justified since those groups would share, as members of a nation, what Kymlicka calls a societal culture: “a culture which provides its members with meaningful ways of life across the full range of human activities, encompassing both public and private spheres. These cultures tend to be territorially concentrated, and based on a shared language” [lxx].

According to these definitions, the main difference between such groups are that on the one hand a national minority dwells in a homeland while immigrants inhabit a foreign country, on the other hand that distinction of immigrants does not look “inconsistent with their institutional integration” and so they can be expected to “participate within the dominant culture(s) and speak the dominant language(s)” [lxxi]. There is moreover another category, i.e. indigenous people [lxxii] that while having some similarities with national minorities - since they consider the territory they live in as their homeland – they apparently
cannot claim the status of nation, as well as immigrants in the guest countries. They do seem to claim the same rights as those accorded to national minorities given the acknowledgement of the policies aimed at deleting their culture, enacted systematically by the states created in the territory they already inhabited.

Actually, the category of indigenous people, which has been recognized, however, on the basis of reasons and under different conditions from those of national minorities – where they are legally acknowledged – provides a further criterion for clarifying the logic of ethnocultural rights. The idea of distinguishing between rights and forms of autonomy and self-government on one hand and rights of accommodation on the other can be formulated also as a distinction – based on a basic model already quite common – between ‘old’ minorities, which settled the territory before it became part of a wider independent state, and ‘new’ minorities like the groups of immigrants who arrived after state-building.

Standard categorizations largely recognized in many legal systems and also by international law evolved and brought about some practical consequences. The apparent successes of multicultural policies, indeed, partially changed the perception itself of minority rights, which today can be interpreted as constraints to the processes of nationbuilding. Recent international law contributed to modifying the context within which minority claims take place. In other terms, the idea of a unitary, homogeneous and centralized state has been challenged, while pluralistic, multilingual and multilevel states are increasingly seen as the representation of a modern approach.

This change in perspective has obviously had some implications on the legitimacy of minorities as political players. Since the ethnic claims are apparently no longer viewed suspiciously and some rights have been recognized to ethnic minorities and indigenous people an increase has been noticed in mobilisation of ethnocultural groups. Even if the international community does not apply pressure directly and rights exist only on paper, they legitimize such mobilizations and today minorities in their countries can appeal to international standards which the states already subscribed.

So, according to Kymlicka, the point is exactly that the mere recognition by multicultural liberalism of some generic group rights for ethnocultural groups is not sufficient while an elaboration of targeted categories is necessary. Indeed, in different contexts, the difference between groups can result in independent and conflicting strategies, with various outcomes, and for this reason the ‘logic’ of multiculturalism cannot be generalized by granting the same rights to all minorities and to all their members.

The correct way of viewing liberal multiculturalism would not simply be, according to
Kymlicka, as a conception according to which states should recognise certain rights of some groups beyond the usual citizenship rights. Multiculturalism should rather be conceived as a reaction to the idea of a model of homogeneous and unitary nation-state. Indeed, policies enacted in order to build a nation can be various but all tend to constitute political domination exercised by the dominant ethnocultural group and have as an effect the making of minoritarian cultures publicly invisible, by centralising political and legal power and favouring the majoritarian culture and language. Historically speaking, such policies have been enacted on pain of serious injustices and discrimination and they excluded from the nation-building process precisely those who were most concerned, since they would have paid the highest cost – cultural but not only. And it is exactly such groups who react by claiming, legitimately, multicultural and multi-national models of state.

There are different criticisms one might move against ethnocultural models. In the next section I will briefly consider some arguments against multicultural policies, which I hold as incompatible with welfare policies.

5. **Against multicultural politics**

As already mentioned, mere redistribution policies might seem insufficient to redress some kinds of inequality suffered by groups’ members, when not reinforcing prejudice against them. It is in similar cases that the need for symbolic cultural recognition acquires its persuasiveness. However, some theorists oppose multicultural policies tout court, intended as politics of recognition, by arguing that they work against welfare policies. If this were true, it would make it possible for the worst-off to be even worse because of those policies.

According to Kymlicka, “a growing chorus of researchers and commentators argue that ethnic/racial diversity makes it more difficult to sustain redistributive policies, regardless of the types of policies that governments adopt to manage that diversity. Such arguments assume that it is inherently difficult to generate feelings of national solidarity and trust across ethnic/racial lines, and that the very presence of sizeable ethnic/racial diversity erodes the welfare state. We will call this the ‘heterogeneity/redistribution trade-off’ hypothesis.”

According to those who are rather sceptical about multicultural policies they would either: (a) produce the crowding-out effect of weakening “pro-redistribution coalitions by diverting time, energy, and money from redistribution to recognition”; or
Minority Claims in Multicultural Societies: A comparative study of case law

(b) the corroding effect “by eroding trust and solidarity amongst citizens, and hence eroding popular support for redistribution” by emphasizing differences and then impairing the common identity among co-citizens; or

c) the misdiagnosis effect of making people think that the main problems of minority groups can be solved by recognizing ethnic identities and practice while ‘they lie elsewhere’ and furthermore distorting “people’s understanding of the causes of disadvantage, by denying or failing to acknowledge the reality of racism and class inequality”[lxxvii]. Again, according to Kymlicka, it is plausible that such effects might contribute to explaining why the rise of multicultural policies might have intentionally or inadvertently contributed to the retrenchment of the welfare state and that the plausibility of this concern has even led some defenders of MCPs to rethink their approach. However, the evidence is not the same in every country: “It is not at all clear that the presence or absence of MCPs had any bearing on whether or how the welfare state was restructured”. A counterargument is that the counterfactual existence of ‘sizeable coalitions’ of citizens pro welfare state, if there were not multicultural policies, is hard to prove while a ‘passivity’ on economic issues can be due to scepticism about egalitarian policies. On the contrary multicultural policies might have reinvigorated the left in some contexts. In other words, it is arguable that political mobilization is to be conceived as a zero-sum game and it is plausible that more participation, on any issue, could reinforce both the ‘old’ issues of justice and the new ones, by increasing citizens’ confidence in the effectiveness of their political agency.

If there is not conclusive evidence proving that redistributive and multicultural policies bring about effects which in practice contradict or weaken each other, one might be tempted to design a political space where they cooperate. In the next section I will briefly consider Marion Young’s critique to ethnocultural model, which is precisely an alternative proposal of how minority-majority relationships should be interpreted, which put into question the, so to speak, ‘traditional’ conception of politics of recognition by challenging the definition of relevant groups.

6. An internal critique

In this section I shall consider the objection of the continuum, raised by Marion Iris Young against the ethnocultural model of minority rights. Young asserts to share “Kymlicka’s liberal defense of group rights is powerful and persuasive” and endorses the distinctions Kymlicka draws between different kinds of cultural minorities, given the need to “develop specific arguments about justice required for each”[lxxviii].
Nevertheless, she questions Kymlicka’s account accusing it of being in some way contradictory. According to Young’s account, Kymlicka’s project, while being a pluralizing one, ends up in duality. The distinction which Kymlicka draws is indeed, in Young’s view, not only not sufficient to grasp and handle real differences between groups, but also yields a contradiction in Kymlicka’s project’s own terms. His distinction between national minorities and ethic minorities is, in Young criticism, on one hand, too rigid to account for a notion of multicultural citizenship; on the other hand, being dual rather than plural, it makes it hard to understand the very notion of multicultural citizenship. Moreover, Young cites several examples of ‘anomalies’ that cannot be grasped by such a model and would show that it would be “better to think of cultural minorities in a continuum, or perhaps in a set of continuua”.

Thus, not only can minorities not be defined, as Kymlicka does, in dichotomous terms – to whom a related and clear-cut distinction of rights would correspond – but they have to be conceived in their complexity and especially in their gradualness. As Young correctly stresses, if one looks at the world through Kymlicka’s model, there are few groups which are able to pass the test of minority status compared to the ‘culturally’ disadvantaged groups quite clearly identifiable in contemporary democratic societies.

The difficulties of categorization in general are acknowledged by Kymlicka (see especially Kymlicka in his work dated 2007). He also admits that when the practice of categorization goes wrong multicultural policies for reducing inequalities prove to be highly questionable, e.g. The bureaucratic categories designed for identifying the beneficiaries of policies are insensitive to their aspirations, putting together very different issues under the same label and indirectly damaging the more disadvantaged in the target group while privileging some other members.

As to ethnocultural minorities, Kymlicka suggests to imagine targeted rights for groups, which can be sensitive to their different nature, aspiration and claims, rather than recognize generic minority rights (e.g. linguistic, representation) extended to any kind of cultural minority. The problem of the targeted approach is that we lack a systematic account of appropriate and feasible individuation criteria and this state of affairs risks ending up in loss of confidence in multicultural policies or ad hoc interpretations of them, which can subvert their original purpose.

The targeted approach aims to prevent predictable injustices in minority-state relations, by conceiving minority rights a protection from the cultural power of modern nation-states. But they should be calibrated on different cases, since the groups involved in each context are different in respect to their history and aspirations. However, Kymlicka
Minority Claims in Multicultural Societies: A comparative study of case law

acknowledges that unfortunately the fact that we do not have an account which is universally accepted can put into question the very idea that minority rights should be recognised.

Even if we admit this is true, and I think we should, we are not necessarily committed to giving up an even imperfect and incomplete distinction, or at least a reformulation of it. We could apparently just accept that there are other disadvantaged groups which do not constitute cultural minorities in a proper sense and might constitute cultural minorities in other senses which must be specified but can be compatible with the given definitions. However, Young’s criticism of such a multicultural model is more radical. She argues that the model itself of cultural minority based on the idea of nation/societal culture is to be rejected. Such a model of multicultural citizenship indeed represents the relation between the state and minorities – cultural or not – in a misleading way.

Actually, Young and Kymlicka basically agree both on the importance and necessity of group rights in liberal democracy and on the fact that the categorisations of groups can hardly be clear-cut. This is the main reason why I would define Young’s objection as internal.

Kymlicka openly admitted the limits of his distinctions and acknowledged there is a grey area of hard cases that are not clear how to treat. Given this ‘admission’, the argument of anomalies does not seem to me the more relevant objection made by Young to Kymlicka’s account. Young’s argument questions more deeply Kymlicka’s account pointing out the grounds of the distinction, i.e. the notion of ‘nation’, and she suggests abandoning it. In more recent works she provides an alternative account of differentiated citizenship which is not based on the concept of nation and criticizes the idea of integration itself by proposing an idea of democratic inclusion based on the recognition of social groups suffering structural inequalities. In Young’s account, social and economic inequalities reproduce and perpetuate themselves in institutions and negatively affect political agency of citizens by marginalizing their voices in formally democratic procedures as well. The analysis in terms of structural social groups would show that they are more important in assessing issues about justice: “Differentiations of gender, race, or ability are more like class than ethnicity, I argue, inasmuch as they concern structural relations of power, resource allocation, and discursive hegemony. Even where the basis of group differentiation more concerns culture than structure, furthermore, claims to cultural recognition usually are means to the end of undermining domination or wrongful deprivation. A strong communicative democracy, I conclude, needs to draw on social group differentiation, especially the experience derived from structural differentiation, as a
Minority Claims in Multicultural Societies: A comparative study of case law

resource. A democratic process is inclusive not simply by formally including all potentially affected individuals in the same way, but by attending to the social relations that differently position people and condition their experiences, opportunities, and knowledge of the society”[lxxxii].

Young opposes these definitions of groups as an essentialist approach that is blind to internal differences and disagreement and apply a logic of ‘inside-outside’ as if group differences could single out common identities rather than more concrete goals.

The most important criticism of the idea of an essentialist group identity that members should share, however, concerns its apparent denial of differentiation within and across groups. Cross-cutting differences from the mainstream culture or the majoritarian standards of citizenship put disadvantaged members of society into a plurality of social groups. So if groups defined identities and membership defined individual identity, it would be difficult to account both theoretically and practically for ‘the fact of multiple group positioning’. In an essentialist account, ontological problems can give rise to political issues by marginalizing or silencing some group members. Groups, therefore, according to Young, should be conceived as consisting in both the individuals and their relationships. “A relational conception of group difference does not need to force all persons associated with the group under the same attributes. Group members may differ in many ways, including how strongly they bear affinity with others of the group. A relational approach, moreover, does not designate clear conceptual and practical borders that distinguish all members of one group decisively from members of others. Conceiving group differentiation as a function of relation, comparison, and interaction, then, allows for overlap, interspersal, and interdependence among groups and their members”[lxxxiii].

7. The problems of categorization reformulated

The two accounts I sketched are incompatible under several respects. In particular, as far as I am concerned, they seriously diverge on the definitions of relevant groups to be addressed by policies of recognition. However persuasive, I find Young’s account suffering at least from two major problems:

1. To conceive minorities along a continuum, without envisioning criteria or thresholds which enable us to identify when groups have – for example – title to specific claims as a group, makes the account very uncertain and at risk of not being able to solve the very problems the policies of recognition of minority rights are conceived for.
Minority Claims in Multicultural Societies: A comparative study of case law

2. To underestimate the importance and the – also theoretical – role of values which some oppressed people already proved to cherish – like e.g. the idea of being a member of a nation and then to be in some respects exclusive for the sake of a more genuine inclusion.

To reformulate the issue in other terms, the problem as I see it is the following:

1. there are groups which are not cultural minorities in a proper sense but suffer from analogous kinds of disadvantage;
2. such disadvantage, while not to be described as ‘cultural’, works apparently in a structural way which seems very similar to that suffered by members of properly defined cultural minorities.
3. The elimination of or the compensation for such disadvantages should be of the same nature, i.e. according to a standard definition, or its reformulation, some policies of recognition should be appropriate for a sub-cultural disadvantage.

In other words, Young’s objection of the continuum against Kymlicka’s classification of cultural minorities points out perhaps that there are issues concerning the politics of recognition which cannot be reduced to an analysis in terms of cultural minorities and rights but concern, so to speak, sub-cultural minorities. The question is more precisely whether, by accepting Kymlicka’s model, we are committed to the claim that there are cultural minorities and that only they can lodge claims for special treatment and rights, even if not necessarily minority or group rights. To be sure, if one thinks that only the recognition of the status of minority can grant access to targeted rights or special treatment under certain conditions, defining disadvantaged categories as minority might seem to be fundamental. Otherwise, one can accept that other concepts can produce satisfactory outcomes as well. An additional problem seeming to arise is that, even if the analogy between cultural and sub-cultural disadvantage can hold, the appropriate kind of policies are to be envisioned for such a disadvantage.

Indeed, in order to determine what measures are appropriate, apparently the nature of the group concerned should be determined previously. But this seems to presuppose, in turn, an argument to show what groups are entitled to differential treatment and why.

If we think in terms of access to a societal culture, as described by Kymlicka, we could be tempted to expand the model of ethnocultural differences arguing that in many cases some sub-cultural groups do not have the same opportunities of exercising their equal rights compared to other members of their societal culture. So Kymlicka’s argument about the importance of a societal culture can be reformulated to answer the internal social claims
which normally arise in regimes of democratic pluralism. Some multicultural claims are indeed against a mainstream culture which is inhospitable for persons who are holders of some specific differences (e.g. gay and women’s movements against male chauvinism). Differences underlying such claims are not connected to forms of disadvantage of a merely economic nature, which would appear to be resolvable through redistributive measures, but to socially relevant features crossing classes and economic conditions. To use the terminology used so far they should be defined as ‘cultural’.

This analogy probably goes too far but I think that it puts us on the right track. What I shall propose in the next and last section is a sort of ‘reconciliation’ account of the definition of minorities based on the idea of equal respect for people as a democratic political value.

8. Respectful policies of recognition and groups

Going back to the analysis of redistribution/recognition distinction, what clearly characterizes the different accounts I sketched in this paper is on one hand the concern over a conflict between multicultural policies as policies of recognition, which emphasize differences among members of the polity, and egalitarian policies of redistribution; on the other hand all the approaches aim at the elimination of inequalities suffered by individuals as members of disadvantaged groups and share the hope that policies addressing those groups are not self-defeating in improving the conditions of individuals concerned and democratic institutions.

As Kymlicka correctly notices, public labels placed on individuals are always imperfect but these are well-known pathologies of public policies in general in liberal democracy whether they concern age, class, gender, neighbourhood, region or family status and there is no reason to belief that these pathologies afflict multicultural policies more seriously than others[lxxxiv]. By using a happy distinction made by Miller we should “distinguish multiculturalism as ideology from multiculturalism as public policy”[lxxxv]. Multicultural policies can be seen as a subset of policies of recognition which should address specific inequalities as a response to a demand for more equality rather than a demand for recognition of differences as differences.

Moreover, many theories on groups and/or group identities seem to agree on the fact that group relations should be conceived in a transformative way as opposed to a merely affirmative one[lxxxvi] and this can lead to a convergence of methods. I cannot develop this idea here but I think that a transformative approach to the definition of groups that matter
in liberal democracies should lead to outlining policies and/or institutional procedures which guarantee full political agency to individuals as members of disadvantaged groups and enable them to influence both their mainstream background culture and the minority they are a member of. Such an approach should avoid employing categories that are so ‘rigid’ they trap their members but stable enough to make it possible to identify groups and contemplate policies to apply to them, even at the cost of a certain degree of oversimplification.

A promising path to these challenges would be to appeal to the value of equal respect. As I will try to show, indeed, it can enable us to give a single account of the reasons why cultural or religious claims of individuals who are members of recognized groups should be assessed in an analogous way as claims of individuals whose ‘membership’ is neither recognized nor ‘obvious’. I will make two general assumptions that are not too controversial: a) that liberal democratic institutions should treat all persons with respect and b) that it is unreasonable not to expect at least a certain degree of pluralism.

The kind of respect owed to persons in liberal democratic theory is modelled on the notion of recognition respect for persons as such. Such a specific kind of recognition respect is owed to persons as moral agents and, being independent on any actual performance, it is accorded unconditionally to those whom the status is ascribed (conditionally on the possession of the relevant property – moral agency). This kind of respect is, however, given equally to any person as such since it is assumed that anyone has the relevant property to a sufficient degree. An insightful account of this kind of respect is Carter’s idea of opacity respect as an attitude of evaluative abstinence about persons’ capacities.

Moreover, recognition respect is second-personal in its nature: “The act of recognition of another as my equal can be twofold: it can be a generalizing act which sees common humanity behind the individual, or it can be an individualizing one which sees the person in the individual. In the first case, the recognition is not second-personal, because it comes only by abstracting from the individual in front of me, and it comes with a price, the price of bracketing the individual person as she or he is. Dispensing with his or her special traits, I eventually see the common humanity. By contrast, in the case of an individualizing act of recognition I see a moral partner in the person as he or she stands in front of me. Only in this latter case the second-person nature of respect is properly captured, hence I claim that respect is properly paid only by an individualizing act of recognition”.

Respect, however, requires also reciprocity and accountability since to treat persons as moral agents and ascribing the moral agency to them means also to be entitled
Minority Claims in Multicultural Societies: A comparative study of case law

to have expectations and claims on them.

The moral powers of individuals have the potential to produce pluralism in liberal democratic regimes where persons have different moral doctrines and beliefs and given their different positions in society and cultural traits can draw different judgements on the same issues. Therefore, to treat persons with equal respect seems to require recognizing them as persons - and so as equal moral agents - “neither despite, nor in virtue of, but given their identity”[xcii].

Thus, in order to express respect for persons, on one hand institutions should be calibrated on the idea of person as moral agent, “self-originating sources of valid claims”, and so be able to guarantee visibility and full participation on equal footing - e.g. by envisaging some kind of policies of recognition; on the other hand, the attitudes institutions should show must be coherent with the idea of treating all as equals by giving due consideration to the fact that they are persons and to treat them as moral partners in their relations with them - e.g. institutions should not be patronizing nor dismissive.

In other terms, as a matter of respect, minoritarian claims should be taken into consideration and treated in a respectful manner[xciii] by institutions at least prima facie regardless of their content (even if they cannot be satisfied).

This is the practical implication of the use of the notion of equal respect which I find more interesting for the problems of ‘defining’ minorities or groups. Some difference would represent cultural minoritarian issues which might require targeted policies of recognition.

Such policies would also take into due consideration the fact that what those who are ‘excluded’ claim is not only to be included (e.g. via assimilation) but to modify the culture itself, given the recognition of equal moral agency and its transformative potential in terms of mutual accommodation.

Instances of this sort are e.g. minoritarian dietary practices.

- They are shared by various groups which are not organised, homogeneous and unitary.
- Their issues are often dismissed by the majority as of little importance (private, relative to subjective preferences).
- Such issues are not recognised as questions which should receive public recognition and appropriate answers from institutions.

However, such minoritarian instances, like the demand for alternative menus by
vegetarians, are usually claims concerning the exercise of choices which are not incompatible with any of the rules of a peaceful democratic regime, but are not guaranteed. Through such a conceptualisation, then, we can account for minoritarian issues which cannot be connected to a sufficiently precise and stable reference group but that apparently require some sort of public recognition. Such issues represent positions which are weak in terms of visibility and political power compared to the points of view of the cultural majority and sometimes aim to put under discussion the mainstream interpretation of their culture, by making it more plural (i.e. questioning the idea itself that there are standards anyone has to satisfy or making those standards less rigid).

When social standards are at stake the following conditions might hold:

- Some social standards put someone in a disadvantaged position for no sound reasons.
- Social culture as a set of institutionalized practices cannot be modified by decree.
- Minoritarian claims require public recognition for having a chance to ‘update’ the social standards defining what is to be considered as ‘normal’.
- Such differences can be reconciled with majoritarian cultural standards by a public act of recognition as equals from the point of view of institutions, rather than by the promotion of those differences as differences.

Such options, indeed, do not have an intrinsic value but they are valuable insofar there are persons for whom they are meaningful. Applying this approach also to multicultural policies and to the definition of groups one can avoid underestimating the importance of mobilisation and participation without being too demanding for those who are concerned. This approach is also promising for assessing ‘new minorities’ issues as well as the old ones on the basis of the same reasons and according to the same criteria.

**SECTION IV**

*Religion, European secular identities, and European integration*

«Deus, sive natura»

(B. Spinoza, *Ethics*)
1. Introduction

The rapid and drastic process of secularization in western Europe over the last decades has not diminished the continuing unease with which Europe considers the Islamic religion and Muslims in its midst. In this part of my essay, I argue that the “Islam problem” is an indicator of the disparity between liberal and illiberal strands of European secularism, focusing on post-secular tendencies and religion(s) in the new Europe.

Moreover, I will try to answer to the following pressing questions: “Is religion a public or a private matter? Can there be such a thing as a European Islam? If so, what characterizes it? What role can religion – or religions – play when it comes to the emergence of a European solidarity”?

2. A focal point: post-secular Europe?

Since the signing of the Treaty of Rome in 1957 that established the EEC and initiated the ongoing process of European integration, western European societies have undergone a rapid, drastic, and seemingly irreversible process of secularization. In this respect, one can talk of the emergence of a post-Christian Europe. At the same time, the process of European integration, the eastward expansion of the European Union, and the drafting of a European constitution have triggered fundamental questions concerning European identity and the role of Christianity in that identity. What constitutes “Europe”? How and where should one draw the external territorial and the internal cultural boundaries of Europe? The most controversial and anxiety-producing issues, which are rarely confronted openly, are the potential integration of Turkey and the potential integration of non-European immigrants,
who in most European countries happen to be overwhelmingly Muslim. It is the interrelation between these phenomena that I would like to explore in this part of paper.

The progressive, though highly uneven, secularization of Europe is an undeniable social fact. An increasing majority of the European population has ceased to participate in traditional religious practices, at least on a regular basis, while still maintaining relatively high levels of private individual religious beliefs. In this respect, one should perhaps talk of the unchurching of the European population and of religious individualization, rather than of secularization. Grace Davie has characterized this general European situation as “believing without belonging.” At the same time, however, large numbers of Europeans even in the most secular countries still identify themselves as “Christian,” pointing to an implicit, diffused, and submerged Christian cultural identity. In this sense, Danièle Hervieu-Léger is also correct when she offers the reverse characterization of the European situation as “belonging without believing.” “Secular” and “Christian” cultural identities are intertwined in complex and rarely verbalized modes among most Europeans.

The most interesting issue sociologically is not the fact of progressive religious decline among the European population, but the fact that this decline is interpreted through the lenses of the secularization paradigm and is therefore accompanied by a “secularist” self-understanding that interprets the decline as “normal” and “progressive”, that is, as a quasi-normative consequence of being a “modern” and “enlightened” European. It is this “secular” identity shared by European elites and ordinary people alike, that paradoxically turns “religion” and the barely submerged Christian European identity into a thorny and perplexing issue when it comes to delimiting the external geographic boundaries and to defining the internal cultural identity of a European Union in the process of being constituted.

I would like to explore some of the ways in which religion has become a perplexing issue in the constitution of “Europe” through a review of four ongoing controversial debates: the role of Catholic Poland, the incorporation of Turkey, the integration of non-European immigrants, and the place of God or of the Christian heritage in the text of the new European constitution.

3. **Catholic Poland in post-Christian Europe: secular normalization or great apostolic assignment?**
The fact that Catholic Poland is “re-joining Europe” at a time when western Europe is forsaking its Christian civilizational identity has produced a perplexing situation for Catholic Poles and secular Europeans alike. It suffices to state here that throughout the Communist era, Polish Catholicism went through an extraordinary revival at the very same time when western European societies were undergoing a drastic process of secularization. The reintegration of Catholic Poland into secular Europe can be viewed therefore as “a difficult challenge” and/or as “a great apostolic assignment”. Anticipating the threat of secularization, the integralist sectors of Polish Catholicism have adopted a negative attitude towards European integration. Exhorted by the Polish Pope, the leadership of the Polish church, by contrast, has embraced European integration as a great apostolic assignment.

The anxieties of the “Europhobes” would seem to be fully justified since the basic premise of the secularization paradigm, that the more a society modernizes, the more secular it becomes, seems to be a widespread assumption, also in Poland. Since modernization, in the sense of catching up with European levels of political, economic, social, and cultural development, is one of the goals of European integration, most observers tend to anticipate that such a modernization will lead to secularization also in Poland, putting an end to Polish religious “exceptionalism”. Poland becoming at last a “normal” and “unexceptional” European country is after all one of the aims of the “Euroenthusiasts”.

The Polish Episcopate, nevertheless, has accepted enthusiastically the papal apostolic assignment and has repeatedly stressed that one of its goals once Poland rejoins Europe is “to restore Europe for Christianity”. While it may sound preposterous to western European ears, such a message has found resonance in the tradition of Polish messianism. Barring a radical change in the European secular zeitgeist, however, such an evangelistic effort has little chance of success. Given the loss of demand for religion in western Europe, the supply of surplus Polish pastoral resources for a Europe-wide evangelizing effort is unlikely to prove effective. The at best lukewarm, if not outright hostile European response to John Paul II’s renewed calls for a European Christian revival points to the difficulty of the assignment.

I suggest that a less ambitious, though no less arduous, apostolic assignment could perhaps have equally remarkable effects. Let Poland prove the secularization thesis wrong. Let Polonia simper fidelis keep faith in its Catholic identity and tradition while succeeding in its integration into Europe, thus becoming a “normal” European country. Such an outcome, if feasible, could suggest that the decline of religion in Europe might be not a teleological process necessarily linked with modernization but a historical choice that Europeans have made. A modern religious Poland could perhaps force secular Europeans to rethink their
secularist assumptions and realize that it is not so much Poland which is out of sync with modern trends, but rather secular Europe which is out of sync with the rest of the world. Granted, such a provocative scenario is only meant to break the spell which secularism holds over the European mind and over the social sciences.

4. Could a democratic Muslim Turkey ever join the European Christian club. Or, which is the torn country?

While the threat of a Polish Christian crusade awakens little fear among secular Europeans confident of their ability to assimilate Catholic Poland on their own terms, the prospect of Turkey joining the European Union generates much greater anxieties among Europeans, Christian and post-Christian alike, but of the kind which cannot be easily verbalized, at least not publicly. Turkey has been patiently knocking on the door of the European club since 1959, only to be told politely to keep waiting, while watching latecomer after latecomer being invited first in successive waves of accession.

The formation of the European Coal and Steel Community (ECSC) in 1951 by the six founding members (Benelux, France, Italy, and West Germany) and its expansion into the European Economic Community (EEC) or “common market” in 1957 was predicated upon two historic reconciliations: the reconciliation between France and Germany, two countries which had been at war or preparing for war from 1870 to 1945; and the reconciliation between Protestants and Catholics within Christian Democracy. Indeed ruling or prominent Christian Democrats in all six countries played the leading role in the initial process of European integration. The Cold War, the Marshall Plan, NATO, and the newly established Washington-Rome Axis formed the geopolitical context for both reconciliations. Greece in June 1959 and Turkey in July 1959, hostile enemies yet members of NATO, were the first two countries to apply for association to the EEC. That same July, the other western European countries formed EFTA as an alternative economic association. Only Franco’s Spain was left out of all initial western European associations and alliances.

The EEC always made clear that candidates for admission would have to meet stringent economic and political conditions. Ireland, The United Kingdom, and Denmark formally applied for admission in 1961 but only joined in 1973. Spain and Portugal were unambiguously rebuffed as long as they had authoritarian regimes, but were given clear conditions and definite timetables once their democracies seemed on the road to consolidation. Both joined in 1986. Greece, meanwhile, had already gained admission in 1981 and with it de facto veto power over Turkey’s admission. But even after Greece and Turkey entered a quasi-détente and Greece expressed its readiness to sponsor Turkey’s
admission in exchange for the admission of the entire island of Cyprus, Turkey still did not receive an unambiguous answer, being told once again to go back to the end of the queue. The fall of the Berlin Wall once again rearranged the priorities and the direction of European integration eastward. In 2004, ten new members, eight ex Communist countries plus Malta and Cyprus are set to join the European Union. Practically all the territories of Medieval Christendom, that is, of Catholic and Protestant Europe, will now be reunited in the new Europe. Only Catholic Croatia and “neutral” Switzerland will be left out, while “Orthodox” Greece as well as Greek and Turkish Cyprus will be the only religious “other”. “Orthodox” Romania and Bulgaria are supposed to be next in line, but without a clear timetable. Even less clear is if and when the negotiations for Turkey’s admission will begin in earnest.

The first open, if not yet formal, discussions of Turkey’s candidacy during the 2002 Copenhagen summit touched a raw nerve among all kinds of European “publics”. The widespread debate revealed how much “Islam” with all its distorted representations as “the other” of Western civilization was the real issue rather than the extent to which Turkey was ready to meet the same stringent economic and political conditions as all other new members. About Turkey’s eagerness to join and willingness to meet the conditions, there could be no doubt now that the new, officially no longer “Islamic” government had reiterated unambiguously the position of all the previous Turkish “secularist” administrations. Turkey’s “publics”, secularist and Muslim alike, had spoken in unison. The new government was certainly the most representative democratic government of all of Turkey’s modern history. A wide consensus had seemingly been reached among the Turkish population, showing that Turkey, on the issue of joining Europe and thus “the West”, was no longer a “torn country”. Two of the three requirements stated by Samuel Huntington for a torn country to redefine successfully its civilizational identity had clearly been met: “First, the political and economic elite of the country has to be generally supportive of and enthusiastic about this move. Second, the public has to be at least willing to acquiesce in the redefinition of identity” [xcvii]. It was the third requirement that apparently was missing: “The dominant elements in the host civilization, in most cases the West, have to be willing to embrace the convert.”

The dream of Kemal, “Father of the Turks”, of begetting a modern Western secular republican Turkish nation-state modeled after French republican laïcité has proven not easily attainable, at least not on Kemalist secularist terms. But the possibility of a Turkish democratic state, truly representative of its ordinary Muslim population, joining the European Union, is today for the first time real. The “six arrows” of Kemalism (republicanism, nationalism, secularism, statism, populism, and reformism) could not lead
Minority Claims in Multicultural Societies: A comparative study of case law

towards a workable representative democracy. Ultimately, the project of constructing such a nation-state from above was bound to fail because it was too secular for the Islamists, too Sunni for the Alevi’s, and too Turkish for the Kurds. A Turkish state in which the collective identities and interests of those groups that constitute the overwhelming majority of the population cannot find public representation cannot possibly be a truly representative democracy, even if it is founded on modern secular republican principles. But Muslim Democracy is as possible and viable today in Turkey as Christian Democracy was half a century ago in western Europe. The still Muslim, but officially no longer Islamist party in power has been repeatedly accused of being “fundamentalist” and of undermining the sacred secularist principles of the Kemalist constitution which bans “religious” as well as “ethnic” parties, religion and ethnicity being forms of identity which are not allowed public representation in secular Turkey.

One wonders whether democracy does not become an impossible “game” when potential majorities are not allowed to win elections, and when secular civilian politicians ask the military to come to the rescue of democracy by banning these potential majorities, which threaten their secular identity and their power. Practically every continental European country has had religious parties at one time or another. Many of them, particularly the Catholic ones, had dubious democratic credentials until the negative learning experience of Fascism turned them into Christian Democratic parties. Unless people are allowed to play the game fairly, it may be difficult for them to appreciate the rules and to acquire a democratic habitus. One wonders who the real “fundamentalists” are here. “Muslims” who want to gain public recognition of their identity and demand the right to mobilize in order to advance their ideal and material interests, while respecting the democratic rules of the game, or “secularists” who view the Muslim veil worn by a duly elected parliamentary representative as a threat to Turkish democracy and as a blasphemous affront against the sacred secularist principles of the Kemalist state? Could the European Union accept the public representation of Islam within its boundaries? Can “secular” Europe admit “Muslim” democratic Turkey? Officially, Europe’s refusal to accept Turkey so far is mainly based on Turkey’s deficient human rights record. But there are not-too-subtle indications that an outwardly secular Europe is still too Christian when it comes to the possibility of imagining a Muslim country as part of the European community. One wonders whether Turkey represents a threat to Western civilization or rather an unwelcome reminder of the barely submerged yet inexpressible and anxiety-ridden “white” European Christian identity.

The widespread public debate in Europe over Turkey’s admission showed that Europe was actually the torn country, deeply divided over its cultural identity, unable to answer the
question whether European unity, and therefore its external and internal boundaries, should be defined by the common heritage of Christianity and Western civilization or by its modern secular values of liberalism, universal human rights, political democracy, and tolerant and inclusive multiculturalism. Publicly, of course, European liberal secular elites could not share the Pope’s definition of European civilization as essentially Christian. But they also could not verbalize the unspoken “cultural” requirements that make the integration of Turkey into Europe such a difficult issue. The spectre of millions of Turkish citizens already in Europe but not of Europe, many of them second-generation immigrants, caught between an old country they have left behind and their European host societies unable or unwilling to fully assimilate them, only makes the problem the more visible. “Guest workers” can be successfully incorporated economically. They may even gain voting rights, at least on the local level, and prove to be model or at least ordinary citizens. But can they pass the unwritten rules of cultural European membership or are they to remain “strangers”? Can the European Union open new conditions for the kind of multiculturalism that its constituent national societies find so difficult to accept?[xcviii]

5. Can the European Union welcome and integrate the immigrant “other”? Comparative perspectives from the American experience of immigration

Throughout the modern era, western European societies have been immigrant-sending countries, indeed the primary immigrant-sending region in the world. During the colonial phase, European colonists and colonizers, missionaries, entrepreneurs, and colonial administrators settled all corners of the globe. During the age of industrialization, from the 1800s to the 1920s, it is estimated that ca. 85 million Europeans emigrated to the Americas, to Southern Africa, to Australia and Oceania, 60 per cent of them to the United States alone. In the last decades, however, the migration flows have reversed and many western European societies have instead become centres of global immigration. A comparison with the United States, the paradigmatic immigrant society (despite the fact that from the late 1920s to the late 1960s it also became a society relatively closed to immigration), reveals some characteristic differences in the contemporary western European experience of immigration.

Although the proportion of foreign immigrants in many European countries (United Kingdom, France, Holland, West Germany before reunification), at approximately 10 percent is similar to the proportion of foreign born in the United States, most of these countries still have difficulty viewing themselves as permanent immigrant societies or viewing the native second generation as nationals, irrespective of their legal status. But it is
in the different ways in which they try to accommodate and regulate immigrant religions, particularly Islam, that European societies distinguish themselves not only from the United States but also from one another. European societies have markedly different institutional and legal structures regarding religious associations, very diverse policies of state recognition, of state regulation, and of state aid to religious groups, as well as diverse norms concerning when and where one may publicly express religious beliefs and practices.

In their dealing with immigrant religions, European countries, like the United States, tend to replicate their particular model of separation of church and state and the patterns of regulation of their own religious minorities. France’s etatist secularist model and the political culture of laïcité require the strict privatization of religion, eliminating religion from any public forum, while at the same time pressuring religious groups to organize themselves into a single centralized church-like institutional structure that can be regulated by and serve as interlocutor to the state, following the traditional model of the concordat with the Catholic Church. Great Britain, by contrast, while maintaining the established Church of England, allows greater freedom of religious associations which deal directly with local authorities and school boards to press for changes in religious education, diet, etc, with little direct appeal to the central government. Germany, following the multi-establishment model, has tried to organize a quasi-official Islamic institution, at times in conjunction with parallel strivings on the part of the Turkish state to regulate its diaspora. But the internal divisions among immigrants from Turkey and the public expression and mobilization of competing identities (secular and Muslim, Alevi, and Kurd) in the German democratic context have undermined any project of institutionalization from above. Holland, following its traditional pattern of pillarization, seemed, until very recently at least, bent on establishing a state-regulated but selforganized separate Muslim pillar. Lately, however, even liberal tolerant Holland is expressing second thoughts and seems ready to pass more restrictive legislation setting clear limits to the kinds of un-European, un-modern norms and habits it is ready to tolerate.

If one looks at the European Union as a whole, however, there are two fundamental differences with the situation in the United States. In the first place, in Europe immigration and Islam are almost synonymous. The overwhelming majority of immigrants in most European countries, the UK being the main exception, are Muslims and the overwhelming majority of western European Muslims are immigrants. This identification appears even more pronounced in those cases when the majority of Muslim immigrants tend to come predominantly from a single region of origin, e.g., Turkey in the case of Germany, the Ma’ghreb in the case of France. This entails a superimposition of different dimensions of “otherness” that exacerbates issues of boundaries, accommodation and incorporation. The
Minority Claims in Multicultural Societies: A comparative study of case law

immigrant, the religious, the racial, and the socio-economic disprivileged “other” all tend to coincide.

In the United States, by contrast, Muslims constitute at most 10 percent of all new immigrants, a figure that is actually likely to decrease given the strict restrictions to Arab and Muslim immigration imposed after September 11 by the increasingly repressive American security state. Since the US Census Bureau, the Immigration and Naturalization Service, and other government agencies are not allowed to gather information on religion, there are no reliable estimates on the number of Muslims in the United States[xcix]. Available estimates range widely between 2.8 million and 8 million. Moreover, it is estimated that from 30 to 42 percent of all Muslims in the United States are African-American converts to Islam, making more difficult the characterization of Islam as a foreign, un-American religion. Furthermore, the Muslim immigrant communities in the United States are extremely diverse in terms of geographic region of origin from all over the Muslim world, in terms of discursive Islamic traditions, and in terms of socio-economic characteristics. As a result, the dynamics of interaction with other Muslim immigrants, with African-American Muslims, with non-Muslim immigrants from the same regions of origin, and with their immediate American hosts, depending upon socio-economic characteristics and residential patterns, are much more complex and diverse than anything one finds in Europe.

The second main difference has to do with the role of religion and religious group identities in public life and in the organization of civil society. Internal differences notwithstanding, western European societies are deeply secular societies, shaped by the hegemonic knowledge regime of secularism. As liberal democratic societies they tolerate and respect individual religious freedom. But due to the pressure towards the privatization of religion, which among European societies has become a taken-for-granted characteristic of the self-definition of a modern secular society, those societies have a much greater difficulty in recognizing some legitimate role for religion in public life and in the organization and mobilization of collective group identities. Muslim organized collective identities and their public representations become a source of anxiety not only because of their religious otherness as a non-Christian and non-European religion, but more importantly because of their religiousness itself as the other of European secularity. In this context, the temptation to identify Islam and fundamentalism becomes the more pronounced. Islam, by definition, becomes the other of Western secular modernity. Therefore, the problems posed by the incorporation of Muslim immigrants become consciously or unconsciously associated with seemingly related and vexatious issues concerning the role of religion in the public sphere, which European societies assumed they
had already solved according to the liberal secular norm of privatization of religion.

By contrast, Americans are demonstrably more religious than the Europeans and therefore there is a certain pressure for immigrants to conform to American religious norms. It is generally the case that immigrants in America tend to be more religious than they were in their home countries. But even more significantly, today as in the past religion and public religious denominational identities play an important role in the process of incorporation of the new immigrants. The thesis of Will Herberg concerning the old European immigrant, that “not only was he expected to retain his old religion, as he was not expected to retain his old language or nationality, but such was the shape of America that it was largely in and through religion that he, or rather his children and grandchildren, found an identifiable place in American life,” is still operative with the new immigrants. The thesis implies that collective religious identities have been one of the primary ways of structuring internal societal pluralism in American history.

One should add as a corrective to the thesis that not religion alone, as Herberg’s study would seem to imply, and not race alone, as contemporary immigration studies tend to imply, but religion and race and their complex entanglements have served to structure the American experience of immigrant incorporation, indeed are the keys to “American exceptionalism”. Today, once again, we are witnessing various types of collision and collusion between religious identity formation and racial identity formation, processes that are likely to have significant repercussions for the present and future organization of American multiculturalism. Religion and race are becoming, once again, the two critical markers identifying the new immigrants either as assimilable or as suspiciously “alien”.

Due to the corrosive logic of racialization, so pervasive in American society, the dynamics of religious identity formation assume a double positive form in the process of immigrant incorporation. Given the institutionalized acceptance of religious pluralism, the affirmation of religious identities is enhanced among the new immigrants. This positive affirmation is reinforced moreover by what appears to be a common defensive reaction by most immigrant groups against ascribed racialization, particularly against the stigma of racial darkness. In this respect, religious and racial self-identifications and ascriptions represent alternative ways of organizing American multiculturalism. One of the obvious advantages of religious pluralism over racial pluralism is that, under proper constitutional institutionalization, it is more reconcilable with principled equality and non-hierachic diversity, and therefore with genuine multiculturalism.

American society is entering a new phase. The traditional model of assimilation, turning European nationals into American “ethnics”, can no longer serve as a model of
assimilation now that immigration is literally world-wide. America is bound to become “the first new global society” made up of all world religions and civilizations, at a time when religious civilizational identities are regaining prominence on the global stage. At the very same moment that political scientists like Samuel Huntington are announcing the impending clash of civilizations in global politics, a new experiment in intercivilizational encounters and accommodation between all the world religions is taking place at home[cii]. American religious pluralism is expanding and incorporating all the world religions in the same way as it previously incorporated the religions of the old immigrants. A complex process of mutual accommodation is taking place. Like Catholicism and Judaism before, other world religions, Islam, Hinduism, Buddhism are being “Americanized” and in the process they are transforming American religion, while the religious diasporas in America are simultaneously serving as catalysts for the transformation of the old religions in their civilizational homes, in the same way as American Catholicism had an impact upon the transformation of world Catholicism and American Judaism has transformed world Judaism.

This process of institutionalization of expanding religious pluralism is facilitated by the dual clause of the First Amendment which guarantees the “no establishment” of religion at the state level, and therefore the strict separation of church and state and the genuine neutrality of the secular state, as well as the “free exercise” of religion in civil society, that includes strict restrictions on state intervention and on the administrative regulation of the religious field. It is this combination of a rigidly secular state and the constitutionally protected free exercise of religion in society that distinguishes the American institutional context from the European one. In Europe one finds on the one extreme the case of France, where a secularist state not only restricts and regulates the exercise of religion in society but actually imposes upon society its republican ideology of laïcité, and on the other the case of England, where an established state church is compatible with a wide toleration of religious minorities and a relatively unregulated free exercise of religion in society.

As liberal democratic systems, all European societies respect the private exercise of religion, including Islam, as an individual human right. It is the public and collective free exercise of Islam as an immigrant religion that most European societies find difficult to tolerate precisely on the grounds that Islam is perceived as an “un-European” religion. The stated rationales for considering Islam “un-European” vary significantly across Europe and among social and political groups. For the anti-immigrant, xenophobic, nationalist Right, represented by Le Pen’s discourse in France and by Jörg Haider in Austria, the message is straightforward. Islam is unwelcome and un-assimilable simply because it is a “foreign” immigrant religion. Such a nativist and usually racist attitude can be differentiated clearly from the conservative “Catholic” position, paradigmatically expressed by the Cardinal of
Bologna when he declared that Italy should welcome immigrants of all races and regions of the world, but should particularly select Catholic immigrants in order to preserve the Catholic identity of the country.

Liberal secular Europeans tend to look askance at such blatant expressions of racist bigotry and religious intolerance. But when it comes to Islam, secular Europeans tend to reveal the limits and prejudices of modern secularist toleration. One is not likely to hear among liberal politicians and secular intellectuals explicitly xenophobic or anti-religious statements. The politically correct formulation tends to run along such lines as “we welcome each and all immigrants irrespective of race or religion as long as they are willing to respect and accept our modern liberal secular European norms”. The explicit articulation of those norms may vary from country to country. The controversies over the Muslim veil in so many European societies and the overwhelming support among the French citizenry, including apparently a majority of French Muslims, for the recently passed restrictive legislation prohibiting the wearing of Muslim veils and other ostensibly religious symbols in public schools, as “a threat to national cohesion”, may be an extreme example of illiberal secularism. But in fact one sees similar trends of restrictive legislation directed at immigrant Muslims in liberal Holland, precisely in the name of protecting its liberal tolerant traditions from the threat of illiberal, fundamentalist, patriarchal customs reproduced and transmitted to the younger generation by Muslim immigrants.

Revealingly enough, we all remember that Prime Minister Jean-Pierre Raffarin, in his address to the French legislature defending the banning of ostensibly religious symbols in public schools made reference in the same breath to France as “the old land of Christianity” and to the inviolable principle of laïcité, exhorting Islam to adapt itself to the principle of secularism as all other religions of France have done before. “For the most recently arrived, I’m speaking here of Islam, secularism is a chance, the chance to be a religion of France”. The Islamic veil and other religious signs are justifiably banned from public schools, he added, because “they are taking on a political meaning”, while according to the secularist principle of privatization of religion, “religion cannot be a political project”. Time will tell whether the restrictive legislation will have the intended effect of stopping the spread of “radical Islam” or whether it is likely to bring forth the opposite result of radicalizing further an already alienated and maladjusted immigrant community.

The positive rationale one hears among liberals in support of such illiberal restriction of the free exercise of religion is usually put in terms of the desirable enforced emancipation of young girls, if necessary against their expressed will, from gender discrimination and from patriarchal control. This was the discourse on which the assassinated liberal politician Pim Fortuyn built his electorally successful anti-immigrant platform in liberal Holland, a
campaign which is now bearing fruit in new restrictive legislation. While conservative religious people are expected to tolerate behaviour they may consider morally abhorrent such as homosexuality, liberal secular Europeans are openly stating that European societies ought not to tolerate religious behaviour or cultural customs that are morally abhorrent in so far as they are contrary to modern liberal secular European norms. What makes the intolerant tyranny of the secular liberal majority justifiable in principle is not just the democratic principle of majority rule, but rather the secularist teleological assumption built into theories of modernization that one set of norms is reactionary, fundamentalist, and anti-modern, while the other set is progressive, liberal, and modern.

6. Does one need references to God or to its Christian heritage in the new European constitution or does Europe need a new secular “civil religion” based on Enlightenment principles?

Strictly speaking, modern constitutions do not need transcendent references nor is there much empirical evidence for the functionalist argument that the normative integration of modern differentiated societies requires some kind of “civil religion”. In principle, there are three possible ways of addressing the quarrels provoked by the wording of the Preamble to the new European Constitution. The first option would be to avoid any controversy by relinquishing altogether the very project of drafting a self-defining preamble explaining to the world the political rationale and identity of the European Union. But such an option would be self-defeating in so far as the main rationale and purpose of drafting a new European constitution appears to be an extra-legal one, namely to contribute to European social integration, to enhance a common European identity, and to remedy the deficit in democratic legitimacy[civ].

A second alternative would be the mere enumeration of the basic common values that constitute the European “overlapping consensus”, either as self-evident truths or as a social fact, without entering into the more controversial attempt to establish the normative foundation or to trace the genealogy of those European values. This was the option chosen by the signatories of the Declaration of American Independence when they proclaimed “We Hold These Truths To Be Self-Evident”. But the strong rhetorical effect of this memorable phrase was predicated on the taken-for-granted belief in a Creator God who had endowed humans with inalienable rights, a belief shared by

republican deists, Establishmentarian Protestants, and radical-pietist sectarians alike. In our post-Christian and post-modern context, it is not that simple to conjure such selfevident
“truths” that require no discursive grounding. The 2000 Solemn Proclamation of the Charter of Fundamental Rights of the European Union attempts to produce a similar effect with its opening paragraph: “Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality, and solidarity.” But the proclamation of those values as a basic social fact, as the common normative framework shared by most Europeans, could hardly have the desired effect of grounding a common European political identity. It simply reiterates the already existing declarations of most national European constitutions, of the 1950 European Convention on Human Rights, and most importantly of the 1948 Universal Declaration of Human Rights of the United Nations. Without addressing explicitly the thorny question of Europe’s “spiritual and moral heritage” and its disputed role in the genesis of those supposedly “universal values”, it is unlikely that such a proclamation can have the desired effect of inscribing those values as uniquely, particularly, or simply poignantly “European”.

The final and more responsible option would be to face the difficult and polemical task of defining through open and public debate the political identity of the new European Union: Who are we? Where do we come from? What constitutes our spiritual and moral heritage and the boundaries of our collective identities? How flexible internally and how open externally should those boundaries be? This would be under any circumstance an enormously complex task that would entail addressing and coming to terms with the many problematic and contradictory aspects of the European heritage in its intranational, inter-European, and global-colonial dimensions. But such a complex task is made the more difficult by secularist prejudices that preclude not only a critical yet honest and reflexive assessment of the Judeo-Christian heritage, but even any public official reference to such a heritage, on the grounds that any reference to religion could be divisive and counterproductive, or simply violates secular postulates.

The purpose of my argument is not to imply that the new European constitution ought to make some reference to either some transcendent reality or to the Christian heritage, but simply to point out that the quarrels provoked by the possible incorporation of some religious referent in the constitutional text would seem to indicate that secularist assumptions turn religion into a problem, and thus preclude the possibility of dealing with religious issues in a pragmatic sensible manner. Firstly, I fully agree with Bronislaw Geremek that any geneological reconstruction of the idea or social imaginary of Europe that makes reference to Greco-Roman antiquity and the Enlightenment while erasing any memory of the role of Medieval Christendom in the very constitution of Europe as a civilization evinces either historical ignorance or repressive amnesia.

Secondly, the inability to openly recognize Christianity as one of the constitutive
components of European cultural and political identity means that a great historical opportunity may be missed to add yet a third important historical reconciliation to the already achieved reconciliation between Protestant and Catholics and between warring European nation-states, by putting an end to the old battles over Enlightenment, religion, and secularism. The perceived threat to secular identities and the biased overreaction to exclude any public reference to Christianity belies the self-serving secularist claims that only secular neutrality can guarantee individual freedoms and cultural pluralism. What the imposed silence signifies is not only the attempt to erase Christianity or any other religion from the public collective memory, but also the exclusion from the public sphere of a central component of the personal identity of many Europeans. To guarantee equal access to the European public sphere and undistorted communication, the European Union would need to become not only post-Christian but also post-secular[cvi].

Finally, the privileging of European secular identities and secularist self-understandings in the genealogical affirmation of the common European values of human dignity, equality, freedom, and solidarity may not only impede the possibility of gaining a full understanding of the genesis of those values and their complex process of societal institutionalization and individual internalization, but also preclude a critical and reflexive self-understanding of those secular identities. David Martin and Danièle Hervieu-Léger have poignantly shown that the religious and the secular are inextricably linked throughout modern European history, that the different versions of the European Enlightenment are inextricably linked with different versions of Christianity, and that cultural matrixes rooted in particular religious traditions and related institutional arrangements still serve to shape and encode, mostly unconsciously, diverse European secular practices[cvii]. The conscious and reflexive recognition of such a Christian encoding does not mean that one needs to accept the claims of the Pope or of any other ecclesiastical authority to be the sole guardians or legitimate administrators of the European Christian heritage. It only means to accept the right of every European, native and immigrant, to participate in the ongoing task of definition, renovation, and transmission of that heritage. Ironically, as the case of French laic etatism shows, the more secularist self-understandings attempt to repress this religious heritage from the collective conscience, the more it reproduces itself subconsciously and compulsively in public secular codes.

**SECTION V**

*Majorities and minarets: religious freedom and public space*
Minority Claims in Multicultural Societies: A comparative study of case law

«Imagine there’s no countries;
it isn’t hard to do.
Nothing to kill or die for,
and no religion, too»

(J. Lennon, Imagine)

«God is a concept
by which we measure
our pain »

(J. Lennon, God)

«My sweet Lord,
I really want to see you,
really want to show you,
that it won’t take long, my Lord»

(G. Harrison, My sweet Lord)

1. Introduction: the Swiss case

In late November 2009, as we remember, Swiss voted in a national referendum (I would like to take the Swiss case as a paradigmatic example) to ban all future construction of Islamic minarets in their country. This decision drew widespread criticism both inside and outside Switzerland. It was regarded as a significant breach of liberal principles of freedom and equality, and as evidence of a wave of Islamophobia that was sweeping across Europe[cviii]. Switzerland is unusual in the use it makes of different forms of popular referendum – this one was a ‘federal initiative’ that added a new clause to the Swiss constitution – to decide questions of law and policy that in other places are determined by representative institutions. The proposal won the approval of 57.5% of those who voted, and gained majority support in 22 out of 26 cantons. Thus it appears to present a clear case in which
the will of a democratic majority came into collision with the rights of a religious minority, here the rights of Swiss Muslims to build mosques with minarets or to add minarets to existing buildings. And so it raises some fundamental questions of political philosophy: the general issue of majority will versus minority rights, but also the more specific issue of a historic nation’s right to preserve features of its cultural inheritance in the face of demands for equal treatment by incoming minorities. Thus the Swiss minarets decision raises questions for those like myself who want to defend a liberal form of nationalism. Can national self-determination and liberalism be coherently combined, or must one of these ideas give way to the other in hard cases?

This paper looks closely at the issues raised by the minarets ban, exploring both the arguments that were used, or might have been used, to support it, and the arguments that were brought, or might have been brought, on the other side. It takes both sets of arguments seriously. In doing so, it sets aside the possibility that the minarets initiative was merely a pretext for certain political actors, most notably the Swiss People’s Party, to win support by riding on a wave of hostility to Islam. There is no question that the campaign for the initiative contained Islamophobic elements, not least the rather lurid poster that showed the Swiss flag festooned with black minarets looking rather like bayonets with a burka-clad women standing in front of it. Yet in politics defensible positions, whether of the right or of the left, can always be supported by individual persons for indefensible reasons, and it would be reductive to suppose that any political decision that burdens Muslims at the expense of other citizens, as this one did, must be dismissed as stemming merely from religious prejudice. In early 2013 the Swiss again voted in a referendum, this time to widespread liberal applause, on a proposal to curb executives’ pay and bonuses and to outlaw ‘golden parachutes’. No doubt some of those who supported this proposal were motivated by envy and resentment rather than principled considerations; yet this should not cause us to discount the arguments of social justice that were used to defend it.

2. The rights and interests of religious minorities in the sphere of public space

The particular feature of the minarets decision that sets it apart from other measures that affect the rights and interests of religious minorities is that it concerns the character of public space. It is generally recognized that decisions that burden such groups stand in need of special justification, since they may force a religious minority to abandon some practice or mode of behaviour that they regard as central to their identity, whether this is a matter of a style of dress, the use of time set aside for religious ceremonies, or particular forms of religious expression. In many cases, it is possible to circumvent the problem by employing what has been called ‘the strategy of privatisation’ together with ‘the rule-and-
exemption approach’ (which is often the solution favoured by liberals). Typically the problem is whether to grant exemption on religious grounds to laws that otherwise are general in scope. Thus a majority might support laws that regulate animal slaughter, and the issue would be whether to give religious minorities special dispensation to kill animals in ways that produce halal or kosher meat. Or the question might be whether to allow believers to wear religious symbols in defiance of general rules that lay down a dress code for workplaces or schools. In these cases, a majority may simply legislate to impose a uniform rule on all citizens, but it also has the option of privatising the issue by granting exemptions to designated minorities who can show that complying with the rule would severely burden them by requiring them to act against their consciences or prevent them from engaging in important symbolic practices. Whether such a rule-and-exemption approach is defensible in any particular case will of course raise issues of justice and equality. But wherever we think that the balance should be struck between majority will and minority rights in such cases, the option of privatisation, where the majority agrees to do one thing but allows the minority to go its own way, is always on the table.

This is not so, however, in cases where what is at stake is essentially some feature of public space that all parties will have to share. Here either the majority must decide on the basis of its own preferences or convictions, or it must defer to the minority. Suppose the question is what flag should fly above the city hall. While sometimes a compromise may be possible – different flags might fly on alternate days – what is not possible is for the majority view to prevail while granting an exemption to the minority. Everyone has to walk past the flag whatever design is chosen.

The Swiss minarets decision, by virtue of its national scope and the vigorous political campaign that preceded it, was a particularly striking example of a dispute over the place of religious symbols in public space, but it reflected a wider set of arguments in European countries about the construction of mosques, their siting, architecture and so forth. Very often proposals to build mosques have been opposed by groups of citizens who are concerned about what they see as the likely impact of the mosque on the character of the surrounding community. Some of these objections are practical, having to do with increases in traffic, for example, but in many cases the underlying concern is with the symbolic character of public space. Minarets, their shape and size, are often a major source of dispute. A minaret is seen by its opponents as a sign of cultural domination, as will shortly become apparent in the Swiss case, and resisted on that basis. As one commentator puts it, ‘the minaret appears to have become a symbol par excellence of the conflict surrounding Islam, or rather of its visibility in the public eye – even more than the hijab, for example’. In a number of cases, resistance to a perceived threat of domination has
been shown by local authorities restricting the height of minarets, sometimes ruling that they must remain lower than nearby churches or cathedrals. It is hard to make sense of this concern about the relative height of a spire unless one understands the underlying issue to be one about which culture should be given dominant expression in the architecture of public space. And this, clearly, is an issue that has to be decided one way or the other. Either the state, or the local authority, reflects the culture of the majority by privileging physical expressions of that culture and limiting the opportunities for minorities to express their religious commitments in public space, or it adopts a stance of neutrality and treats all religious (and non-religious) buildings in the same way, regulating their construction only by general safety and zoning laws, and so forth.

In the Swiss case, the referendum on minarets came about as a result of a dispute in a small town called Wangen bei Olten in which an application by the Olten Turkish Cultural association to add a small minaret to its clubhouse met with opposition and was refused by the local building commission. Following a legal battle, the Federal Supreme Court ruled that the minaret could be built. This provoked the right-wing Swiss People’s Party to gather the 100,000 votes needed for a referendum on a federal initiative whose effect would be to amend article 72 of the Swiss constitution by adding a simple, stark clause: ‘Der Bau von Minaretten ist verboten’. The Swiss government, which was opposed to the ban, and believed on the basis of prior polling data that it would be defeated, nevertheless accepted the outcome of the referendum. Outside of Switzerland it met with widespread condemnation, not only among Muslims, but among liberal commentators, and even the Vatican, which described it as ‘a blow to religious freedom’. It was confidently predicted that the decision would be overturned through an appeal to the European Court of Human Rights, but so far at least this has not happened. Swiss Muslim groups have attempted to bring such an appeal, but their lawsuits were turned down as inadmissible on the grounds that they could not show that they were ‘victims’ in the relevant sense, since according to the court the ban had had no practical effect on their exercise of their human rights. The current position, therefore, is that no more minarets can be built on Swiss soil to add to the four that already exist.

3. **What arguments were offered in the course of the campaign leading up to the referendum?**

The central claim of proponents of the ban was that minarets are signs of Muslim power and territorial advancement. As one put it, they should be seen as ‘spearheads of political Islamisation’[cxii]. Another compared them to ‘the flags that generals place on strategic military maps to identify a conquered territory’[cxiv]. Allowing minarets to be built would
also lead to further demands, for example for the muezzin’s call to prayer to be permitted, and for the introduction of Sharia law. It was further claimed that minarets were not essential to the practice of Islam itself. According to an initiative committee press release: ‘Millions of Muslims worldwide practice their faith in mosques without minarets. The minaret is mentioned nowhere in the Quran. It has no religious function. No Muslim is affected in his free exercise of religion if minarets are not built’.\[cxv\]

Supporters of the ban rejected claims that minarets and church steeples should be treated alike, on the grounds that ‘the church tower is an expression of our Christian-western cultural inheritance’; furthermore the modern Christian church, in contrast to Islam, recognized the separation of church and state[\text{cxvi}]. The implication was that the building of a minaret was a political act in a way in which the construction of a church spire would not be. Moreover the wish to build minarets was a sign that Muslims were unwilling properly to integrate into Swiss society. Finally, a women’s group ‘against the Islamisation of Switzerland’ claimed that support for the ban meant support for rights to freedom and equality for all women living in Switzerland.

Opponents of the ban mounted a range of arguments, including feminists within the main parties who claimed that the effect of the initiative would be to further isolate Muslim women from others in Switzerland. It was argued that minarets themselves were not the real issue; the campaign was being used as a way of stirring up hostility to Islam in general. Rather than encouraging the integration of Muslims into Swiss society, the ban would have precisely the opposite effect. Such an initiative endangered religious peace and religious tolerance, and by singling out the symbol of one particular religion for prohibition, it violated the principle of equal treatment of religions. It was further argued that existing legislation gave local authorities adequate powers to regulate all building proposals, including minarets, so imposing a blanket ban was completely unnecessary to avoid any problems that building a minaret in a particular place might pose.

Although these substantive claims on either side formed the heart of the debate, the second-order issue of what was and was not a proper subject for democratic decision occasionally surfaced. Thus opponents of the ban argued that it was contrary to international law, and would be overturned by the European Court of Human Rights, provoking supporters to claim that the initiative itself was a beacon of Swiss sovereignty and Swiss democracy, to be contrasted with the undemocratic character of international law. After the ban was passed, questions were raised about the prerogative of the Swiss parliament to declare initiatives invalid if they violated ‘peremptory’ norms of international law. It was suggested that the federal chancellery might be better placed to perform this function instead.
The central question of political philosophy raised by the minarets ban is whether a prohibition such as this, which restricts the public expression of one particular religion, runs counter to fundamental liberal principles. In addressing it, I want to set aside for later discussion the issue of whether a constitutional amendment covering the whole of Switzerland was an appropriate way for those opposed to minarets to pursue their objective – as opposed, for example, to more routine legislative referenda held in individual cantons. Here the question is where the line should be drawn between decisions that are taken by normal democratic means, and accordingly subject to revision by the same means at some later date if the political community changes its mind, and decisions that are properly constitutional in nature, i.e. intended to bind future democratic majorities by laying down principles that their decisions cannot contravene. It is one thing to say that a demos is entitled to vote to ban the building of minarets, and another to say that its decision should be or may be constitutionally entrenched. Setting this issue aside for the time being, I propose to focus on the simpler case where a democratic majority decides not to allow the building of minarets in the area under its jurisdiction, but without denigrating Muslims or restricting their freedom in other ways. It does so because it wishes the area to retain its traditional character, which includes the prominence of church spires and other features that reflect its western-Christian past. Why might such a decision be open to objection?

There are two main grounds on which such a decision might be challenged. First, we can ask whether policies such as a minaret ban infringe the human rights of those whose religious freedom is restricted. Second, we can ask whether a restriction that applies only to the symbols or practice of one religion but not to those of others violates a liberal principle of equal treatment or neutrality. Of course these two approaches are not completely distinct because of the existence of a human right against discrimination. Nevertheless the focus appears to be different. In the first case we are asking about a restriction on religious freedom, and our question will be about the scope of the right of religious expression: does religious free expression extend to the right to construct religious buildings of a particular type? In the second case the question is about the equal treatment of religions, or alternatively about the grounds on which it may be justifiable to privilege one religion in particular when public space is at stake. Discriminating between religions might be objectionable even in cases where there is no basic right to the form of expression that is being discriminated against. The basis for an objection on human rights ground might begin with the charter provisions that protect religious freedom. Thus Article 18 of the International Covenant on Civil and Political Rights contains the following clause:

1. ‘Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and
freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching’.

There is also, however, a rider that sets out the grounds on which this freedom can be restricted:

3. ‘Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others’. [cxx] Very similar wordings can be found in Article 9 of the European Convention on Human Rights.

4. How might these human rights provisions apply to the minarets case?

Let me deal first with what appears to be the more straightforward issue, namely whether the reasons presented by those opposed to the building of minarets correspond to any of the limitations referred to in Article 18.3. It seems clear that they do not. Supporters of the ban point to the general social and cultural consequences that they claim would follow if minarets were permitted to be built. But they do not suggest that minarets pose a risk to public safety, order, health, or morals and it is difficult to see how even a prima facie plausible case along these lines could be made. When practical objections to minarets are raised, they refer to the possible nuisance value of these edifices to those living in the surrounding area, and especially of the risk that they might in future be used for the call to prayer. But this cannot be construed as affecting the fundamental rights and freedoms of others. Now one should note here that in practice courts, including the European Court, have allowed a wider set of considerations to limit the exercise of human rights, including the right to freedom of religion; in other words, they interpret ‘the rights and freedoms of others’ more generously such that nuisance value might qualify as a rights-violation[cxxi]. On a more rigorous interpretations of human rights (which I favour), however, it is very hard to see that one could restrict the right to build minarets by appealing to the human rights of other people.

So the question then becomes whether a positive defence of such a right could be mounted by reference to Article 18.1 which sets out the right to freedom of religion. It is clear from the wording of the clause that the right is intended to cover more than just the right to hold religious convictions in private, or to express them in the space of one’s home. The Article refers explicitly to the manifestation of religious belief ‘in community with others’ and ‘in public’. On the other hand, it refers only to ‘worship, observance, practice and teaching’ and says nothing directly about the physical environment within which these
activities are going to occur. It does not say that there is a human right to erect buildings of a distinctive type within which to carry out worship, observance, and so forth. So we are not being given explicit guidance on whether the human right will include the right to erect minarets, or more generally to construct churches, synagogues and other buildings within which to practise one religion.

The answer to our question may, however, seem to be obvious. The freedom of religion clause is understandably general in nature, and should not be expected to descend to matters of detail such as religious buildings. But insofar as the intention of the clause is to protect the public practice of religion, by implication it also protects the creation of physical sites within which that practice is going to occur. If a church congregation is going to exist, it needs a church inside which to gather, complete with altar and so forth, and similarly for the other faiths. Such an extension of the right seems hard to deny. But it rests on the thought that certain physical conditions are essential to the practice of the religion. And it therefore invites us to draw a distinction between physical elements that are indeed essential, and others that are merely desirable because, for example, they enhance the experience of worshippers in aesthetic or other ways. A church altar may be essential because of the role that it plays in the Mass or Communion service, but having stained glass windows in a church should be seen simply as a desirable addition because of the way in which it creates a special type of atmosphere within the building.

Can such a distinction be drawn, and should it be? Let me take the questions in reverse order, since if we shouldn’t draw a distinction between what’s essential to religious practice and what’s merely desirable, we won’t need to get into the intricacies of how the line should be drawn. Recall that what is at stake here is the human right to religious freedom, and specifically religious expression. We are not yet dealing with the wider question of what a liberal state should permit. Much will then depend on how one understands the purpose, and the justification, of human rights. This is a large topic, and I will assume a position that I have defended elsewhere, which is that the aim of human rights is to provide their bearers with the opportunity to lead a minimally decent life, by protecting them against threats imposed primarily by states, and by creating obligations for states and other institutions to provide the material conditions for such a life. On this understanding, the content of human rights should be construed in a minimalist way, in the sense that they should be understood to require only the least demanding way of securing the relevant opportunities. If the human right to shelter can be satisfied by building either type A houses or type B houses, and type A houses are cheaper to build, then a state that builds sufficient type A houses has discharged its human rights obligations even if many people would prefer to live in houses of type B.
Since having the opportunity for a minimally decent life does require having the right to religious worship and observance, there can be no objection, on the view I defend, to including this right in the human rights catalogue. But equally it must be understood to extend only what is essential to religious practice, the equivalent of a type A house. So we how can we tell what is essential and what is not? There are broadly two ways of approaching this question[[cxxiv]]. One is to regard it as a matter of individual conviction. What is essential is what any person, or any group of people, regards as essential. Debates in the U.S. about freedom of religious expression have tended to move in this direction[[cxxv]]. In contrast, European approaches to religious freedom, including decisions taken in the European Court, have adopted a more objective approach, applying a test of necessity to determine whether a particular activity is or is not required by the religion in question. This may involve consulting relevant texts, or obtaining expert evidence from religious leaders. This approach is open to the objection that ‘when there is disagreement between various members of a religion or belief over issues of doctrine and practice, the desire of the European Commission to find an objective and authoritative answer to whether the practice is required can lead it to decide between competing approaches, sometimes rejecting an applicant’s claim because it is outside the mainstream of his or her religion’.[[cxxvi]] Despite this difficulty, there are good reasons to prefer the objective approach. If someone makes a claim that some activity or feature is required by her religion, they are saying something about what an established body of religious doctrine and practice demands. Although some requirements may at a particular moment be debated within the faith, others cannot be, otherwise we do not have a religion in any recognizable sense, but simply an aggregation of individual people laying claim to the same religious designation. There can be debates about whether courts in particular are well placed to reach valid conclusions about what is or is not an essential component of religious practice[[cxxvii]], but there must in general be a right or wrong answer to questions of this kind.

If we turn to the particular case of minarets, I know of no case where a court has been asked to rule on whether it is an essential feature of an Islamic mosque that it should have one. But were a court to be asked, it is likely that it would conclude that it was not essential. Relatively few mosques in European societies currently have them, and this is not just because applications to build them have been refused[[cxxviii]]. Historically, it appears that associating a tower with a mosque did not become widespread until the 9th century, and the building of minarets at that time had more to do with their functions as symbols of religious power than with their role in Islamic religious practice; they were not, for example, regarded as essential for broadcasting the call to prayer[[cxxix]]. To that extent, opponents who argue that minaret building has a symbolic purpose as an expression of power rather than a strictly religious function appear to have a point. The Ottoman style of minaret which
was caricatured in the provocative pro-ban poster has only fairly recently spread as a recognizable Islamic symbol to regions of the world in which previously mosques were built without towers[xxx].

So although, for Muslims, the right to religious freedom must include the right to have access to a mosque - to build one, or to convert an existing building, if necessary - the features that are essential to a mosque are those that allow collective prayer and other rituals to be performed, and a minaret does not qualify for that purpose. What a minaret does, plainly, is to signal to the wider world that the building it is attached to is a mosque, increase its visibility, and in certain cases make it easier to broadcast the call to prayer. These may all be seen as desirable features, but they fall into the same broad category as stained glass windows, or indeed church spires, which are equally not essential to Christian practice. So although minarets cannot be objected to on human rights grounds, as I argued earlier, neither can they be defended on human rights grounds. The right to religious freedom does not cover them. So the first objection to a democratic ban on minarets fails. If such a ban is wrong, it is not because it violates the human rights of Muslims.

We should turn, therefore, to the second possible reason for objection that I outlined, namely that a ban would breach a liberal principle of equal treatment of religions, or of state neutrality. Clearly a minaret ban is directed against the practitioners of one particular religion, namely Islam. It makes no pretense of equal treatment; indeed supporters, as we have seen, argue quite openly that it is legitimate in countries like Switzerland to give favourable treatment to the historically-established religion, namely Christianity. So the issues we have to address here are whether the equality principle in question is valid, what its scope is, and whether it should be regarded as a constraint on democratic decisions over the use of public space.

5. **The citizens’ equality principle in a liberal state**

I will take for granted without discussion here the principle that the citizens of a liberal state should receive equal treatment with respect to their rights and opportunities, and bracket off the complications that may arise when some denizens of a liberal state do not qualify for citizenship. The relevant point for what follows is that the reasons behind the principle of equal rights also require the state to treat citizens equally when it comes to providing the resources that they need to pursue their individual or collective life projects. Very often this will take the form of providing, or subsidizing the provision of, public goods. So when the state contributes towards sports grounds, or art museums, or national parks, it should do so with the general aim of giving all citizens access to goods that they value, and
value to approximately the same extent overall. Specifying a formal rule that captures this intuition is quite tricky[cxxxi], but for present purposes all we need is the broad claim that a state that provides hockey pitches but not baseball grounds at public expense in a society that includes significant numbers of people wishing to play either sport is behaving unjustly, and so equally is a state that subsidizes one form of music but not another, unless it can be shown that there is a special reason (of the right kind) why the preferred form won’t survive without subsidy.

Applying this principle to the case of religions, it appears that if there is reason to support one religion, for example by granting a church charitable status for purposes of taxation, the same must apply to all religions, again in the absence of special factors. So the equality principle holds here too. But now we encounter a difficulty. The argument for equal treatment goes through when there is no conflict involved in supplying different public goods, other than over the resources that are needed to produce the goods. So long as a local authority has sufficient space and resources, it can build a baseball stadium alongside a hockey field, and the presence of one does not detract from the value of the other. But this appears not to be the case in the disputes over public space that led to the Swiss minaret ban. Here it seems that the goods are to some extent rival. At least in the eyes of those who argued in favour of the ban, the building of a minaret in a particular location diminishes the quality of the surrounding public space for those who do not subscribe to Islam. We can see this rivalry occurring particularly clearly in cases where the dispute turns partly on the height of the proposed minaret in relation to nearby churches.

Now it might seem absurd for people to care about whether a minaret is 55 or 65 metres high - I shall address this issue shortly. But supposing that they do, it seems that the equal treatment principle is in trouble. Either the public architecture of a particular town or city will reflect its predominantly Christian heritage, with the church spire looming over the surrounding streets, giving those who value this heritage what they want, or the erection of a minaret makes a statement about the increasing public prominence of Islam, a good presumably for local Muslims. So what could equal treatment mean here? The state might try to rid public space of all culturally laden symbols, which would presumably mean demolishing church spires and other Christian artifacts as well as banning the construction of minarets. But this would mean pursuing equality at the expense of giving any of the rival groups the public goods that it sought, a form of cultural as well as physical levelling down. A more plausible suggestion is that it should regulate public space only through the application of neutral building regulations, zoning laws, etc., and then allow the market to decide what actually gets built. It would be irrelevant whether what was being proposed was a church, a mosque or a supermarket; the only relevant considerations governing the
decision would be culturally neutral factors such as safety, noise, congestion and so forth.

The problem with this suggestion is that by disaggregating decisions about the use of space and allowing the market to rule, it denies that there is any collective interest in the way that cities, towns and villages look in general. Yet plainly this is something that people care about a great deal. They want the places they live in and are attached to look both beautiful and familiar, and this means that when new buildings are planned they should be designed to harmonize with their surroundings. So far this is just an aesthetic argument. But it shows that there is a legitimate case for subjecting what goes on in public space to democratic control. People should be able to decide how tightly or loosely they want new buildings to match what already exists, and this is no doubt going to depend on the character of the status quo ante. What is acceptable in a stone-built village is going to be very different from what will work in a city landscape that is already a jumble of architectural flights of fancy. Nonetheless having public space that reflects the aesthetic preferences of the people who occupy it is a public good, and accordingly something that justifies democratic control rather than leaving everything to private initiative and the market.

It could be said in reply here that this argument for democratic control over public space will also extend to the external aspect of private buildings, with intolerant consequences. For example, someone might wish to decorate the outside of their house in a particular way to celebrate a religious festival, and since this decoration will be visible to passers-by, it will according to the principles I am defending be potentially subject to a democratic veto. Now the design of private buildings is already governed by planning law in most jurisdictions, so the baseline here is not complete freedom to do whatever the owner wishes with her private property. The question to ask is whether a form of decoration changes the appearance of the building in a fundamental way, and this is a matter both of the scale of the change and whether it is permanent or temporary. If the change is fundamental and clearly visible to outsiders, then it falls within the scope of democratic decision. Admittedly, some judgement is involved here: one may ask whether in a particular case it is reasonable to regard what someone is doing with their private property as having a significant external impact, and it will be a feature of a tolerant society that it permits owners a good deal of freedom. A minaret, however, is by its nature both a permanent and a prominent feature of the neighbourhood it occupies, and so a proposal to build one is clearly a proper subject for democratic debate.

The argument up to this point is essentially about the physical appearance of buildings, and what it suggests in relation to mosques and minarets is simply that they should be built in a style that harmonises with existing town – or cityscapes, that if there is a
particularly fine view of the local cathedral, a minaret shouldn’t be sited just where it blocks that view, and so forth – nothing has been said so far about their religious significance. In order to produce even a prima facie case for banning minarets as Islamic symbols, we have to make the much stronger assertion that a majority is entitled to ensure that the appearance of public space reflects its own cultural values, so that where those values reflect a Christian heritage, it can insist that Christian buildings and symbols should remain hegemonic. This means explicitly setting aside the equal treatment principle. Instead the claim must be that the state is not required to remain neutral when what is at issue is the culture of the majority. What could justify this?

6. What could justify the principle of the majority?

If the majority who sought to assert the pre-eminence of a particular culture were simply a randomly assembled group, it would be difficult to justify their discriminatory decisions. The claim to pre-eminence only carries weight where the majority in question is also a majority nation with deep historic roots in the territory in which the decisions are being taken. For such a group, the physical shape of the territory is likely to serve as one of the principal media through which the public culture of the group is reproduced over time. Clearly it is not the only medium: the group’s culture will also be conveyed through the practices of everyday life, through books and other cultural artefacts and so forth. But the physical environment, including the built environment, will be an important repository of culture. Indeed the nation’s claim to control the territory itself may be based on the way it has shaped the land in the service of its cultural and other needs[cxxxiv]. In a sense, then, members of the national majority come to understand their own historic identity partly by looking around at the environment they have created. When they do this, they will experience public space that is replete with cultural symbols: statues of national leaders, historic monuments, war memorials, etc. In cases where a particular religion has played the dominant role in natural life, this will extend to churches, temples, mosques and so forth. So the value that is created by preserving this heritage is the value of national identity itself. Now this value can of course be disputed. One of the major points of disagreement in contemporary political theory is between those who believe that a modern democratic state functions most effectively when its citizens share a national identity, and those who argue that in societies that are increasingly multicultural, all that is required is that citizens should subscribe to a common set of principles, or display ‘constitutional patriotism’. [cxxxv]

This is not the place to engage further in this particular dispute. But it is important to see that the claim to cultural pre-eminence only rises above simple prejudice in cases where the majority culture that is being protected has evolved among people who share a national identity and have occupied the space in question for many generations, changing its
Minority Claims in Multicultural Societies: A comparative study of case law

appearance in ways that mirror that culture. The minority religious culture that is being denied equal treatment, on the other hand, is a relatively recent arrival. That is the context in which departures from equality may look *prima facie* justifiable.

If we apply this to the minarets case, however, it might be argued that there is no real threat to the majority culture when a minaret is added to a mosque. There is no sense in which a church is demolished every time a minaret is built. If we examine the Swiss debate, we find there is dissonance between the claims made by supporters of the minaret ban, and the intentions we can reasonably attribute to those who want to build minarets. As we saw, advocates of the initiative argued that the building of minarets was a means by which Islam as a whole staked its territorial claims, akin to the flags planted by successful generals. This portrays public space as zero-sum: either it is wholly Western/Christian in character or it is wholly Islamic. Minaret builders, we may assume, would disavow any such aim. They would argue that a minaret would take its place alongside church steeples and other buildings in shared, multicultural public space. It would be hard for them to deny that a minaret serves to symbolise the arrival and in some sense the legitimacy of Islam. But they would repudiate any intention to dominate or conquer the place where it is built. So here the two sides hold conflicting views of what is at stake in the minarets dispute. Whose interpretation should we accept?

The majority can of course impose its interpretation by voting to ban minaret construction. But for this to be even *prima facie* justifiable, there must be a reasonable case that its cultural heritage would be harmed by the arrival of a minaret. Such a case seems difficult to make unless the proposed minaret will indeed become the feature that dominates the surrounding space. This explains why there may legitimately be sensitivity about the relative height of the minaret compared to other buildings in the vicinity, but does not seem to justify the ban itself. Perhaps it might be argued that there is a collective action problem here: one new minaret, especially in a town or city, will not inflict cultural damage, but a series of them in finite space will change its character permanently. This, however, points towards a series of decisions on specific proposals rather than a blanket ban. I will return to this issue at the end of the paper.

7. **A collective action problem?**

So far some authors have been asking about the reasons that might justify a national majority in voting against minaret construction; they have not yet looked at the fairness claims of the Islamic minority who may wish to build them. Muslims in Switzerland are an immigrant group, and they follow writers such as Will Kymlicka in assuming that the
cultural rights of such groups are different from the rights of national minorities or indigenous peoples\[cxxxvi]. I also assume that where a legitimate state exists, and has territorial rights, it is entitled to decide within certain limits on its policy for admitting immigrants, and also entitled to decide on the terms of admission so long as these are fair between the two sides\[cxxxvii]. Elsewhere other authors (such as Miller, for instance), have suggested that it is helpful to think in terms of a ‘quasi-contract’ whereby immigrants who are admitted are granted a set of rights, including the opportunity to advance to full citizenship, and in return asked to accept certain obligations to integrate with the host society\[cxxxviii]. These obligations have mostly to do with accepting the prevailing legal and political norms and abandoning social practices that run counter to these. But it is also a reasonable requirement that immigrants should acknowledge and adapt to the public culture of the receiving society. ‘Public culture’ here refers to those cultural features that form part of the national identity of the society in question, and this may include religion in cases where a particular religion has long played a central role in the nation’s life. What does ‘acknowledge and adapt to’ mean here? Clearly there can be no requirement that incoming groups should convert to the national religion. They have a human right to religious freedom, which as we saw earlier includes the right to associate for purposes of religious observance and the right to create buildings suitable for that purpose. Moreover, they have a claim on the basis of equal citizenship that their religious practices should be supported in the same way as other religions, for example by being given charitable status. So they must acknowledge and adapt only in the sense of recognizing that in matters of public culture, one religion may take precedence, for example where the state recognizes an established church, and allows its officials to participate in state ceremonies or other functions. My claim is not that states must recognize religion in this way, but only that they are permitted to do\[cxxxix]. A state may follow the example of the U.S. and entrench an establishment clause in its constitution that requires it to observe strict religious neutrality. But equally it may follow the example of Denmark, say, and have a national church which is granted certain privileges and to which most people formally belong\[cxl]. Which of these models is followed is ultimately a matter for democratic decision. So when an immigrant group enters a society whose public culture is of the second, non-neutral type, they can reasonably be expected to acknowledge the priority of one religion as a feature of national culture.

National cultures are of course always in flux, and ideally they should be open to reshaping by democratic deliberation between all cultural groups in the relevant society. In societies that are both liberal and multicultural, one likely result of the reshaping is that the country’s historic religion will play a decreasing role in national identity, and this may eventually lead to calls for the national church to be disestablished and all religions to be
Minority Claims in Multicultural Societies: A comparative study of case law

treated even-handedly. Immigrant groups are certainly not debarred from taking part in this deliberation or from arguing for the equal treatment of religions in the public sphere (though in practice some may accept that the established religion should continue to enjoy de facto priority)[cxli]. So acknowledging religious precedence does not mean actively supporting it, or assuming that it will always obtain. What it does mean is recognizing that no basic injustice occurs when (with democratic support) the practices or symbols of a particular religion are awarded a special place in the public sphere.

Critics of religious precedence, like Martha Nussbaum, argue that it unavoidably ‘subordinates’ or ‘marginalizes’ those who do not belong to the established religion; it amounts to a public declaration that they are second-class citizens[cxlii]. It is hard to take this seriously when what is involved is purely symbolic recognition, such as when it is the archbishop rather than a multi-faith committee who places the crown on the head of the incoming monarch. But the question is perhaps more serious when the issue is the character of the public space that a person has to inhabit day in and day out. Now it is of course unavoidable that an immigrant minority will arrive in public space that is already coloured by the symbols of the majority religion, assuming there is one. The cities and towns they live in will already be festooned with temples, mosques or churches as the case may be, streets will be named after saints or prophets, and so forth. This by itself cannot give grounds for complaint. The issue is whether having arrived, and wanting to make a public statement about their presence, the group is subordinated or marginalized if on cultural grounds the majority refuses its request to do so in the form of a building or other symbol[cxliii].

Here I think the form of the refusal does make a significant difference. Recall two features of the Swiss minaret ban: it was imposed by national referendum, and it took the form of a constitutional amendment. Contrast this with a hypothetical case in which decisions on the building of minarets were taken by democratic deliberation (which in Switzerland might well culminate in local referenda) in cities or cantons. There would be two important differences. First, decisions would be taken on proposals to create towers of a specific shape and size in particular places, allowing negotiation to take place over the height of the minaret, and so forth, and also responding to the strength of local feeling about how important it was to preserve the existing character of the environment. Second, whatever decision was taken would not be set in stone; it could be reversed at some later time if the relevant local community changed its mind or its character. From the minority’s point of view, there is a difference between feeling that you have lost the argument on this occasion, and feeling that a decision has been reached that forever prevents you from returning to the table with a similar proposal. Insofar as talk of marginalization or subordination applies, it is surely to the case where a minority is barred by a constitutional
Minority Claims in Multicultural Societies: A comparative study of case law

So the Swiss referendum decision is certainly open to criticism, quite apart from the intolerant language and imagery used by the pro-ban lobby. It is hard to think of a good reason why there should be a single constitutional rule applying throughout Switzerland to all future minarets, unless you thought that local democratic decisions were in constant danger of being overturned by a conspiracy of ultra-liberal judges (the Swiss People’s Party may have believed something like this, but on the basis of what evidence?). If there is presently a national consensus that the quality of public space will be damaged for cultural reasons by minaret building, then this would be reflected in a series of local decisions; if instead some more multicultural city like Geneva (which voted against the ban) chose to approve a minaret, it is hard to argue that the citizens of Appenzell, some 300 kilometres and many Alps away, have a significant interest in opposing it. So the constitutional ban could be opposed on democratic as well as on liberal-egalitarian grounds; a principle of subsidiarity applies here.

**SECTION VI**

**Some arguments for religious exemptions**

«The life of a lamb is no less precious than that of a human being. I find that the more defenseless a creature, the more it has the right to be protected from man by the cruelty of other men».

(M.K. Gandhi, *The words of Gandhi*)

«When a religion claims to impose its doctrine on all humanity, it degrades itself to tyranny and becomes a form of imperialism»

(R. Tagore)
1. **The 2013 ECHR Rulings**

In the summer of 2010, we all remember that four cases involving religious accommodation in the UK reached the European Court of Human Rights. The four applicants – three women and one man – each claimed that they had been discriminated against by their employers on account of their religious beliefs. All four were practising Christians, and had made a long legal journey to reach the European Court, through Employment Tribunals, Employment Appeal Tribunals and the UK Court of Appeal. The four cases fall naturally into two pairs because two of them concerned the applicants’ refusal to work with homosexuals and the other two concerned women who wished to wearing a necklace with a small cross at work[cxliv].

One of the women who wished to wear a crucifix was a 55 year old nurse named Shirley Chaplin. She had come into conflict with her employer when, in 2007, it had introduced a new uniform for its nurses which included a V-neck tunic. The cross-bearing necklace which she had worn for years underneath her old uniform was now visible for all to see. Managers at the hospital were concerned that a patient might grab the cross, injuring herself and possibly others. Chaplin told an earlier Employment Tribunal of her belief that Christians are called upon to tell others of their faith, and that the wearing of a Cross was a visible means of manifesting that calling. Moreover ‘I cannot remove my Cross without violating my faith’. The other cross and chain case concerned a woman named Nadia Eweida who worked for British Airways as a check in clerk. She too had been a victim of a change in her employer’s uniform policy. Up until 2004 her uniform had included a high-necked blouse, and she wore the cross underneath it. However, in 2004 British Airways introduced a new uniform which had an open neck and prohibited the wearing of any visible item of adornment around the neck. Initially, Ms Eweida concealed her crucifix in her clothing but she then decided to wear it openly. The result was that she was sent home without pay until such time as she complied with the policy. The case attracted media attention in the UK, and following negative publicity, British Airways changed its uniform policy in 2006 and permitted religious symbols. Ms Eweida returned to work, but took BA to an Employment Tribunal for loss of earnings.

Gary McFarlane, the one male applicant to the ECHR, was employed as a counsellor by *Relate*, a well known organisation in the UK which offers relationship counselling to couples. Mr McFarlane believes that homosexuality is sinful and that he should do nothing which endorses it. Initially, he had some concerns about counselling same sex couples, but after discussion with his manager he accepted that such counselling did not involve endorsing their relationship. Yet he later confirmed to his manager that he had difficulty reconciling his religious beliefs with the sexual practices of gay and lesbian couples.
Following lengthy discussions with his manager, he was dismissed in 2008 for gross misconduct.

The final case concerned a woman named Lillian Ladele who worked as a registrar of marriages for Islington, a London local authority. In 2005, the Civil Partnerships Act came into force in the UK which gave same sex couples the right to a legally recognised union. Ms Ladele, however, believed that civil partnerships were contrary to God’s law. At first Ms Ladele was permitted to make informal arrangements with colleagues in the registry office to swap work so that she did not have to conduct any civil partnership ceremonies. But after a short time two of her colleagues complained about her refusal to carry out such duties. In 2007 Islington commenced disciplinary proceedings against her. Ms Ladele took her case to an Employment Tribunal which upheld it on the grounds that Islington had placed greater weight on the rights of gay and lesbian people than it had on Ms Ladele’s rights as a Christian. However, Islington appealed against this decision and the Employment Appeals Tribunal upheld their appeal, reversing the earlier decision.

In January 2013, the ECHR finally reached a ruling on the four cases. In the two cross-wearing cases it found in favour of Nadia Eweida, the British Airways clerk, but against Shirley Chaplin, the nurse. In the two cases of alleged discrimination towards homosexuals, it found against both Gary McFarlane and Lillian Ladele.

2. Preliminaries

I begin with these four cases for a number of reasons. One is that they are all recent and they all concern my own country, the UK. Another is that they all involve Christians, whereas some of the high profile religious accommodation cases on which the ECHR has been asked to intervene involved Muslim women who wished to wear Muslim religious dress. The four cases also interests me because they all hinge on the personal convictions on the individuals concerned, albeit convictions which reflect their Christian beliefs. But nothing in Christian doctrine requires Christians to wear a cross, and a great many believing Christians do not believe that same sex relationships are sinful.

I shall return to the four ECHR cases as we proceed, but I now want to broaden the discussion to ask, in general, how we might approach cases of religious accommodation. What values are at stake in the issues of religious accommodation above, and others like them? And what principles can we employ in attempting to resolve them? Before considering some ways of approaching those questions, I want to suggest that any answer to them must satisfy two very general conditions: it must speak to the interests of both the
main parties involved, namely, those who claim an exemption, but also other citizens, whether or not they are personally involved.

A satisfactory theory of religious exemptions needs to address the attitudes and motivations of those religiously-minded citizens who are claiming a particular exemption. It needs to engage with their attitudes and motivations so that they can be satisfied that they got a fair hearing, especially if their claim is turned down. If the values and principles used to determine their claim are ones that claimants cannot connect with – ones that do not cohere with their interpretation of the situation at hand – then claimants will have reason to feel excluded. Public discourse will not have addressed them as citizens with religious identities. Here is an example of what I mean. In the course of criticising the law mandating motorcycle crash helmets in the UK which provides for an opt-out for turban-wearing Sikhs, Brian Barry writes that ‘we all constantly impose restrictions on ourselves according to our beliefs about what is right, polite, decent and prudent’[^cxlvi]. Thus on Barry’s view the fact that, absent an exemption, Sikh men do not ride motorbikes is because they have imposed a restriction on themselves; they have in fact the same opportunity to ride a motorbike as everyone else. But that is to interpret opportunity in narrowly legal terms in a way which does not speak to Sikh men’s convictions that wearing a turban is something they are called upon to do.

At the same time, though, a theory of religious exemptions must also address citizens at large. It must be capable of moving non-believing citizens and citizens of a different faith than the exemptions claimant. One reason for this second stipulation is that third-parties must sometimes bear the costs of other people’s exemptions. Thus in the Ladele and MacFarlane cases above, their colleagues would need to be prepared to swap rotas with them in order to ensure that Ladele and MacFarlane did not encounter homosexuals in their work. But there is also a more fundamental reason why an account of religious exemptions must engage with the interests of third party citizens. This is the fact all legal exemptions represent an apparent privilege: religious exemptions are an exception to the very strong principle that all should be equal under the law as well as subject to the same law. In a just liberal regime citizens are expected to adjust their aims and aspirations so that they are achievable within the law. That is, so to speak, a standing burden which all of us face in our daily lives. Religious exemptions are an exception to that principle. It therefore needs to be demonstrated to citizens that any particular exemption is not a merely partialistic privilege. It is a necessary (though not a sufficient) condition of doing so that it addresses their outlook as democratic citizens.

These two criteria are in some tension with each other. An account of exemptions articulated in the vocabulary of democratic citizenship is not likely to satisfy religiously
minded folk, those who believe for example that salvation lies beyond the state. On the other hand, an argument for exemptions which begins from the premise that a particular religion is a true and accurate picture of the universe, will not do much to satisfy non-believers.

In the remainder of this paper I shall consider a couple of arguments that have recently been proposed for religious exemptions, before setting out my own. In doing so I examine what might be termed the basic reason that grounds an exemptions claim, not the exceptions which might over-ride that basic reason. Thus in the Shirley Chaplin case, her basic reason was her desire to express, publicly, her Christian convictions, and judging by their verdict in the similar Nadia Eweida case, the ECHR accepted that. But that basic reason was over-ridden, for Ms Chaplin’s employer and the ECHR by the importance of patient safety. Similarly it could be argued that Sikh men have a prima facie right to wear a kirpan [ceremonial dagger], but that this right is over-ridden by the state interest in public safety. Article Nine of the European Convention on Human Rights, which enumerates the right to freedom of religious conscience says that it may be limited ‘in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others’[cxlvii].

In examining arguments for religious exemptions, I shall also not be emphasising the distinction between a rights-based approach to the issue and approach based on equality of opportunity. The rights-based approach is the approach of the ECHR and the US Supreme Court, as well as the tradition of First Amendment jurisprudence in the United States. The equality of opportunity approach has been adopted by a number of liberal egalitarian philosophers who have defended religious accommodation, at least in some circumstances[cxlviii]. This distinction may be important for some purposes, but when fully spelled out, there seems not much difference between the claim that an individual should have the right to manifest her religious convictions and the claim that she should have the same opportunities to manifest them as everyone else.

3. **What is it that religious conscience protects?**

One recent defence of religious exemptions is provided by Martha Nussbaum in her book, *Liberty of Conscience*. Nussbaum, it should be said, like the American legal scholars who have discussed religious accommodation, takes herself to be interpreting the constitutional settlement in the United States, rather than setting out a free-standing philosophical account. At the same time, however, she is concerned to articulate a case for exemptions which can convince non-believers. She writes: “From the respect we have for
the person’s conscience, that faculty of inquiring and searching, it follows that we ought to respect the space required by any activity that has the general shape of searching for the ultimate meaning of life except when that search violates the rights of others or comes up against some other compelling state interest”.[cl].

Nussbaum proposes a two-part test, reflecting the structure of exemptions claims I noted above. First, we ask whether an applicant’s claim is supported by convictions about life’s ultimate meaning, or the search for it, and if it does, we then ask their whether the proposed exception to the law would over-ride the rights of others or intrude upon some compelling state interest. All of us, religious and non-religious, can understand the notion of life’s ultimate meaning, even if it is not something we give much thought to most of the time, so I think in that respect Nussbaum’s view does a good job of speaking to non-believers as well as religious believers, the second of my two criteria above. But does it capture what religious believers take themselves to be doing, the first criterion? Here Nussbaum’s emphasis on inquiring and searching sits oddly with for example Shirley Chaplin’s comment that she was called upon to wear a cross at work. Or consider, Lillian Ladele’s statement in a newspaper interview that ‘I couldn’t allow myself to be sacked for something civil partnerships I knew wasn’t right… How could it be right to ask me to choose between my religion and my job?’[cli]. These testimonies seem to me to reflect the convictions of individuals who had, what was for them, a compelling answer to the question of life’s meaning, not those who were in search of answers. Of course, Nussbaum could amend her interpretation of conscience to reflect these individuals’ settled convictions, but she could then no longer appeal to individuals’ faculty of inquiring and searching, and it is that secures which her view against the objection that is religiously sectarian.

Leaving that problem aside, a second issue with Nussbaum’s emphasis on life’s ultimate meaning is that it seems very broad. For a great many things concern life’s ultimate meaning. Consider for example a person who requested extra holiday from her employer because she wanted to go trekking through the Amazonian rainforest. This person might believe that life’s ultimate meaning involved respect for nature and its diversity; and she might have just as much sincerity and conviction about that as religious people have towards their own faith commitments. Or consider a man who requested that he be moved from a full-time to a part-time contract in order that he spend more time with his children. Many people do indeed regard having children as one of the most meaningful things they do with their lives, but it’s likely that this man would receive short shrift from his employer. A defender of Nussbaum’s approach might reply that environmental commitment or child-raising are meaningful, but they do not concern ultimate meaning. But that seems an arbitrary distinction; who is to tell an individual what is ultimately meaningful for him or
Minority Claims in Multicultural Societies: A comparative study of case law

her? Of course, Nussbaum could also tighten her argument by stipulating that ultimate meaning concerns religion or spirituality more generally. But then her argument would no longer convince the irreligious.

An account of religious accommodation with some similarities to Nussbaum’s has been provided by Paul Bou-Habib who, like her, is concerned to avoid charges of sectarianism. His argument hinges on the basic good of integrity which he interprets as the good of expressing fidelity to one’s values and principles. Recognising however that people reasonably disagree about what values and principles are important, Bou-Habib stresses that it is subjective identification which counts. More specifically, the basic good of integrity is the good of being able to live in accordance with one’s perceived duties, whatever those duties are. In defence of this view, Bou-Habib asks us to think of two people’s lives which are identical in all respects except that the former person fulfilled his perceived duties and the latter did not. We would, he suggests, unanimously prefer the former person’s life. He also asks us to imagine two Muslims, who lived the same kinds of lives, except that one realised his life long ambition to go to Mecca and the other did not. This shows, he suggests, that integrity is a basic good. He gives the example of a case that went to the US case, City of Bourne v. Flores, where the Supreme Court was asked to decide whether a Catholic church wanted to expand its walls in order to make room for a growing congregation in contravention of a local building ordinance. Accommodating the congregations’ desire to increase the size of their church better enabled them to meet their perceived duties while acceding to the desire of a resident to add an extension to his house would not.

Bou-Habib’s argument is in some ways an advance on Nussbaum’s because fulfilling one’s perceived duties seems to better grasp what motivates exemptions claimants and yet non-religious people can equally understand what integrity involves. At the same time, though, it seems to be suffer from some of the same difficulties as Nussbaum’s ultimate meaning argument. Thus both the environmental activist and the frustrated father might both regard themselves as striving to meet their perceived duties; for the activist, especially, integrity might well capture what it is that fuels her desire to go to South America. Thus, insofar as we would not countenance these two accommodations claims, integrity seems too broad a concept. At the same time, though, integrity seems to narrow to be a basic good. To see this, consider another version of Bou-Habib’s thought experiment where we consider, not two more or less similar lives, but two quite different ones, one of which displays the virtue of integrity while the other does not. Imagine for example, Jill who lives a pedestrian, dutiful life and values doing so. She is a loving wife and mother, a diligent employee and a regular churchgoer. By contrast, James is an adventurer and thrill
Minority Claims in Multicultural Societies: A comparative study of case law

seeker whose life is tumultuous and eventful. He’s had several relationships, but is a serial philanderer, he’s worked as a ski instructor, a deep sea diver and a circus trapeze artist, but he’s also been sacked several times because he keep letting his colleagues down. Some of us might prefer Jill’s life to James’s, but perhaps not all of us.

Reflecting on what she has done and what she has failed to do at the end of her life, a person may just as likely regret the opportunities she did not take as her failure to meet her duties to others. So it seems to me that Jill’s life is not obviously better, not better enough to make integrity, as the fulfilment of felt duties, a basic good. Of course, Bou-Habib doesn’t need to maintain that Jill’s life is better all things considered to James’s. He only needs to maintain that it is better in respect of its enjoying more integrity. But that then raises the question of why integrity, and not some other good, is the basic one. Thus James might argue that his life has been more autonomous than Jill’s or has been more authentic, for he has lived out his convictions, and both autonomy and authenticity are candidates for basic goods.

4. Religious accommodation, unconscionability and self-respect

In what follows I want to interpret freedom of religious conscience in a slightly different way, as the public expression of a person’s commitments to certain standards and principles. On this view, the religious person strives to live up to her ideals in her decisions and actions, and not to compromise them in the face of pressures to do so. The person who does something she regards as unconscionable, on my interpretation, has degraded or debased herself because she has failed to meet her own moral standards. That is the basic reason, I believe, why we should accede at least some of the time to exemptions claims, though as I said that reason may be over-ridden by yet more powerful moral or other considerations.

On this view, living a religiously observant life is not just about living an authentic or meaningful life but also about living a dignified and worthy one. I stress this interpretation because it connects with a view of self-respect that has been proposed by Thomas Hill Jnr. among others where self-respect consists just in maintaining one’s commitments and standards, and where failing to meet them will likely occasion a loss of self-respect. This idea of self-respect involves a notion of fidelity to one’s own ideals in contrast to the self-respect we have just because we are persons, and autonomous not servile. Hill’s discussion includes a series of vignettes of individuals who make slightly inexplicable choices that degrade themselves in some way (such as the aspiring actress who turns to prostitution to
support herself). But it need not be a personal choice or instance of akrasia, which diminishes a person’s self-respect but also the actions of third parties who force her to do something which compromises her standards or impose high costs if she does not comply with a rule or law. It is in that context that we can employ this notion of self-respect as an argument for exemptions. A law which imposes a high cost on a person doing something which betrays her standards harms her because sets back her self-respect, self-respect which consists just in maintaining those standards. For reasons with which she cannot identify and does not endorse, the law asks her to do something which would normally be beyond the pale and out of the question. It is unconscionable not because it causes an individual to be estranged from her philosophical or metaphysical values (though it may do that), but because it leaves her estranged from herself, as a person for whom alienation from those commitments is a very personal loss. The potential attack on self-respect is an ever-present existential threat. The case for an exemption, then, is in preserving the conditions under which a person can live by those standards she has set herself. What seems like an opt-out is in fact a way of maintaining the sources of self-respect to which all persons have an entitlement.

Some further points are worth making about the notion of self-respect which underlies this argument. First, the notion of self-respect involved is not an exclusively psychological notion, but is also a moral one. My claim is that individuals asked to do or refrain from doing something they regard as unconscionable or beyond the pale have reason to regard their self-respect as damaged, not that they actually do. Some people are more existentially robust than others and may be able to maintain their own personal standards in the face of social pressures; moreover they are multiple bases of self-respect so that person who feels he has debased himself may be able to maintain his psychological sense of self-respect from other sources. Second, my claim is not that securing the bases of each person’s self-respect involves a public endorsement of their personal values and standards, which is plainly impossible given the fact of pluralism, but the more modest negative claim that no person should be put in a position where she is forced to undermine her own values and standards because that is a fairly direct assault on her self-respect. I assume that citizens enjoy multiple bases of positive self-respect beyond simply the law. Third, talk of the social bases of self-respect recalls John Rawls’s claim that self-respect is perhaps the most important primary good, so perhaps there is a Rawlsian route for the argument I have outlined. Perhaps, but Rawls sees self-respect in relatively narrow terms as underwritten by a just liberal constitution whereas my argument is that self-respect arises from the interdiction between law and citizens’ own moral standards.

As Thomas Hill points out, there is ‘a way in which a person can respect himself quite
aside from appreciating his rights. The basis of self-respect I am stressing is the ability to express one’s own moral standards in the public realm where one is called to account by one’s fellow citizens. Of course, self-respecting individuals do not debase themselves in private either, but exemptions claims invariably involve individuals non-private roles, principally as employees, but also as schoolchildren, transport users and so on. Both Shirley Chaplin and Nadia Eweida, for example, were concerned publicly to be able to express their Christian commitments by wearing a cross at work, in view of those with whom they interacted. Both of them refused their employer’s suggestion that they wear their crosses underneath their uniforms. I interpret this as their wanting to stand up and be counted as Christians. The fact that wearing a cross is not required by Christian doctrine is not relevant to our judgement on these cases; what matters is the personal standards of those involved, standards that are informed but not dictated by wider religious doctrine.

The same appeal to moral standards may be used in the Ladele and McFarlane too. We may think that Ladele’s and McFarlane’s belief that homosexual relations are a sin against God to be mistaken. But there can be no doubt that both of them held that belief strongly and sincerely, enough that in both cases they lost their jobs as a result. Hence in both their cases we can appeal to the same argument that individuals should not be asked to do things which falls below their personal standards, compatible with their sense of self-respect. But as I said, that only establishes a presumptive case for religious accommodation which may be over-ridden by other normative considerations, in this case perhaps the principle that those acting in an official capacity should treat those to whom they supply goods and services without discrimination. Moreover, if we did grant individuals such as Ladele and McFarlane an exemption so that they did not have to deal with same sex couples, then that sends a message to those couples that the law does not respect them because it accommodates the views of those who believe that same sex relationships are immoral. That message arguably diminishes the self-respect of same sex couples.

That we can employ the self-respect argument in the four recent ECHR cases I hope suffices to establish that it addresses the attitudes and motivations of religiously-minded citizens, that it can speak to them as citizens with strong convictions. That was one of the two criteria I outlined earlier that an account of religious accommodation needs to meet. The other criterion was that it addressed non-religious citizens, and those who had divergent religious beliefs from those claiming an exemption. I think that it speaks to them too because the notion of having personal standards which we strive not to fall below (consistent with maintaining our self-respect) seems a pretty much universal feature of persons as moral agents. Hence we often regard as unprincipled or weak willed the person who betrays her own standards for no good reason – the vegetarian who opts for the
Minority Claims in Multicultural Societies: A comparative study of

case law

hamburger in a restaurant - even if there are no setbacks for third parties. That the argument I’ve outlined applies not just to religiously minded individuals can be illustrated by one recent and intriguing legal case from the UK. This concerned a man named Tim Nicholson who worked for a large London property firm as head of sustainability. Mr Nicholson was an environmental activist who had become increasingly frustrated at the way his firm ignored environmental concerns even though it was his job remit to promote them. The final straw was when a senior manager we went on a business trip abroad but left his mobile phone behind in his office by mistake. So vital was the phone to his work that he asked another employee to collect his mobile phone from his office, take a plane trip and give it to him in another country. Nicholson refused on the grounds that this was a frivolous reason to take a flight in view of the carbon emissions which flying causes. Nicholson was dismissed by his firm but later leave to appeal by a judge who regarded his environmental convictions as sufficiently strongly and sincerely held that they were relevantly analogous to religious ones. I interpret Nicholson’s predicament as a choice between keeping his job and maintaining his environmental convictions.

I have spoken so far of people who were required to do or not do certain things, in every case by their employer, but this does not in fact adequately characterise every exemptions claim. In the UK for example, Sikh men enjoy an exemption from the law which mandates the wearing of motorcycle helmets on the grounds that that they cannot wear their turban and a helmet at the same time. Turbans for Sikh men, unlike crosses for Christians, are mandatory part of their religion. But there is nothing which forces or requires a turban-wearing Sikh man to ride a motorbike. I assume that not all states have this exemption for Sikhs. If they do not wish to betray their own principles in those states which do not have an opt out then Sikh men can simply choose not to ride a motorbike. This is not to claim, with Brian Barry, that, absent an exemption, Sikh men have the same opportunity to ride a motorbike as everyone else. It is simply to point out that, unlike the employment related cases I’ve been discussing, there is no requirement for anyone, Sikh or non-Sikh, to ride a motorbike. On this view, Sikh men can retain their self-respect by not riding a motorbike.

However, in assessing exemptions claims I think we need to ask not just whether a person is required to do something, but also how far the activity they are not able to engage in absent an exemption is common or important. Thus in a society in which motorbikes were a more common means of transport than cars, we might consider an exemption from the helmet-wearing requirement for Sikhs more favourably than we would in our own society where riding a motorbike is a minority pastime. Or consider the exemption which Jews and Muslims in the UK enjoy from animal welfare legislation so that they may slaughter animals
Minority Claims in Multicultural Societies: A comparative study of case law

according to kosher or halal stipulations. The fact that eating beef or lamb is a very common activity helps strengthen the case for an exemption. The case for an exemption in order to participate in a common social activity criteria may seem quite different from the argument I’ve been pursuing so far that exemptions may be justified so that individuals are not required to do things which fall below their own moral standards, but I don’t think that this in fact the case All exemptions claimants face a choice about whether to adapt their behaviour in order to comply with the law or whether not to participate in an activity which brings them into contradiction with that law.[clxviii] All four of the exemptions claimants whose cases were recently decided by the ECHR could have resigned their jobs or could have set aside their strong desire to manifest their religious beliefs in order to continue with their jobs. That is analogous to the Sikh man who must decide either not to ride a motorbike or, if there is no exemption for turbans, to wear a crash helmet instead of a turban. The main difference is that most of the time jobs-related exemptions claimants are already in work, and it is in general harder to give up something beneficial, such as paid employment, than not to undertake some activity which one values.

The Sikh motorbike case brings out a further complicating factor to our investigation of exemptions which is that, unlike the four ECHR cases, sometimes a person voluntary chooses to interdict with a law which they then claim is unfair. An example of this is the 2006 case of Begum v. Denbigh High School where a fourteen year old Muslim girl named Shabina Begum suddenly decided that she wished to wear the Muslim jilbab [a loose fitting outer-garment that covers the body] to school in contravention of its uniform policy[clix]. She had attended the school for two years without doing so and without complaint. (The judges who decided the case took into account the fact that that policy had been arrived at after extensive consultation with local mosques, and that Shabina Begum could have attended two other local schools where the jilbab would have been allowed).

A case with some similarities arose in 2007 when a nineteen year old Muslim, Bushar Noah, claimed indirect discrimination when a hair salon refused to employ her because she wore a headscarf[clx]. The manager explained that, in a hairdresser, it was important that customers could see their hairdresser’s own hair. This is quite different from the case of Lillian Ladele, for example, who could not have anticipated that she would be asked to register civil partnerships when she first assumed employment as a registrar. In general, the fact that a person has chosen to come into contact with a law weakens their case for an exemption. Thus in my view the fact that Sikh man can choose whether or not to ride a motorbike, together with the fact that riding a motorbike in the UK is a minority pastime, weakens their case for an exemption.
5. Does liberalism demand strict separation between state and religion?

Until now, there has been no direct and extensive engagement with the category of religion from liberal political philosophy. Over the last thirty years or so, liberals have tended to analyze religion under proximate categories such as ‘conceptions of the good’ (in debates about neutrality) or ‘culture’ (in debates about multiculturalism). US constitutional lawyers and French political theorists both tackled the category of religion head-on (under First Amendment jurisprudence and the political tradition of laïcité, respectively) but neither of these specialized national discourses found their way into mainstream liberal political philosophy.

This is somewhat paradoxical because key liberal notions (state sovereignty, toleration, individual freedom, the rights of conscience, public reason) were elaborated as a response to 17th Century European Wars of Religion, and the fundamental structure of liberalism is rooted in the western experience of politico-religious conflict. So a reappraisal of this tradition – and of its validity in the light of contemporary challenges – is well overdue.

Should the liberal state be secular? The issue is not merely a theoretical one. Most western states are secular states, even as they accommodate various forms of religious establishment and accommodation. Yet the great majority of people in the world live under regimes that are either constitutional theocracies – where religion is formally enshrined in the state – or where religious affiliation is a pillar of collective political identity. In countries otherwise as different as Egypt, Israel, Turkey, India, Indonesia, Poland, and many others, politics and religion are interconnected in ways that belie any simplified model of secular separation. Many such states, for example, appeal to religious tradition in making the law, provide material and symbolic advantages to members of the majority religion, and enforce conservative laws in matters of sexuality and the family. Are they ipso facto in breach of liberal legitimacy? Is there a minimal secularism – or separation between state and religion – that is required by liberal legitimacy?

In her book *Liberalism’s religion*, the author (Cécile Laborde) argues that there is. Secularism, however, is a more complex political ideal than is commonly realised. I disaggregate the different strands of secularism, and I show how they relate to different dimensions of what we (in the West) have come to call religion. Instead of asking the question, can secularism travel? – which invites answers measuring how well non-western countries fare in relation to a presumed model of western secularism – I start from liberal democratic ideals and assume that they are not ethnocentric: human rights, freedom, equality and democracy are universal aspirations. I then ask how much, and what kind of,
state separation from religion is required to secure these ideals. In brief, I extract the
minimal secular core of liberal democracy[clxiv].

This allows us to see that it is a mistake to assume that liberal democracy requires a
strict separation of state and religion on the French[clxv] or US model. There is a broader
range of permissible secularisms. There are the four liberal-democratic ideals that underpin
and justify minimal secularism: the justifiable state, the inclusive state, the limited state and
the democratic state. Each picks out a different feature of religion: religion as non-cessible;
religion as vulnerable; religion as comprehensive; and religion as theocratic. Let me analyse
these in turn.

The justifiable state draws on the idea that state officials should only justify their
actions by appeal to public, accessible reasons. In the theory of minimal secularism, only
officials are under an obligation to provide public reasons: secularism is a constraint on
state action and justification, not a duty on the part of citizens. State officials should not
appeal to the authority of sacred doctrines or to personal revelation to justify the legal
coercion of all citizens. Accessibility articulates what citizens need to share, in particular
societies, in order for public deliberation about the reasons for laws to be possible at all.
Importantly, it is not the case that only religious ideas are inaccessible, nor is it the case
that all religious ideas are inaccessible. The accessibility condition, then, does not rule out
the public presence of religion.

The inclusive state draws on the idea that the state should not associate itself with
one religious identity, lest it deny equal civic status to dissenters and non-members. Merely
symbolic establishment is wrong if - but only if - it infringes on equal citizenship. The
dimension of religion that this picks out is different from the previous one: here religion has
nothing to do with personal revelation or inaccessible belief or doctrines. It is, rather,
structurally similar to other politically divisive or vulnerable identities, such as race, and
sometimes culture or ethnic identity. A liberal state must not be a Christian state or a
Muslim state when such identities are - as they are in many states today - factors of
political salience and vulnerability. But in societies where religion is not a socially divisive,
vulnerable identity, there is less ground for secular separation.

The limited state draws on the idea that a liberal state should not enforce a
comprehensive ethics of life on its citizens. The dimension of religion that this liberal value
picks out is that of religion as comprehensive personal ethics that covers education,
sexuality, eating codes, work, dress, and so forth. Many liberal rights were products of hard-
won struggles, against the authority of traditional religious authorities, to construct and
preserve a sphere of individual liberty. Consider the range of liberal laws in the 19th and 20th
Minority Claims in Multicultural Societies: A comparative study of case law

centuries such as laws about marriage and divorce, women’s rights, and sexuality, and contemporary conflicts about abortion and gay rights in Africa and South and North America. Yet not all religion is about comprehensive personal ethics. Religious traditions also provide collective norms of coordination and cooperation (eg. holidays) which raise less acute threats to individual liberty[clxvi].

Finally, a democratic state is necessary because citizens profoundly disagree about the boundary between personal and collective ethics, the public and the private, the right and the good. John Locke[clxvii] argued that the state should deal with ‘civil’ interests, and leave ‘spiritual’ matters of the salvation of the soul to individuals in their private lives. But who is to decide what pertains to the civil, and what pertains to the spiritual? In the areas of church autonomy and anti-discrimination laws, the nature of personhood, the family, marriage, bio-ethics and education, general liberal principles do not generate uniquely determinate and conclusive solutions. In such conflicts, the democratic state – not competing authorities such as churches – has final sovereign authority. It decides where the boundary between the this-worldly and the other-worldly, the religious and the secular, lies. This, I argue, is what is radical about liberalism’s secularism: that it is democratic – that it locates its legitimacy in the will of the people, not in extra-political, divinely ordained or philosophically grounded authority.

The most radical challenge to religion posed by liberalism is not, therefore, that liberalism maintains a wall of separation between state and religion. It is, rather, that it assumes democratic sovereignty[clxviii]. Within the bounds of basic liberal legitimacy and human rights, deep reasonable disagreements are to be solved democratically (democracy is, of course, not to be equated with majoritarian tyranny, and must provide for minority representation, separation of powers, and judicial review). This democratic conception of liberal legitimacy allows for more variation in permissible state-religion arrangements than both secular liberals and religiously minded liberals have assumed. Just as secularized majorities can impose their own conception of the boundary between state and religion, so can religious majorities, provided they honour the other three liberal principles of accessible justification, civic inclusiveness and individual liberty.

In secularized societies, state law will naturally reflect and promote the non-religious ethics of the majority, for example via the dismantling of structures of traditional family and marriage and the expanding reach of norms of human rights and non-discrimination. Likewise, in societies where religious citizens are a majority, they can shape the public sphere of their societies to some extent. But only to some extent: religious majorities can shape the state within the constraints of what Laborde, in particular, has called minimal liberal secularism[clxix]. Beyond that, minimal secularism has no ambition of providing final
substantive answers to key questions of political, public, private and sexual morality.

SECTION VII

_Do emotions play a vital role in all political processes?_

«I am not here to think, but to be, feel, live!»

1. G. Herder, _Sämtliche Werke_ (1877-1913)[clxx]

1. **The case of the Greek bailout**

To a large extent emotions have been instrumental in determining outcomes in the recent and on-going struggle between Greece and Germany as regards to the terms of the Greek bailout. Both at the level of policy-making and at the level of ordinary citizens strong emotions, mainly of _sympathy_ and _fear_, have calcified the positions of all players, so as to make the attainment of a compromise popular with all parties difficult, if not impossible to attain. Even the terms used to refer to the Greek situation “Grexit” and “A-Greekment”, the latter coined by the president of the European Council, carry an emotional charge because they point to the singularity of the situation.

On one side, the Greeks appealed to feelings of sympathy in their creditors when demanding debt relief and an abatement of the proposed austerity measures. They wanted to continue their membership in the Eurozone, but also to retain their way of life, which they understood as tantamount to preserving their national sovereignty and identity. The Greeks were hopeful that others would accept and empathize with that need. On the other side, again based on feelings of sympathy, the Germans insisted that it was not fair to other European member-states and to German taxpayers to offer such favorable financial terms to the Greeks. And, the German policy-makers reminded of the dream of an ever-increasing federalization of a European Union that is to operate by terms fair to all.

Confrontations quickly ensued because of these divergent visions, which replaced feelings of intergroup sympathy with intragroup sympathy and with fears and mistrust. First, there was the personal confrontation between the leather-jacket clad finance minister
of Greece, Yanis Varoufakis, and his counterpart – Germany’s Wolfgang Schäuble. Their relationship was marked by offensive language and much posturing, especially by the former, which when reflected in media increased mistrust and hostility between the ordinary citizens of the two nations. On the party level, the Greek Syriza had demonstrated an anti-EU bent from its sole beginning, and its election to power in January of 2015 with a majority short of 2 seats in Parliament showed the collective anti-EU sentiments of Greeks. The referendum held on July 5th of 2015 that garnered more than 60% OXI votes clearly confirmed that anti-European sentiments had not changed. All of this strengthened German fears and mistrust of Greek policy-makers and they saw the latter as intransigent and intentional in stoking anti-European feelings.

The hotbed of negative emotions experienced by the Germans precipitated the imposition of harsher austerity measures upon the Greek government. It is true that the Greeks feared the measures, but they also wanted to stay on the euro and that to a large degree determined the government’s acceptance of the terms of the bailout package. Even though for awhile Greece’s solvency has been ensured, ordinary Greeks remain generally pessimistic about the future and do not believe that the required reforms will bring about improvement of life conditions. Actually, opinion polls show that most Greeks consider that their children will have worse lives than their own.[clxxi]

The struggle that has unfolded between Greece and Germany reminds of the David and Goliath story, but unlike it the small Balkan country has not successfully used the means at its disposal – stirring up and managing the necessary emotions, so that the behemoth yields to its demands. The relationship remains highly volatile and internal and external tensions can escalate quickly because of the existing negative emotions.

2. Emotions: a necessary ingredient of the political process

As the case with the settling on the terms of the Greek bailout package shows, emotions suffuse many aspects of the political process and can often lead to bad political choices. Impulsive, changeable, subject to biases are just a few of the negative labels used for describing emotional decision-making and behavior. Because of their power to sway reasoning, two theoretical schools – that of rationalism and rational choice theory – maintain that reason-based argumentation should be primary in the political process and that, if not entirely eliminated, all assertions based in the emotions should be subjugated to it. However, recent neuroscience findings demonstrate that rationality is interwoven with the emotions and the latter cannot be sequestered from the political realm. Because reasoning
and the emotions always act jointly, any irrational behavior or choices are caused by the two of them, and emotions are wrongly labeled as the sole culprit.

This intertwining and the fact that emotions are context-dependent makes the crafting of a precise definition of individual and collective emotions and isolating their main types difficult. What is certain on the individual level is that experiencing an emotion always has physical manifestations and carries an impetus for action. On the collective level, it can be ascertained that specific emotions are prevalent for a given social group at a given time, the so-called *emotional habitus*, even though how precisely one experiences them varies greatly among individuals. Because of this sharedness emotions can be stirred-up, whether top-down or bottom-up, and directed to attain two primary goals in the political process. Firstly, emotions could be addressed to engendering and sustaining a strong commitment to worthy projects that require long-term effort and sacrifice and giving up one’s self-interest in the name of the common good. A second objective for the cultivation of public emotion is to keep at bay negative forces that lurk in all societies.\[clxxii\]

This research has isolated nine major ways, in which emotions impact the political process and through which they could be used for attaining the two primary goals. Even though, all societies harbor a variety of intense emotions, this paper will explain the nine ways within a particular normative conception – that of political liberalism\[clxxiii\] put forward by John Rawls in *A Theory of Justice* (1971) and *Political Liberalism* (1993).\[clxxiv\] The fact that emotions cannot be sequestered from the political process and entirely subjugated to reason demands understanding their proper role in policy-making because this will lead to its improved management, especially when aiming at the consolidation and strengthening of political liberalism.

3. **Rationalism and rational choice theory**

Currently, rationalism and rational choice theory are the two dominant tropes for explaining moral decision-making on both a theoretical and practical level. Even though the two are quite dissimilar in their nature, they are both theoretical approaches that elevate reason as the primary guide and motivating factor for human decisions and actions. Reason assumes preeminence because reason-based decision-making relies on a methodology similar to the one of the natural sciences. Reasons are logical and coherent in supporting a course of action because they draw on provable facts – thus, reasons are impartial, consistent across different situations, and can be understood by all people “armed with adequate powers of
observation and logical thinking”. As a result, reason-based decision-making provides grounds for judgment that lead to truthful conclusions.

Rationalism and rational choice theory do not entirely exclude emotions and other nonrational and irrational factors from moral decision-making, but take them into consideration only if they are wrapped within a rational justification. This account of decision-making and policy-formation has found wide application both in real-life policymaking and in scholarly theorizing. An example of the former is Cass Sunstein’s and Timur Kuran’s description of availability cascades. Briefly, an availability cascade is the public salience of an idea as a result of a chain reaction that has given the idea greater plausibility because of its increasing presence in public discourse. However, such availability cascades often lead to biased and not well-considered reactions from policymakers as they are under public pressure. Sunstein and Kuran argue that policymakers need to be isolated from such pressures, so that they impartially and rationally weigh the costs and benefits for a given course of action based on the number of lives saved and the financial impact on the economy. Other such examples abound. In terms of scholarly work, the paradigmatic account of reason-based decision-making for selecting proper public policies is John Rawls’ justice-as-fairness. Actually, Rawls’ theory commingles rational choice theory and rationalism because the former utility-maximization postulates are central for citizens’ choices in the original position, whereas rationalism guides citizens’ subsequent lives.

Similar theoretical descriptions of public discourse as inherently rationalist can be found in the works of many other major moral and political philosophers from the entire ideological spectrum – on the left are Max Horkheimer and Theodor Adorno; in the liberal center – Isaiah Berlin and Ernst Cassirer; and on the right: Michael Oakeshott and Alasdair MacIntyre. Altogether, these constitute just a few illustrations of the ways, in which rational choice theory and the rationalist paradigm more broadly have found wide application in informing both theory and practice-based approaches for policy formation during the everyday work of government and in times of political change.

4. About the nature of the emotions

Yet, sheer observation of the political process and neuroscience experiments from the 1990s onwards have conclusively shown that these two accounts have deficiencies because the reason-emotion opposition is scientifically unsustainable. Reason and the emotions are inextricably linked, and reason is not always able to gain control of the justification process or assert the course it suggests as the correct or necessary one. New imaging techniques
such as functional magnetic resonance imaging, positron emission photography scans and different electrophysiological methods have yielded much insight into how the brain’s reasoning and emotional capacities operate jointly. One of the most recent trends in brain imaging is optogenetics, a technology that renders individual brain cells photosensitive and later activates them with flashes of light – this technology has been successfully used in alleviating acute psychological conditions, which implicate both one’s reasoning and emotional capacities. In addition to the newly developed technical tools, a whole slew of authors have employed various scientific experiments to study human decision-making, and the role of reason and emotions in it. The heuristics and biases approach put forward by Daniel Kahneman and Amos Tversky is the paradigmatic such account. It divides human decision-making into two systems: the automatic, System 1, and the reflective, System 2. System 1 is the primary way, in which one perceives the world; it operates automatically and quickly, with no sense of voluntary control. Emotions belong here and assume primacy in how one apprehends the world, while System 2 encompasses reason and takes over in longer and harder decisionmaking.

Even though based on reason, System 2 is mostly an apologist rather than a critic of the conclusions derived through System 1 according to the two authors. And it is prone to support the many biases and heuristics, mostly emotion based, which are part of System 1. An example of such heuristics provided in chapter 14 entitled “Tom W’s Specialty” shows how stereotyping governs all immediate assessments of a situation. Many other such examples exist. The System 1- System 2 model with its relegation of emotions to the former and reason to the latter has come under much criticism, but again what the various experiments employed in its defense have come to prove is that human decision-making is seldom entirely rational. Emotions are helpful in explaining not only human biases and heuristics, but a variety of other behaviors such as deriving pleasure from self-sacrifice in the name of the common good, feeling happiness related to gift giving, friendship and love; feeling internally conflicted when deciding between shortand long-term goals; inconsistency in behavior, and many others. Still, human decisionmakers are not passions’ slaves, as stated in Hume’s famous dictum, but rational and emotional creatures that have to rely on their two inseparable and unimpeded natures in decision-making. These insights about individual decision-making should be extended to the state and its policy process, especially when successful policy formation is the goal.

So what is an emotion after all? Besides the general agreement that emotions have developed over time to aid in human survival, as postulated by Darwin awhile ago, there is no current consensus on the precise definition of the nature of emotions. The scholarly debate falls roughly into two groups. On one side are scholars, who emphasize...
their physical embodiment – features such as qualitative feel, physiological arousal, physiological expression, valence, and action tendencies – and on the other, scholars who focus on elements such as cognitive antecedents and intentional objects. One of the foundational theories in the first group was created independently by William James and Carl G. Lange. It postulates that emotions are the result of changes in one’s physiological state related to the automatic and motor functions of the body. However, these views have been criticized because it is difficult to distinguish between the physical manifestations of emotions – some of the same manifestations appear connected to different emotions. On the other hand, one of the most influential accounts among the second group of scholars was put forward by Richard Lazarus, who explained emotions in an opposite manner to the James-Lange account. He argued that emotions have “cognitive intentionality” – one must first cognitively assess the inhabited situation, which triggers the emotion and its accompanying physical manifestations, and finally, the individual acts on the thus obtained information. Also, reason controls the quality and intensity of the experienced emotions. However, this view has merited criticism because it cannot be established that reason takes precedence in decision-making. In-between these two theoretical approaches, many other propositions about the definition of emotions exist, but there is little agreement between the two groups and also within the groups. Hence, it remains for neuroscience with its precise methodology to put forward a definition for the emotions out of the morass of conflicting propositions.

Yet, up to this point it has offered little conclusive insight. What has been determined for certain is that, firstly, emotions consist of both rational and emotional elements. Whether they are irrational or rational depends on the situation and on how the non-cognitive and cognitive elements they encompass are aligned with attaining its objective. What sets emotions apart from reason, however, is their physicality and the fact that they carry an impulse to action. As Hume argues, when all the pros and cons regarding a given course of action have been weighted, it is an emotional response that stirs the individual to action. But, little can be said about the precise characterizations of emotions. Emotions vary with situations, time periods, cultures and all that scholars can offer in terms of explanation is an approximation. As Jon Elster suggests: characterizing an emotion is best accomplished through mechanisms – “frequently occurring and easily recognizable causal patterns that are triggered under generally unknown conditions or with indeterminate consequences”.

In other words, if one is afraid from a barking dog in a dark street, one can strike the dog, take flight or remain in position. It is unclear and uncertain which of the three responses would follow the fear, but most likely one of them will be the outcome. Even
though it is only an approximation and not a precise definition that can be offered for emotions at the present moment and even though emotions cannot serve as a tool with which to predict events and actions with certainty, understanding the approximation offers invaluable information about the political process.

Because of this indeterminacy and near approximation, it is also difficult to offer a possible classification of the emotions. A most basic way to distinguish among the emotions is based on their valence – emotions could be either positive or negative depending on whether what was experienced is viewed as pleasurable or painful or directed at good or evil. Yet, of recent this approach has been criticized because valence is not an indisputable quality and can vary significantly with different situations. For example, fear is usually labeled as a negative emotion, but could be a positive force if it induces an individual to undertake constructive actions. A most foundational theory for classification of the emotions based on their physicality was developed by Paul Ekman. It claims that there are six basic and universal emotions – happiness, sadness, fear, anger, surprise, and disgust – in the sense that their facial expressions are recognized across cultures. Later scholars have modified Ekman's theory to different degrees by adding or removing emotions. Still, others have emphasized how the basic emotions combine to form more complex or secondary ones. For example, in certain situations anger and disgust could combine to yield contempt.

However, these assertions have also been highly disputed. Some scholars argue that emotions are culture-specific because their content varies across cultures and time periods - universal emotions means only having the same labels. For example, feeling anger at hurt honor as in Ancient Greece that leads one to fight is unthinkable in contemporary Western societies. Nonetheless, various neuroscience studies show that two emotions have a claim to universality – those of sympathy and fear. What is of note for the political process is the positive and negative action tendencies they set off for large groups of people, which fall in line with the above-mentioned idea of mechanisms. The emotion of sympathy, defined broadly as genuine concern for others, is so valuable for the political process because it can motivate and sustain altruistic actions, the common will for carrying out long-term projects and for accepting difference among citizens. On the other hand, if focused too strongly on one's immediate surrounding and in-group, it can easily lead to discrimination and negative stereotyping against certain segments of a given society. Similarly, fear, understood as the wish to protect oneself and one's belongings from arbitrary cruelty, can act as a force that strengthens or weakens political liberalism. On one hand, fear can lead to enhanced interest into and engagement with the political process, but in large doses it augments citizen’s tendencies to increase their own advantage at the expense of other
Minority Claims in Multicultural Societies: A comparative study of case law

Hence, most conclusions about a possible classification of the emotions remain highly tentative, with the exception of findings that assert the universality of sympathy and fear and scholarly analyses that point to their possible action tendencies. What happens when these tentative conclusions are extended to the political process that involves collectives of people? Methodological individualists dispute the idea that emotions may be the property of a group. Considering the individual as the basic unit of society, they assume that emotions are anchored in an individual. Yet, prevalent emotional patterns are often detectable within given groups empirically. Using Pierre Bourdieu’s insights, Deborah Gould has developed a very useful term for describing such patterns – *emotional habitus*. The term refers to the emotional dispositions, whether conscious or subconscious, that operate within a specific group. An emotional habitus provides group members “with a sense of what and how to feel, with labels for their emotions, with schemas about what emotions are and what they mean, with ways of figuring out and understanding what they are feeling”. It also contains an “an emotional pedagogy”, a template for which emotions are approvable and which not. In addition, it contains historical knowledge for the beginning and evolution of the felt emotions and thus provides context for their understanding. Yet, even though an emotional habitus has the ability to shape how members of a group feel and comprehend their feelings, habitus are nondeterministic and can be understood similarly to Elster’s mechanisms. Habitus do not possess definite predictive power, but consist of “virtualities, potentialities, eventualities”. Deborah Gould is not alone in proposing a concept for describing collective emotions – other authors have also suggested ideas similar to the emotional habitus. For instance, James Jasper in his work on political mobilization distinguishes between fleeting emotional reactions and what he terms “abiding affects”. The latter are enduring and structured emotions, which give the impetus political action.

Another valuable concept – structures of feeling – was put forward by Raymond Williams. The author claims that a structure of feeling describes the prevalent emotions in an entire society during a particular period of history. Moreover, these emotions are evident in everything related to the society – “from the design of homes and buildings, patterns of use of outdoor urban spaces, film, art and music and even in everyday public interaction”. Even though an emotional habitus does not have a deterministic structure and effects, it gives important information for the processes, which are underway in a given society and thus holds valuable explanatory power for the political process.
5. **Functions in the political process**

As discussed above, little can be said with certainty about the definition, types and collective experience of emotions, yet the deduced approximations are invaluable for understanding how to set off processes that strengthen political liberalism. Because when stirred-up, whether top-down or bottom-up, collective emotions could prove to be the glue that binds societies together and the trigger, which propels them to implement worthy projects that require personal effort and sacrifice. On the other hand, strong emotions could also stymie destructive tendencies to protect and enhance oneself by denigrating others and by eliminating non-conforming behavior.

The avenues open to collective emotions to impact the political process, so that the two above-mentioned objectives are attained, can be summarized under nine general headings. Even though a lot can be said about each of the headings, this section will discuss them only briefly.

*Firstly*, citizens’ emotions are intimately tied to all forms of political language. Various arguments exist within the rationalist school of thought that if emotions are banned from political language, its quality and results will be improved. And, yet, this is neither possible, nor desirable. Expressing moderate amounts of sympathy or fear, for instance, can prod citizens to a deeper and more informed engagement with a topic.[cc]

*Secondly*, emotions play a vital role in political campaigning. As George Lakoff has claimed in *The Political Mind* successful political campaigning, even though hidden behind a rationalist patina, relies heavily on emotions. US Republicans have been more adept at relating emotionally to voters as opposed to U.S. Democrats because they construct narratives, which appeal to voters’ guttural emotions.[cci]

The *third* major role for collective emotions in the public process is in social mobilization. Emotions aid participants in social movements in developing a sense of unity and of belonging to a cause based on sympathy with each other, and in fending off negative and destructive forces that dissolve the movement.[ccii]

*Fourthly*, emotions are key for forming groups and for respectively excluding members from these groups. On one hand, a feeling of sympathy is instrumental for creating and supporting a sense of belonging to a group; on the other hand, feelings of envy, disgust, shame are often the major causes for discriminating against minority groups due to their otherness.[cciii] Handling excess moods of the collective such as paranoia, fear, psychosis constitutes the *fifth* area where emotions play a role.
Minority Claims in Multicultural Societies: A comparative study of case law

How should the state respond to such collective anxieties? According to Thomson and Hoggett, if governments are not successful in defeating these anxieties, they can come to “project, enact or embody” them. Projection means that they will re-focus them on a scapegoat; enactment is when government engages in unnecessary actions just to be seen as doing something and embodying them is if the government accepts policies that correspond to the anxieties – tightens control, institutes new rules and procedures, etc.[cciv]

The sixth area, where emotions influence the political process is in their relation to values. In *A Treatise of Human Nature* and *An Enquiry Concerning the Principles of Morals* David Hume describes an initial sympathetic reaction that necessarily accompanies all first impressions of a given situation. A feeling of sympathy towards others, claims Hume, is immanent to all human beings. And this sympathy grounds an initial reaction of either approval or disapproval towards all situations, in which an individual finds oneself. If the reaction is one of approval such as the one that stems from observing a mother’s affection towards her child, the feeling of sympathy affirms the positive value of paternal care; if the reaction is one of disapproval such as that one that arises at the sight of child abuse, the value affirmed is of prohibition of violence directed against children. In a similar manner unfolds the interaction between sympathy and the other values.

The seventh inclusion of emotions in the political process is in managing conflict, especially in decision-making assemblies.[ccv] Political actors often share contradictory and irreconcilable opinions about the means and a way for proceeding in a certain situation. Reasoning constitutes the way to offer argumentation and weigh which arguments are more compelling, but some scholars have insisted that in the case of a deadlock it is only the emotion of sympathy, which can bring the warring parties to overcome the stilled situation and to continue their co-existence peacefully.[ccvi] As Rawls’ political liberalism postulates people can subscribe to a variety of values, norms and lifestyles - an arrangement especially suited for today’s contemporary societies, while coming to a consensus on the basic principles of justice that are to govern their joint existence. With this basis and because of their mutual sympathy, they will be able to successfully overcome conflictual situations.

In the eighth place, emotions are key for managing post-conflict situations. These situations are especially difficult because they deal with abstract and immeasurable events and phenomena such as loss of a loved one, violent hate, bodily injury and others. Weighing rational arguments is not the way to deal with such emotions - symbolic actions that are emotion-laden could be more effective in alleviating the situation.

And lastly, emotions could play a vital role in how a state conducts its international
Minority Claims in Multicultural Societies: A comparative study of case law

relations. Feeling sympathy for another nation undergoing a humanitarian crisis could prove decisive as to whether the government intervenes in its domestic affairs. In other words, as these nine headings illustrate, there is a constant dialectic relationship among events, political actions and emotional responses, and it is important to direct emotions in such a way as to enhance their impact on the political process in a direction that favors political liberalism.

6. Failure to tame the Greek emotions

To be sure including emotional justifications in the public square will not necessarily lead to decisions that would not have been suggested by rationalists and rational choice theorists. However, as shown, emotional justification does constitute an inseparable part of the political process, and ignoring it diminishes the explanatory power of all sorts of theoretical and empirical models about the political process. As shown with the on-going situation with the Greek bailout, when emotions run high and are not heeded to or understood, they could lead to suboptimal outcomes for the parties involved. Emotions can derail the successful attainment of goals by introducing divisions, hierarchies and forms of neglect by making positions more intractable.

Moreover, ceding the terrain of emotion-shaping to anti-liberal forces gives the latter a huge advantage and risks making people think of liberal values as irrelevant and unattainable. On the other hand, as shown, if rightly directed emotions can make the pursuit of political liberalism more vigorous and thorough; ensure the upkeep of values in times of stress and conflict, and thus ultimately guarantee the stability of political cultures over time.

This is why it is important for state actors to understand how to make prevalent the emotions in line with political liberalism – albeit that the success of this endeavor will always require ongoing work and vigilance.

In particular, I have to add that these remarks must suffice so that space remains for the financial crisis that overshadows everything now. The plaintiffs in this litigation were the usual suspects: a group of professorial economists and Dr. Gauweiler, a member of the Bundestag, as representing the Bavarian branch of the Christian Democratic party (CSU). They challenged both German and European legal instruments as well as further measures related to attempts to solve the current financial and sovereign debt crisis in the area of the European monetary union.
My reading of the judgment on the Greek rescue package focuses on three concerns:

1) The first is the tension between the financial crisis management and the German constitution. In this regard, the message of the Court is strong in principle, but not so constraining in practice: Budgetary powers are a core responsibility of the parliament and a central element of democratic self-rule. [ccxi] This is why the Bundestag must remain “the place in which autonomous decisions on revenue and expenditure are made, even with regard to international and European commitments.” [ccxii] But this is where the law’s prerogatives end; parliament enjoys wide latitude in the exercise of its responsibilities, a political prerogative which the Court will respect. [ccxiii]

2) A second concern is the compliance with the order of competences. The Court recalls its famous dictum from the Maastricht Judgment: Legal instruments that disregard the order of competences (ausbrechende Rechtsakte) do not apply in Germany. [ccxiv] But this monitum is actually soft, because it needs to be read in the light of the Mangold/Honeywell decision. [ccxv] The court refrained, though, from considering the request for a preliminary ruling under Article 267 TFEU with a view to having the CJEU examine the compatibility of the rescue measure/s with Article 125 TFEU. Instead, it contented itself with assuring that Monetary Union was designed to be a “stability community” and hence is one. [ccxvi]

3) As to the citizens? What about us? We cannot, in a constitutional democracy, be obliged to comply with European commands that exceed the competences conferred to the Union. Hence, we need to accept that our government takes its commitments to our financial interests seriously. [ccxvii] “A crafty and blandishing wink of the eye,” comments Ruffert. [ccxviii] In fact, the Court is examining only whether Germany has met its “integration responsibility” (Integrationsverantwortung), and then leaves the question unanswered of “under what conditions constitutional complaints against non-treaty changes of primary Union law can be based upon Article 38 Paragraph 1 Sentence 1 German Basic Law.” [ccxix] The intergovernmental decisions were not “sovereign acts of German public authorities,” “withstanding other possibilities for legal review,” which is why they could not be challenged. [ccxx]

Is it adequate to consider the decision’s “lasting merit” to be the fact that it “honestly recognized the limits of its own substantive expertise?” [ccxii]

7. General conclusions
1) Understanding how and where to deal with multicultural issues is a pressing question for democracy, and so far Western democracies – in particular – do not seem to have identified a unique procedure to solve issues among different groups yet. Public deliberation is one of the main solutions that have been discussed in recent times. In the present paper, I have analyzed Awad’s adaptation of Habermas’ conception of public sphere to multicultural issues. I have argued that a Habermasian idea of public sphere fails to solve the critical multicultural problem, since it does not guarantee the basic conditions for the equal active participation of all parties into the deliberation process. I conclude that a conception of deliberative democracy prominently based on an ideal of communication might not be able to answer to the multicultural problem that current democracies are facing. In this sense, the cultural differences that have been discussed above might represent not only a limitation of the Habermas’ conception of public sphere, but arguably they pose a challenge to any form of deliberative democracy that is primarily based on the idea of public communication.

In conclusion, the considerations presented in the section one open at least two alternative ways to address the multicultural issue. One alternative way is the “benign neglect” solution. The “benign neglect” solution argues for the non-interference by political institutions in the cultural market-place of a society. The benign neglect does not necessarily represent the refuge of the coward thinker, who is afraid to take a stand. On the contrary, it can be rather the bold and thoughtful willingness to consider the multicultural issue as sadly insoluble, as Kukathas showed[ccxxii]. However, despite its coherence, I believe that not all alternatives to the benign neglect have been explored yet. One alternative to the benign negative is the firm disentanglement from the communicative paradigm and the search of different ways to foster social interactions and reciprocal understanding among social groups. Such alternative way does not exclude the importance of verbal communication, but it does not look at it as the unique or fundamental form of communication and exchange among the parties.

Thus, disentanglement from the communicative paradigm does not exclude the possibility that other forms of democracy can provide a more effective solution to multicultural issues. But it tries to contribute to the search for a more peaceful and respectful way of live together.

2) In the second section, I argued that “separate but equal opportunities” is an incoherent idea, based on sedentarist presuppositions. Compensating restrictions on immigration, in a world of separate nation-states, is not a way to promote global equality of opportunity since opportunities are distinct from their values and cannot be distributed by borders. Borders create, at best, equal discrimination, not equal opportunity. One should not use political
Minority Claims in Multicultural Societies: A comparative study of case law

case law

data

power to decrease other’s freedom, based on one’s own sedentarist view about human nature.

3) Four issues were analyzed in the third and fourth section (the integration of Catholic Poland in post-Christian Europe, the integration of Turkey into the European Union, the incorporation of non-European immigrants as full members of their European host societies and of the European Union, and the task of writing a new European constitution that both reflects the values of the European people and at the same time allows them to become a selfconstituent European demos), all are problematic issues in themselves. But the paper has tried to show that unreflexive secular identities and secularist self-understandings turn those problematic issues into even more perplexing and seemingly intractable “religious” problems.

4) My main conclusion about the fifth section of the paper, nevertheless, is that the use and appearance of public space is properly a matter of democratic decision, so long as the basic rights of minorities are not infringed (as they would be, for example, if a religious minority was prevented from establishing a place of worship). On grounds of fairness, there should be a general presumption of equal treatment for different groups, but this can be set aside when the majority has a legitimate interest in seeing its cultural values reflected in the shape of the physical environment. Here historically rooted groups and immigrant groups are not on all fours, though this will change over time as the immigrants integrate and adapt, while no doubt retaining some culturally distinct features. Their conflicting claims should be worked out through democratic deliberation, and ideally the majority should try to find ways of accommodating minority interests; the more deliberative the procedure that is followed, the more likely this is to happen. I have suggested, however, that members of a national majority may sometimes have good reasons for wanting to preserve the character of public space at the expense of the claims of Islamic and other religious minorities. I argued that the human right to religious freedom did not extend to symbolic expression in public space; and the principle of equal treatment of religions should be qualified when a particular religion is internally linked to national identity. So when majorities and minarets collide in public space, majorities have the right to prevail, even if we think, in the case in hand, that the resulting decision was a bad one.

5) In the middle of the sixth section I have surveyed a number of recent cases where individuals faced a high cost to their core beliefs in they continued in emplyoemt or other common activities but were not able to manifest their beliefs. It might be objected that there is a difference between a person’s inner convictions and her public activities as a nurse or registrar or school student who wishes to wear religious dress. But though we can make sense of that distinction, ignores the way that religious and other individuals with strong
convictions feel called upon to express their beliefs in a public setting, not just to advertise their views to others, but to confirm their beliefs to themselves. A Sikh who wears a turban or a Christian who wears a cross is telling *themselves* that they have these convictions, the turban or cross being a constant reminder of an identity that is central to their lives. Though the ECHR sometimes distinguishes between religious belief and manifestations of that belief, if it was psychologically costless to make that distinction, there would hardly be a need for legal exemptions.

The case for exemptions, and more generally legal accommodation, on religious grounds is instead that, consistent with maintaining their own self-respect, individuals should not have to choose between their religion and their job (or other activity in which they’re engaged) where individuals without these convictions need not make this choice. I have commended this argument on the grounds that it captures what’s going on from the perspective of exemptions claimants and is reasonably justifiable to third parties who are sometimes required to bear the costs of others’ exemptions. More generally, the argument stresses the importance for our self-respect that we live what are in our own eyes dignified and worthy lives, ones where we can maintain our own standards as moral beings.

Moreover, in the last paragraph I tried to reply to the preliminary questions: “Does liberalism demand strict separation between state and religion?”, and “Should the liberal state be secular? The issue is not merely a theoretical one. Most western states are secular states, even as they accommodate various forms of religious establishment and accommodation. I showed that, until now, there has been no direct and extensive engagement with the category of religion from liberal political philosophy. Over the last thirty years or so, liberals have tended to analyze religion under proximate categories such as ‘conceptions of the good’ (in debates about neutrality) or ‘culture’ (in debates about multiculturalism).

Moreover, to move beyond the dichotomies implied by public/private, accommodation/integration, and rational/irrational dichotomies, two different angles for further research have been suggested. Critical contributions to secular studies have aimed to break down the public/private divide and offer more a more nuanced understanding of religion. This approached could be extended to cover not only religious, but also other forms of pluralism. Furthermore, starting from a rethinking of the connections between group membership and citizenship, may also provide a new impulse to thinking about democracy and (severe) pluralism.

Liberal societies conventionally treat religion as unique under the law, requiring both special protection (as in guarantees of free worship) and special containment (to keep
Minority Claims in Multicultural Societies: A comparative study of case law

religion and the state separate). But recently this idea that religion requires a legal exception has come under fire from those who argue that religion is no different from any other conception of the good, and the state should treat all such conceptions according to principles of neutrality and equal liberty. In particular, I have highlighted that Cécile Laborde agrees with much of this liberal egalitarian critique, but she argues that a simple analogy between the good and religion misrepresents the complex relationships among religion, law and the state. Religion serves as more than a statement of belief about what is true, or a code of moral and ethical conduct. It also refers to comprehensive ways of life, political theories of justice, models of voluntary association, and vulnerable collective identities.

But the basic issue, analyzed in the final lines, was: “Is there a minimal secularism – or separation between state and religion – that is required by liberal legitimacy?” In her book Liberalism’s religion, the author (Cécile Laborde), argues that there is. The most radical challenge to religion posed by liberalism is not, therefore, that liberalism maintains a wall of separation between state and religion. It is, rather, that it assumes democratic sovereignty. To sum up briefly, religious majorities can shape the state within the constraints of what Laborde, in particular, has called minimal liberal secularism.

6) As said, the final section challenged how the role of emotions could lead to suboptimal political outcomes for the parties involved, as to a large extent emotions have been instrumental in determining outcomes in the recent and on-going struggle between Greece and Germany as regards to the terms of the Greek bailout. To be sure including emotional justifications in the public square will not necessary lead to decisions that would not have been suggested by rationalists and rational choice theorists.

However, as shown, emotional justification does constitute an inseparable part of the political process, and ignoring it diminishes the explanatory power of all sorts of theoretical and empirical models about the political process. As shown with the on-going situation with the Greek bailout, when emotions run high and are not heeded to or understood, they could lead to suboptimal outcomes for the parties involved. Emotions can derail the successful attainment of goals by introducing divisions, hierarchies and forms of neglect by making positions more intractable.

EXCURSUS

Politics as exchange of individual claims. In-between “biopolitics” and “rule of law”
Minority Claims in Multicultural Societies: A comparative study of case law

«The empire of the law is condition for the anarchy of the spirits».

1. Einaudi (La guerra e l’unità europea – 1948)

1. Introduction

In this brief excursus I want to reconstruct the relationship between “biopolitics” and liberalism, casting a new light on aspects that affect this relationship, analyzing the themes evoked by the latter through the interpretation given by the French philosopher Michel Foucault. The aim is to show the singular analogies with the ideas of “governance” and “Rule of Law” in the liberal tradition, starting from a recognition of politics as exercise prior to all kinds of deliberately created power. Such exercise lies at the base of each human and interindividual relationship, whose nature depends on the reciprocal exchange of performances. In this sense “danger coercion” of politics – quoting Leo Strauss – being represented by relations of power which are established as exercise prior to any constitutional or sovereign will, is described as necessary and unavoidable as long as it is limited to the minimum. This is why I propose to re-examine the link between politics and political subjects as a continuous and indefinite process of exchange, where each individual claims are accepted or denied.

2. The debate on the “rebirth” of liberalism

The debate on the “rebirth” of liberalism in the twentieth century is indeed one of the most discussed issues today among scholars, although its theoretical, political and economic relevance had not been recognized until at least the mid-eighties and nineties, when terms such as “neoliberalismo”, “ultra-liberalisme” and “advanced liberal democracies” began to spread among the medias. The original meaning of the term “neoliberalism” is now gradually drifted away from the theoretical and cultural background in which it was born, that is on the one hand the environment of Austrian academic intellectuals and German members of the Ordo-Liberalismus and Social Market Economy, on the other hand the Austrian School of Economics. Among these, it seems almost superfluous to recall names such as Walter Lipmann, Louis Rougier, Wilhelm Röpke, Ludwig Mises, Frederich Hayek and Alexander Rüstow, which, incidentally, was responsible for the
Minority Claims in Multicultural Societies: A comparative study of case law

Though it was originally supposed to represent a convincing alternative policy to Sozialdemocratie, starting from the eighties the “myth” that echoes and the one we fell in love with looks rather like a project to “govern globalization“, whereas the means of competition and market would be used from the economic environment in order to stimulate and shape, from its inside, the cultural background of individuals. The explosion of the so-called “financial capitalism” during the eighties is a clear example. Not to mention the politics, in those same years, by Ronald Reagan and Margaret Thatcher that are still today the most visible symbol of the breaking from the welferism and from the traditional social-democracy.

Two episodes are essentially related to the spreading of the word and culture linked to “neoliberalism“. The first is the Walter Lippmann Colloquie of 1938 and the founding of the Mont Pelerin Society Hayek, in 1947. The second is the interpretation of liberalism by Michel Foucault, an intellectual who was anything but liberal.

Up to the present time it is not yet agreed which historical moment, whether the Walter Lippmann Colloquie or the founding of the Mont Pelerin, might be the most important for the development of the new theory “du libéralisme agendas“. Only recently some French scholars, including Serge Audier, Christine Dardot and Pierre Laval, have attempted to re-evaluate the historical and theoretical importance of the Lippmann Colloquie, which has been almost never mentioned in the biographies of the author and appears to have been written only in some partial and fragmentary evidence of some of its participants. We know, however, that Hayek, for almost the entire course of his life, had been trying to minimize its importance (as proved by some of his testimony and autobiographies). In the same fashion he had been proudly considering himself promoter “of contemporary liberalism, confident of the roots that the evolutionary approach to the institutions of the Austrian tradition had in common with the thought of English and Scottish Moralist of the seventeenth and eighteenth century: John Locke, Bernard Mandeville, Adam Smith, David Hume, Adam Ferguson.

Unexpectedly, one of the first to re-evaluate the “Lippmann episode” was probably Foucault, who — during the lessons of the Cours au Collège de France of years 1978-1979 — gave it credit for its important historical and intellectual role in the rebirth and development of contemporary liberalism. He captures perfectly the transformation and the theoretical relevance of “new liberalism“ and the distance with the Classical Liberalism. That is to say, the almost unanimous fact that it can no longer be based exclusively on the classic sterile and apologetic principle — using Lippmann’s words — of “laissez-faire,
Michel Foucault’s interpretation of the liberalism has had a remarkable expansion over the last decades and it is essentially linked to the success of the word and category represented by the term “biopolitics”. Since the nineties we have witnessed an intense proliferation of writings on “biopolitics”, in which this category has been used with the porpoise of explaining the economic and social problems that characterize the society of the twenty-first century: globalization, eugenetics, bioeconomics, bioethics, robotics and transformers technologies, sexuality and secularization of bodies, biomedicine and biotechnologies. Since then, the term “biopolitics” is widely used both in debates on political theory and in non-academic environments, often taking on elusive meanings far from being homogeneous. In the same years, taking Foucault’s approach on governance of the individual through the processes of subjectivities, many of the over mentioned phenomena have been gradually associated with the political context “liberal and capitalistic democracies”.

Could all those phenomena be perhaps in some way connected with the practice of liberal government? Is it really that kind of enterprising and individualist capitalism, whose strategic logic can be interpreted as a logic of optimization and comparative efficiency? Therefore, is it possible to speak of “advanced liberal democracies”, using Nikolas Rose’s definition, as an ideal scenario for the effective carrying out of biopolitics?

3. **How to rebuild the link between “biopolitics” and liberalism?**

From these questions, my speech wants to rebuild the link between “biopolitics” and liberalism, casting a new light on aspects that affect this relationship, analyzing the themes evoked by the latter through the interpretation given by the French philosopher. The aim is to show the singular analogies with the ideas of “governance” and “Rule of Law” in the liberal tradition, starting from a recognition of politics as exercise prior to all kinds of deliberately created power. Such exercise lies at the base of each human and interindividual relationship, whose nature depends on the reciprocal exchange of performances. In this sense “danger coercion” of politics – quoting Leo Strauss – being

represented by relations of power which are established as exercise prior to any constitutional or sovereign will, is described as necessary and unavoidable as long as it is limited to the minimum.
Rather than seeing in liberalism a perfect and convincing biopolitical experiment that is to say, a concrete *project of govern mentality of individuals through the means-of-market economy*, as interpreted by Foucault, or *an economic solutions of political matters*, according to the formula of Strauss - My intent is to consider liberalism more as a procedure for resolving the uncertainty, without falling into coercion costs that would result from a political offer of collective choices. Granted the awareness that this uncertainty could never be eliminated nor could power and political activity even if minimized and reduced to the minimum.

Following the interpretation given by Foucault and post-Foucauldian philosophers, like Nikolas Rose, the distinctive character of the “neoliberal rationality” acquires its significance when the main economic aspect is used as analysis grid of not monetized choices of the social partner (for example the choice of a partner or the choice of an environment to spend someone’s life). Doing so the human and the economic as well as politic and economy within the individual himself become hybrid. Its specific logic of function is strategic and economic in contrasts with the political and juridical one, which has on the contrary permanently expressed modernity hinging on the concept of sovereignty.

This assumes a radical work of sensibilization towards the responsibility as well as the ability of the individual to take in full responsibility (i.e. someone’s own health and well-being). Therefore uprooting the culture of dependency, *welferism* and state parasitism. The ability of the paradigm “biopolitical” reveals a productive and incrementing characteristic of power. Power is considered as government of lives, whose political profile appears as a sort of *Vitalpolik*. It implies a practice of government where individuals are recognized as rational and *economic* actors, prior to social. In addition they are subordinated to the principles of competitiveness and encouraged to pursue their own self-government and to take “care of themselves.” For this reason Foucault and Rose proposed a model aimed at encouraging the spreading of entrepreneurial *ethos* as well as the reduction of state involvement in the economy; based not only on the assumption of their inefficiency, in comparison to the regulatory mechanisms of the economy, but also for pursuing a kind of cultural revolution focused on strengthening the values associated with the market.

4. From Foucault to Hayek, to Leoni and to Einaudi

However, this sort of “common economics” view, where economy is supposed to represents
some innovative sort of indirect control, is nothing but another misunderstanding of the political contents of liberalism.

Theorists of liberalism think that the market order is not a control strategy. No sort of “biopolitical” function, neither mental law on the environment, nor on the life and ethos of the individual can be reproduced with the help of optimization and rationalization of the actors’ life plans. Nevertheless through the abstract and impersonal law and Rule of Law. Institutional processes are not, in this case, the expression of some power. They are more likely a barrier against the power itself. The concept of market proposed by the Austrians, and particularly by Hayek is a good example: a process that describes wide “catallactics” horizons for whoever participates, never static, but in a process of constant change. Another important theory is by Bruno Leoni where law is seen as an exchange of individual claims. His perspective on power and politics are always more than an institutional framework, represented by the State and its legislative apparatus, since they may not work other than on the basis of pre-existing relations of powers.

In this sense, both the perspective of Foucault, although exotic and not without risk, and the one of the post-Foucauldian, do not seem to take into account the possible familiarity that the same concept of power drawn by the French philosopher may share with the tendency, shared by the theoretician of liberalism themselves, to define the use and monopoly. It is equally possible to support that in both theories, despite the obvious and undeniable political and methodological differences, we reach an ergodic organization, which is reversible and spontaneous of inter-individual relations, who does not have a decision-making center nor a fixed origin, but it is characterized by a high frequency of changes and modifications.

Since there is no way to establish fixed positions in such contexts nor to make predictions about how these positions will be distributed within the structure, the final outcome of the entire process will be unpredictable and will not be determined in advance unless by the nature of the exchange. At the core of the idea of power described by Foucault, starting from “La Volonté de Savoir”, there is never a single center of decisionmaking, from which rays propagate into forms of descendant sovereignty. Then again there is always a distribution of “individual sovereignty “, relevant or less relevant, found in relations among individuals.

The situation that arises from such exchange looks like a network of strategic relationships originated by different locations. A condition in which these relations are carried on in a binary dualism or a rigid exchange pyramid could never resolve — quoting Leoni — the arkonomeni are always in an inferior condition to arkoi. This sort of “simmachia”
in the exchange of power relations does not involve, as matter of fact, a static and rigid situation in which the exchange is exercised from a straight or perpendicular line, as to its origin there is never a binary and global opposition between dominant and dominated.

My suggestion is, due to these reasons, to look over the link between politics and political subjects as a process of exchange, continuous and indefinite, in which the claims of each individual are to be exchanged, accepted or denied. The government of the individuals is actually seen as spontaneous society of free men starting from the aim, shared even by Foucault himself, of not being over governed and of reducing the legal monopoly of power[ccxxiii]. Such monopoly could never be entirely cancelled, being in itself necessary to the extent in which it can be in an asymptotic way reduced, overturning the forms in order to avoid “states of the domain”, or as Hayek would say, in stable forms of coercion.

On this path, rather than seeing in politics a bioeconomical, increasing and productive capability of life, you can read through a search for different forms of freedom within unavoidable relationships of power, where — as Luigi Einaudi once said — the empire of the law is condition for the anarchy of the spirits.

Minority Claims in Multicultural Societies: A comparative study of case law


Minority Claims in Multicultural Societies: A comparative study of case law


Habermas, (1996b), p. 244.


Similarly to Awad (2011), Correira (2008), argues that Habermas’ deliberative democracy provides a suitable model to face the increasing multiculturalism if we conceive “many alternative media are themselves the organs of the new public sphere concept of public sphere is extended to the new alternative media”, p. 7.


“Secondly, communication and the consequences of communication of the deliberative model cannot be separated from the structural conditions in which discourse occurs. Communication operates at all levels of social justice and arguing that a communicative approach is apolitical is misunderstanding this”, Awad, (2011), p. 52.


Parekh, (2005), pp. 304-305.


“Separate” nation-states can be understood in two senses: separate jurisdictions without control of entry to the territory and separate jurisdictions with control of territory. Separate jurisdictions are, of course, compatible with freedom of movement as historical reality shows. For an account on the origins and construction of the exclusionary power of the states, see e.g., Plender, Richard, *International Migration Law*, Leiden, A. W. Sijthoff, 1972, esp. Ch. 1-3. Nowadays, European Union is a clear example of nation-states where
Minority Claims in Multicultural Societies: A comparative study of case law

separate jurisdictions are compatible with the right to freely move for their citizens.


[xxxviii] The revival of equality of opportunity research is owed to authors like Richard Arneson, Gerald A. Cohen, Amartya Sen, James Fishkin, and John Roemer, among others. Since the debate has been focused on the concept of equality and its relation to responsibility, this literature lacks, except for Arneson’s writings, a clear definition of the word “opportunity”. For literature defining the concept of opportunity, see the following note below.

[xxxix] For some definitions, see D.A. Lloyd Thomas, “Competitive Equality of Opportunity”, *Mind*, Vol. 86, No. 343, 1977, pp. 388-404 (“One has an opportunity to do something or to have something provided that one can do it or have it if one choses. One has no opportunity to do something or to have something if one cannot do it or have it even if one wishes” at p. 388); Peter Western, “The Concept of Equal Opportunity”, *Ethics*, vol. 95, 1985, pp. 837-850 (identifying three elements of the concept of opportunity: an agent, a goal and a relationship between them); S. J. D. Green, “Is Equality of Opportunity a False Ideal for Society?” *The British Journal of Sociology*, Vol. 39, No. 1, 1988 pp. 1-27 (“An opportunity is a chance of getting something if one seeks it. It is about the presence or
absence of obstacles limiting what an agent may do or have if he wishes” at p. 4); Alan H. Goldman, “The justification of equal opportunity”, in Equal Opportunity, Ellen Frankel Paul, Fred D. Miller, Jeffrey Paul and John Ahrens, Blackwell, 1987, pp. 88-103 (“An opportunity is a chance to attain some goal or to obtain some benefit. More precisely, it is the lack of some obstacle or obstacles to the attainment of some goal” at p. 88); Richard Arneson, 1989, “Equality and Equality of Opportunity for welfare”, Philosophical Studies, vol. 56, No. 1, pp. 77-93 (“An opportunity is a chance of getting something if one seeks it” at p. 85).


[xlvi] Assumptions about substitutability can be used to classify political theories: the more a theory presupposes that opportunities are substitutable, the more illiberal it is.

[xlvii] See for instance, D. Miller who considers the idea that global equality of opportunity can mean that “people with the same talent and motivation should have identical opportunity sets no matter which society they are born to” but rejects it suddenly: “surely such a requirement would be too strong. It would for instance require unlimited rights of migration coupled with unrestricted admission to citizenship” ibid. pp. 59-60.

[xlviii] The example comes from Peter Western, who once remarked that “the marital obstacle differs from insurmountable obstacles like race, color, and sex because marriage in America is a legal status that a person himself may change”, cfr. “The Concept of Equal Opportunity”, Ethics, vol. 95, 1985, p. 840.
An important literature has emerged in the last decade to criticize “methodological nationalism” in most social sciences. While the term “methodological nationalism” has been coined by Martins (1974: 226) to criticize the social sciences’ tendency to equate “society” with the bounded nation-state, the idea had been discussed in the 1970s by Giddens (1973: 265) and Smith (1979: 191). Recently, it has been revived by Beck (2000: 24) who has opposed it to methodological cosmopolitanism as an alternative way to analyze social phenomena and political organization. Its impact on migration studies has been firstly highlighted by Wimmer & Glick Shiller (2003).


Shachar Birthright, p. 5.

To see why it is a mistake, compare it to the reasoning “most people who eat are forced by hunger, then eating is generally coerced by hunger”.

Pogge, Thomas, “Migration and Poverty” in Robert Goodin and Philip Pettit (eds.)
To see why it is a mistake, compare it to the reasoning “political oppression generated a new literary style; struggling political oppression is a worthy cause, then struggling the new literary style is a worthy cause”.


[lxv] For an in-depth discussion of such a distinction see Fraser N., Honneth A., Redistribution or Recognition?: A Political-Philosophical Exchange, co-authored with Nancy Fraser, Verso, New York, 2003.


Minority Claims in Multicultural Societies: A comparative study of case law


Minority Claims in Multicultural Societies: A comparative study of case law


Minority Claims in Multicultural Societies: A comparative study of case law


[xcviii] About all these aspects, visit the *Centro studi Medì – Migrazioni nel Mediterraneo di Genova* (Italy), as well as the *San Remo Institute of International Law* (Italy).


[cii] Indeed, one of the most questionable aspects of Huntington’s thesis is his nativist anti-immigrant and anti-multi-culturalist posture in order to protect the supposedly Western civilizational purity of the United States from hybridization.


[civ] This point was forcefully made by Dieter Grimm at his keynote address, “Integration by Constitution - Juridical and Symbolic Perspectives of the European Constitution”, at the Conference “Toward the Union of Europe – Cultural and Legal Ramifications”, at New School University, New York, 5 March 2004.
Minority Claims in Multicultural Societies: A comparative study of case law


[cvi] Even in his new post-secular openness to the religious “other” and in his call for the secular side to remain “sensitive to the force of articulation inherent in religious languages”, Jürgen Habermas still implies that religious believers must naturally continue to suffer disabilities in the secular public sphere. “To date, only citizens committed to religious beliefs are required to split up their identities, as it were, into their public and private elements. They are the ones who have to translate their religious beliefs into a secular language before their arguments have any chance of gaining majority support.” Jürgen Habermas, “Faith and Knowledge”, in The Future of Human Nature, Cambridge 2003, 109. Only by holding to a teleological philosophy of history can Habermas insist that “postsecular society continues the work, for religion itself, that religion did for myth” and that this work of “translation”, or rational linguistification of the sacred, is the equivalent of “non-destructive secularization” and enlightenment.


[cx] See the powerfully argued critique of the approach in Barry, Culture and Equality, ch. 2. For responses to Barry, see P. Kelly (ed.), Multiculturalism Reconsidered (Cambridge: Polity, 2002).


[cxii] Allevi, Conflicts over Mosques, p. 45.


Minority Claims in Multicultural Societies: A comparative study of case law


[cxvii] Even at federal level, there are a number of different referendum formats that can be used: see W. Linder, Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies, 3rd ed. (Basingstoke: Palgrave Macmillan, 2010), ch. 3.

[cxviii] What ‘neutrality’ means is a much-debated topic in liberal political theory. For present purposes, the relevant sense of state neutrality is ‘neutrality of treatment’ as explained and defended by Alan Patten in ‘Liberal Neutrality; A Reinterpretation and Defense’, Journal of Political Philosophy, 20 (2012), 249-72.

[cxix] I do not treat official human rights documents as having canonical status for the understanding of human rights, but they may as in the present case provide a useful starting point for philosophical reflection and interpretation.


[cxxiv] There is a carefully nuanced discussion of this issue in A. Eisenberg, Reasons of Identity: A Normative Guide to the Political and Legal Assessment of Identity Claims (Oxford: Oxford University Press, 2009), ch. 5.

[cxxv] Indeed rather than trying to distinguish between what is essential and what is not, American constitutional doctrine asks whether a government measure imposes a ‘substantial burden’ on religious exercise, and assesses this primarily from the perspective
Minority Claims in Multicultural Societies: A comparative study of case law

of the individual practitioner: see K. Greenawalt, *Religion and the Constitution, vol. 1: Free Exercise and Fairness* (Princeton and Oxford: Princeton University Press, 2006), ch. 13. Thus some aspect of religious practice that matters a great deal to the individual in question will qualify even if religious authorities do not require it. Greenawalt defends this focus, but notes that it cannot apply in the same way ‘when claimants ask for an action that would be reasonable only if it affects a larger group’ such as preserving a sacred forest (p. 207).


[cxxviii] Allevi notes that where such applications have been refused, local Muslims have often accepted the outcome, sometimes choosing instead to depict a minaret on the entrance door of the mosque (Allevi, *Conflicts over Mosques*, pp. 46-7).


[cxxxi] See D. Miller, ‘Justice, Democracy and Public Goods’ in K. Dowding, R.E. Goodin and C. Pateman (eds.), *Justice and Democracy: Essays for Brian Barry* (Cambridge: Cambridge University Press, 2004). There the author defends the principle of equal net benefit – the state should endeavour to supply a package of public goods in such a way that each citizen benefits to the same extent compared to a baseline in which no goods are supplied, while conceding that the principle may not be fully realisable in practice, and also that it may not be appropriate for all classes of public goods.

[cxxxii] See M. Barberis, *Populismo digitale. Come Internet sta uccidendo la democrazia*, Milano, Chiarelettere, 2020. The author advances a diagnosis of digital populism: today politics is now done on smartphones, with shots of alarmist posts, morning tweets and selfies with voters. The people thus have the illusion of being able to directly influence public affairs, but this disintermediation is nothing but a new mediation. Barberis analyzes the phenomenon in all its aspects, but not only: it indicates specific, constitutional, political and media remedies. Instead of disconnecting from the network, as many are now tempted to do, it is necessary to act like Ulysses with the sirens: to remain closely tied to the tree of rationality.
An interesting case to ponder here is Syndicat Northcrest v. Amselem in which five Jewish occupants of an apartment building in Montreal claimed the right to erect sukkahs on their balconies for the nine days of the festival of Sukkot, in defiance of their co-ownership agreement which prohibited any edifices being built on balconies. The majority on the Canadian Supreme Court, finding in favour the five, argued that the aesthetic and property-value objections to such temporary structures were not sufficient to outweigh the religious rights of the tenants. For a discussion of the case, see Eisenberg, *Reasons of Identity*, ch. 5.

This kind of position is defended in D. Miller, ‘Territorial Rights: Concept and Justification’, *Political Studies*, 60 (2012), 252-68.


See the careful discussion of this issue in C. Laborde, ‘Political Liberalism and Religion: On Separation and Establishment’, *Journal of Political Philosophy*, 21 (2013), 67-86. Laborde shows convincingly that Rawlsian political liberalism cannot adjudicate between what she calls ‘moderate separation’ and ‘moderate establishment’. She goes on to argue that the former is required on republican grounds; I disagree, but will not pursue the
Minority Claims in Multicultural Societies: A comparative study of case law

argument here.

[cxl] Although formal establishment is less common, the practical relation between church and state in other European countries is far closer to the second model than the first. See J. Klausen, *The Islamic Challenge: Politics and Religion in Western Europe* (Oxford: Oxford University Press, 2005), ch. 5.

[cxli] They will do this if they fear that the consequence of disestablishment is to entrench radical secularism instead. For a defence of a pluralised version of religious establishment, see T. Modood, ‘Muslims, religious equality and secularism’ in G. Levy and T. Modood (eds.), *Secularism, Religion and Multicultural Citizenship* (Cambridge: Cambridge University Press, 2009).


[cxliii] It is worth underlining here that the Swiss decision took the form of a prohibition – a restriction of the freedom of one particular religious group – and this will be harder to justify than a policy of providing aid in non-neutral fashion. Thus a state might decide to use tax revenues to cover part of the costs of restoring the fabric of churches but decline to do the same for synagogues or mosques, in the name of national identity, but although this is a violation of the equality principle, it is less discriminatory in its impact than a building ban.

[cxliv] As to the Italian scenario: see Giuseppe Sciortino, *Rebus immigrazione*, Bologna, Il Mulino, 2017, pp. 176. Immigration is a problem present on the lips of many but in a clear and defined way perhaps in the mind of few, given the huge number of interpretations and solutions feared in this regard, often without any basis: from total rejection to unconditional reception.

Giuseppe Sciortino, professor of Sociology at the University of Trento, in his latest book *Rebus immigration* tries to shed light on a theme, that of immigration, which he considers so difficult but not impossible to deal with. The treatment, alternating a more general analysis in the first chapters with a more specific one and linked to a chronological scan in the remaining and most part of the text, does not give a primary weight to the solutions, although important, of the author on the subject; rather it aims to make people understand the reason for the rebus, and the modalities of its manifestation.
Minority Claims in Multicultural Societies: A comparative study of case law

The thesis supported by Sciortino, with a simple but not simplistic syntax and a sarcastic and lashing language, almost like a pamphlet, is that immigration is a puzzle because since the mid-sixteenth century there has been one *ius emigrandi* but not one *ius immigrandi*. Along the pages of the text, the author will implicitly indicate to the reader what in his opinion are the causes of this lack: on the one hand the definition, starting from the French Revolution, of the modern concept of citizenship; on the other, the dynamics of the work that have taken place over time.

Citizenship and work will in fact determine all the choices made by men and states in terms of immigration, directing them between internal liberalism-external liberalism, opening-closing, immigrant-refugees, thematic nuclei of the entire narrative.

Since the time of the Peace of Augusta in 1555, with the affirmation of the principle of *cuius regio eius religio*, to this day the presence of an *ius emigrandi* but not an *ius immigrandi* has been constant (making the exit is a right but the enter a concession), with different basic reasons. In modern Europe, as well as in medieval Europe, the mobility of peoples was not a rare or denied phenomenon, being the rulers of the time constantly looking for arms for agriculture, especially after particularly bloody events such as the religious wars of the 16th century and 17th century. If anything, it was the emigration, for which compensation for all those orphaned rulers of their subjects was often provided.

The migrants (including the Huguenots post-Edict of Fontainebleau of 1685, the first refugees in the strict sense of the story for the author) did not cause major concerns: often economically affluent, these “had the aim of not merging with the local population of the new state, asking the sovereigns conditions that would allow the reproduction of a distinct social and legal identity” (p. 43). Exception made in some situations for some categories of people, including the Jews as non-Christians. Currently, however, in the liberal states (precision is a must as you will see), although only 3.3% of the population is on the move (of which 0.5% is made up of refugees, a significant number – see: Abel and Sander, Quantifying global international migration flows [2014]), there is a cyclical impatience of the public opinion on the matter, immigrants being always in a greater number than citizens are willing to tolerate.

However, this dissatisfaction is not present in authoritarian states, where the share of the non-native population can reach 85% thresholds as in Qatar. For the author, this is due both to the lack of freedom of protest in these situations and to the nature of the reception: if the foreigner is placed in subordinate conditions in authoritarian states, running the constant risk of being expelled ipso facto at the behest or whim of the local satrap; instead in liberal democratic states it can take advantage of a long series of rights
and guarantees. In essence: authoritarian states can afford a less restrictive policy because there is a caste system, not unlike that existing in medieval and modern Europe, where the autocrat is the only one to determine who enters. Liberal-democratic states, founded on the concept of equality of men, must instead be more restrictive by necessity because they tend to include foreigners: in many cases only partial; in some total with the recognition of citizenship.

While not flattening the immigration rebus on a single dynamic of possible or non-recognition of citizenship, Sciortino pays close attention in his writing to the definition of the same in the years of the French Revolution, when the modern opposition between citizen and foreigner arises. If in its first cosmopolitan phase the Revolution tended not to create any difference between these categories, granting the foreign revolutionaries the same rights as the French ones for the pélerins de la liberté; later, with a national-republican turn required by the need to establish a new army, which can no longer be assembled as in the past with mercenaries, things change: in fact, only those who serve in the armée will be citizens.

The consequences, already prophesied by Rousseau, are tangible: if the citizen is asked for more (in the duties) than the foreigner, it is logical to give him something more (in the rights) to which the foreigner cannot access if not rarely. During the Revolution, the figure of the emigré was born, a new type of emigrant no longer religious but political, belonging to transnational social bodies (clergy, nobility) and generally stabilized in a neighboring state in the hope of an imminent restoration. It will be precisely these new emigrants, French become étrangers, extraneous to the nation as enemies of the Revolution and ready to plot with all those foreign anti-republican forces, to feed the image of the foreigner as an enemy of the people. In the centuries to come, work, in an increasingly globalized world, will be responsible for the maturation and complication of the immigration puzzle. In the nineteenth century, due to the first massive forms of economic inequality induced by the Industrial Revolution, the image of the migrant changed again: no longer, with the exception of patriots from all over Europe, a man who moves away from his land to preserve his being (Protestants, clerics, nobles) but an individual who emigrates to change it, who moves to live better and earn more. The repercussions are evident: by resuming Weber (p. 67) “migration leads to a break from the patriarchal domestic and economic community and from the power relations of the starting areas”; the migrant becomes the one who, for example, no longer takes his hat off when the lords pass by. The constant demographic increase makes immigration, in Nitti’s words, “a powerful safety valve against class hatred” for the starting states but a problematic one for the welcoming ones, ready to close the borders in harmony with ethnic motivations and nationalistic (pp. 79-80).
In these realities, the main anti-immigration demonstrations come from the working classes, being the foreign worker generally paid less or used as a strikebreaker. The major western states try to overcome the problem by imposing equal pay for all workers, with the aim of making foreign work complementary but not a substitute for indigenous work. This measure, for the author, however, implies not only to request the same duties from the foreign worker (in the mountain hours of activity) but also the same rights (in pay and social assistance) as a native worker. Doing so saves the union between internal liberalism (protecting the citizen from the abuses of power) and the external one (same practice for foreigners present in the territory) but it feeds the image of the parasitic migrant of society, who enjoys the same rights of a citizen despite not often being such yet.

Contrary to Hobsbawn’s thesis, for Sciortino the twentieth century is instead, at least on the immigration side, a long century. If with the First World War many of today’s control tools (visas, permits, detention centers) and the discretion, recognized by law, for each state to fix autonomously the conditions of entry and permanence of foreigners emerge; with the Second, the bearer of a huge excess population (stateless, exiled, veterans of the Shoah), the international right to asylum (individual, not collective) was born, sanctioned by the Geneva Convention of 1951. It, pivoting on the principle of non-refoulement, of non-refoulement, defines the refugee as someone who because of his political opinions or belonging to a particular social group has a well-founded fear of persecution (pp. 107-109).

These tools will bring with them a certain and desired ambiguity: a mass of potential refugees will come to Europe’s doors, however as migrants, potential workers, being the economies of the Old Continent in the glorious thirty years in the constant search for labor in cheap. See the French case (where the Algerian labor force, of French citizenship if born before the independence of 1961, prefers the low-cost and immediately settable Mediterranean one) or the German case (with the celebrations in Cologne in 1964 for the arrival of the millionth foreign worker). When, however, the positive joint in the seventies end up being affected, these foreign workers will be the least qualified; who, however, although they can no longer contribute to the welfare of the state of residence, will continue to receive forms of assistance since they have become denizens, semi-citizens for the work done for years. Once again for the author, the just defense of the combination of internal and external liberalism feeds the image of parasitic immigrants in society; who from now on will almost always present themselves as refugees to enter Europe.

One of the most interesting aspects of the text, written by Sciortino with clear exposition and evident human transport (p. 164), is the description made in the concluding chapters of the “gentle monster” (the expression is by H. Enzensberger, who coined to
define the EU as a whole), sum of the measures taken in recent decades by the EU to tackle the immigration node and culminating in the Dublin Convention (1990 but revised in 2003 and 2013). These measures, including inter alia the establishment of Eurodac (fingerprint database of all asylum seekers and irregular immigrants) and robust actions against the facilitation of illegal immigration, will allow respect for international asylum law but they will make it difficult to get to Europe to get it; much more difficult to choose where to ask; difficult to achieve it as perennial protection (p. 130).

The beauty of this “monstrous creation” will disappear when the main transit countries of the migratory routes (especially Libya) with the outbreak of the Arab Springs are reduced to pale memories of state entities, while at the same time making some structural differences emerge strongly in within the EU. On the one hand, the countries of Northern Europe that have long been able to reform their economies and are not eager for cheap and unskilled labor; a reality where the often unemployed foreigner is a negative voice on the welfare budget, constantly calling for containment of asylum seekers and ready to push the other states of the Union to improve their welcome (not to be no longer the only sought-after destinations). On the other, the countries of Mediterranean Europe, with fully unreformed economies and a large demand for low-skilled foreign workers (see Cvajner, The presentation of Self in emigration: Eastern European women in Italy [2012]; see also Sciortino, Immigration in Italy: Subverting the logic of welfare reform? [2013]). This resulted in a general short circuit since the latter states, for the Dublin agreement (“the first safe country crossed by the refugee must grant him the right to asylum”), welcome people who are eager but unable to go to the North; which obtain the maximum result while contributing minimally to border controls and to the planned redistribution of refugees.

Despite this, in the face of the cretineries of both the muscular populism of the right and that of beautiful souls on the left (“proletarian internationalism revised by John Lennon”, p. 153) the gentle monster appears to Sciortino as the only answer to the immigration rebus; of course, by amending it from its limits: in Europe looking for a collaboration with neighboring transit countries as well as really redistributing refugees and the costs of border checks between member states; in Italy by tackling the problem structurally and not in an emergency (by checking the beds, the procedures for applying for asylum and the related assessment times); cutting off illegal work with the action of the competent inspectors (since once the recent economic crises have passed, irregular flows of foreign workers will return); granting citizenship to those who grew up in the Peninsula and decent places of worship for the Muslim population; selecting refugees directly in the camps (this measure actually leaves doubts: wouldn’t you “risk” choosing only the best?).

At the moment these proposals appear difficult but not impossible to implement:
Minority Claims in Multicultural Societies: A comparative study of case law

perhaps only, as Sciortino reiterated, a competent political class that has the ability and the courage to do so.


[cliv] See Mauro Barberis, Non c’è sicurezza senza libertà. Il fallimento delle politiche antiterrorismo, Bologna, Il Mulino, 2017, pp. 136. What if all we know about security is fake? This is the question that the book puts before us, in its stringent analysis of the anti-terrorism policies adopted by the main western powers since September 11th, 2001. Subjected to the controls of adequacy, necessity and proportionality, commonly used by the great constitutional and international courts, most of the measures against terrorism prove to be useless or counterproductive. The same irrationality, moreover, also pervades most of the current opinions regarding emergency, public order and self-defense.

Minority Claims in Multicultural Societies: A comparative study of case law


[clviii] As to the Italian legal debate, see: C. Volpato (2019), Le radici psicologiche della disuguaglianza, Roma-Bari, Laterza. How do inequalities feed? What psychological processes prevent those in disadvantaged conditions from rebelling? And who dominates, how does he justify his privilege to himself and to others? A new and original key to fully understand one of the central issues of our time. Inequalities are among the main causes of collective unhappiness: they sow mistrust, weaken social cohesion and put democracy at risk. Why, then, are there few and weak attempts to counter them? This book examines how inequalities are constructed, concealed, accepted, interpreted, contrasted. Explore the game of the mechanisms of acquittal or blame respectively of the dominant and the dominated following two different perspectives: the first dwells on the cognitive and motivational processes that ensure that the privileged, who benefit from inequality, are convinced of having the ‘right stuff ‘and to deserve their advantages. The second reconstructs the processes of those who suffer from inequality and accepts it, internalizing it.


[clxi] A very updated book is the following: M. Ambrosini-P. Naso-C. Paravati (2019), Il Dio dei migranti. Pluralismo, conflitto, integrazione, Il Mulino, Bologna. The historical fact is that no migratory movement has ever been reversible. The migratory processes write the paths of the table and conviviality with the indelible pen of the maternal kitchens; families that have never guessed who came to dinner since the times of the Lombards mingle; they interweave the vocabularies of Arabs and Normans, insert barbaric culture into the Romanistic conception of marriage, remodel mentalities. And therefore the most recent migratory process has brought back to our religious landscape physiognomies and looks to the sky that are destined to remain forever: even when the democratic forms that our pride believes to be eternal will have been perfected or eroded by the wind of time.
How many imams are there in Italy? How do they prepare? How do the different Christian churches live in our metropolis? What are the activities and actions carried out by the Romanian Orthodox Church, which in Italy has a basin of over one million people? The volume presents three unpublished investigations on the imams of Italian mosques, on the Romanian Orthodox and on the different faces of Christianity among Milanese immigrants. Three hitherto unexplored paths, which show how immigration constitutes one of the most incisive vectors of a post-secularization process and a new movement of religious ferment.

See also M. Ambrosini, (2005), Sociologia delle migrazioni, Il Mulino, Bologna. (The author – Professor of General Sociology and Sociology of Migration Processes at the Faculty of Education of the University of Genoa -, presents with this book an introduction to an increasingly frequent discipline in university curricula. While insisting on the socio-economic dimension, the author has given the necessary importance to those aspects of the problem that concern the family, the education of minors, migration policies, the problems of deviance and xenophobia). Id., (2008), Un’altra globalizzazione: la sfida delle migrazioni internazionali. (Much has been said in recent years about economic, political and cultural globalization. Indeed, there is some tiredness in a debate subject to the inevitable cycle of intellectual fashions. One aspect, however, has not yet been explored as it deserves: while it is now commonplace to preach the free movement of capital, goods, media products and ideas, we tend to think that borders should remain closed to people, or at least to those that move from south to north in the dramatic geography of planetary inequality. This closure is countered by the idea of emigration as a response of the dispossessed to the overbearing globalization of dominant interests. Suggestive interpretation, which however risks leaving in the shadows the fact that migrants are required by developed economies to fill the gaps in the “jobs of the five Ps”: precarious, heavy, dangerous, underpaid, socially penalized. This study takes a point of view that considers migrants as actors of globalization, exploring the complex web of ties that cross borders, influence the societies of origin, reshape the identity of the migrants themselves and also that of the countries that welcome them). Id., (2017), Migrazioni, Pixel Edit.; Id., (2018), Irregular immigration in Southern Europe: actors, dynamics and governance, Palgrave Macmillan.

Minority Claims in Multicultural Societies: A comparative study of case law

[clxiii] Laborde, C. (2017). *Liberalism’s Religion*, Cambridge, MA: Harvard University Press, 344 pp. This book offers the first extensive engagement with religion from liberal political philosophers. The volume analyzes, from within the liberal philosophical tradition itself, the key notions of conscience, public reason, non-establishment, and neutrality. Insofar as the contemporary religious revival is seen as posing a challenge to liberalism, it seems more crucial than ever to explore the specific resources that the liberal tradition has to answer it. Disaggregating religion into its various dimensions, as Laborde does, has two clear advantages: first, it shows greater respect for ethical and social pluralism by ensuring that whatever treatment religion receives from the law, it receives because of features that it shares with nonreligious beliefs, conceptions, and identities. Second, it dispenses with the Western, Christian-inflected conception of religion that liberal political theory relies on, especially in dealing with the issue of separation between religion and state. As a result, *Liberalism’s Religion* offers a novel answer to the question: can Western theories of secularism and religion be applied more universally in non-Western societies?


[clxviii] See also Laborde, C. *Critical Republicanism. The Hijab controversy and political philosophy*, Oxford: Oxford Political Theory, 2008. The first comprehensive analysis of the philosophical issues raised by the *hijab* controversy in France, this book also conducts a dialogue between contemporary Anglo-American and French political theory and defends a progressive republican solution to so-called multicultural conflicts in contemporary societies. It critically assesses the official republican philosophy of *laïcité* which purported to justify the 2004 ban on religious signs in schools. *Laïcité* is shown to encompass a comprehensive theory of republican citizenship, centered on three ideals: equality (secular neutrality of the public sphere), liberty (individual autonomy and emancipation) and fraternity (civic loyalty to the community of citizens). Challenging official interpretations of *laïcité*, the book then puts forward a critical republicanism which does not support the *hijab* ban, yet upholds a revised interpretation of three central republican commitments:
Minority Claims in Multicultural Societies: A comparative study of case law

secularism, non-domination and civic solidarity. Thus, it articulates a version of secularism which squarely addresses the problem of status quo bias – the fact that Western societies are historically not neutral towards all religions. It also defends a vision of female emancipation which rejects the coercive paternalism inherent in the regulation of religious dress, yet does not leave individuals unaided in the face of religious and secular, patriarchal and ethnocentric domination. Finally, the book outlines a theory of immigrant integration which places the burden of civic integration on basic socio-political institutions, rather than on citizens themselves. Critical republicanism proposes an entirely new approach to the management of religious and cultural pluralism, centred on the pursuit of the progressive ideal of non-domination in existing, non-ideal societies.

Moreover, see: Id., Pluralist thought and the State in Britain and France, 1900-25, Palgrave Macmillan, 2000. This is the first comparative study of early twentieth-century French and British schools of political pluralism. A wide-ranging survey of the works of thinkers such as JN Figgis, GDH Cole, Harold Laski, Edouard Berth, Maxime Leroy and Léon Duguit, Pluralist Thought and the State in Britain and France, 1900-25 is a major contribution both to the study of national tradition of political thought and to the understanding of relationships between state, groups and individuals in democratic societies. Cécile Laborde has written a remarkable comparative analysis of how six leading British and French writers formulated pluralist ideas in the first quarter of the twentieth century. It embeds their striking views in their contemporary context but is particularly welcome at a time when pluralism is making a comeback in France. Couched in a clear and lively style, it merits clear reading on both sides of the Channel.

[clxxiii] Although emotions play a role in all types of political regimes, they will be reviewed in light of attaining political liberalism. As put forward by John Rawls, liberalism denotes a state, in which political principles are not built upon any type of comprehensive
Minority Claims in Multicultural Societies: A comparative study of

doctrine about the meaning and purpose of life, but a state, in which a commitment to equal liberties and rights and guarantees for a number of social and economic entitlements exist. These definitely limit the ways, in which public emotions can be manifested and cultivated at the level of policy-makers and ordinary citizens.


Minority Claims in Multicultural Societies: A comparative study of case law


[clxxxv] For instance, the emotion of anger occurs by first undergoing bodily changes and then becoming aware of them.


[cxc] Ibid. de Sousa.

[cxcii] Feeling sympathy appears to start as early as in six-month old infants. In one study infants watched as a climber was hiking up a hill and another figure was either aiding him or derailing his efforts. The infants expressed signs of approval at the former and disapproval at the latter. In Mlodinow, Leonard. Subliminal: How Your Unconscious Mind Rules Your Behavior. New York, NY: Vintage Books, A Division of Random House, Inc., 2013.

[cxcii] Similarly, fear has often been detected in very young babies and is related to their inability to take care of themselves and ensure their comfort. Ibid., Nussbaum.


[cxcvi] Ibid. Thompson, p.103.
Minority Claims in Multicultural Societies: A comparative study of case law

[cxcvii] Ibid. Thompson, p.106.


[cciii] Ibid. Nussbaum.

[cciv] Ibid. Thompson and Hoggett, p.6.


[ccviii] See Sardo, A., Emotivism is not dead. Relation held during the Convegno “Interpretazione giuridica e teoria del diritto. Intorno a Riccardo Guastini”, held on 21-22 October 2016, University of Genoa (Italy), Faculty of Law.

Namely, the Währungsunion-Finanzstabilisierungsgesetz, (Monetary Union Financial Stabilisation Act), which grants the authorization to provide aid to Greece, and the Gesetz zur Übernahme von Gewährleistungen im Rahmen eines europäischen Stabilisierungsmechanismus, (Act Concerning the Giving of Guarantees in the Framework of a European Stabilisation Mechanism).


Id. at para. 124.

Id. at paras. 130–32.

Id. at para. 116 (referencing the decisions on Maastricht [BVerfGE 89, 155, 175] and Honeywell [BVerfGE 126, 286, 302 et seq.]); in the Maastricht decision, see also paras. 129 & 137 on commitment to the stability concept.

Bundesverfassungsgericht [BVerfG – Federal Constitutional Court], Case No. 2 BvR 2661/06 (July 6, 2010), https://www.bundesverfassungsgericht.de/entscheidungen/rs20100706_2bvr266106en.html.

Judgment of Sept. 7, 2011 at para. 129. The court adds: “In this connection, particular mention should be made of the prohibition of direct purchase of debt instruments of public institutions by the European Central Bank, the prohibition of accepting liability (bailout clause) and the stability criteria for sound budget management (Articles 123 to 126, Article 136 TFEU).” Id. This remark attracted considerable attention but has not been taken too seriously by the ECB.

Id. at para. 98.


Id. at para. 116.

Minority Claims in Multicultural Societies: A comparative study of case law


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