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Mosques in Europe: between Toleration and Respect

A study of the 2015 Lombardy Law for Places of Worship.

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Table of contents

INTRODUCTION

In recent decades European states have experienced a radical change in their demographic composition[1] produced by several waves of immigration[2] that have touched every country, even if in different ways and in different time periods. Northern Europe experienced immigration immediately after the end of the Second World War (as a consequence of lively economic growth and the process of decolonization), while Southern Europe has turned into a migrant-hosting region since the early '90s when Greece, Italy and Spain started to experience massive migration inflows (Triandafillydou, 2008: 54; Dustman and Frattini, 2012: 26).

Waves of immigration brought further diversity in a macro region already characterized by a constellation of about 400 minorities and ethnic groups whose habits, traditions and relations with the majority are regulated by legislative settings varying from country to country.[3] Hence, every country despite the differences in immigration flows and composition of the population has internal pluralism with regard to cultures, religions and ways of life.

Minority habits and practices, however, are conventionally perceived by citizenry and institutions as particularly challenging to accommodate, especially in the case of those minorities that are considered particularly difficult to integrate and which suffer discrimination in many aspects of life.

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[1] For further information see the link to Eurostat web site: http://ec.europa.eu/eurostat/statisticsexplained/index.php/Migration_and_migrant_population_statistics [Last Access: 23/11/2016]

[2] In this paper I refer to immigration to the EU as a structural phenomenon and not to the 'refugees crisis' that EU has been confronting over the last few years. For more information about the EU and the refugee crisis, please check the EU agency FRA: http://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-fundamental-rights-report-2016-2_en.pdf[Last Access: 23/11/2016]

[3] For further information about minorities in Europe see: Federal Union of European Nationalities (FUEN): https://www.fuen.org/european-minorities/general/ [Last Access: 15/11/2016]. Kahanec , M.; Zaiceva, A.; Zimmermann, K.F. (2010). Ethnic Minorities in the European Union: An Overview. Available online at: http://ftp.iza.org/dp5397.pdf [Last Access: 28/11/2016]

This is the case for Muslims, for example who suffer from marginalization everywhere in Europe.[4] Though some Muslim groups have been living in Europe for centuries, such as in the Balkans, the largest part of the current Muslim population is the outcome of the above-mentioned wave of immigration that started after the Second World War (EUMC, 2006: 8).

Despite the difference in composition, they form in each country a minority community whose coexistence with the majority of the population has always been characterized by a certain degree of complexity. In particular, Muslims suffer from discrimination in different areas, such as employment, education and housing. They are often victims of negative stereotyping as a consequence of the biased picture given by media (EUMC, 2006: 31-32).

After 9/11 and subsequent waves of terrorist attacks[5] that have hit almost every European country, suspicion of Muslims has increased and they are increasingly regarded as a 'foreign body' impossible to integrate and as a potential threat to security.

In particular, Muslims have begun to be depicted as a unique undifferentiated group – a sort of monolith – sharing a fundamentalist version of Islam. However, this perception of Islam is blind toward major differences in religious beliefs and practices resulting from Muslims' different national, cultural and religious backgrounds. In addition, especially among the younger generation, Muslims have often undergone important transformations

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[4] FRA, (2016). Fundamental Rights Report 2016. Available at: http://fra.europa.eu/en/publication/2016/fundamental-rights-report-2016 [Last Access: 29/11/2016]. FRA/EUMC, (2006). Muslims in the European Union. Discrimination and Islamophobia. Availableat:http://fra.europa.eu/sites/default/files/fra_uploads/156-Manifestations_EN.pdf [Last Access: 28/11/2016]. Allievi, S. (2010). Mosques in Europe. Why a solution has become a problem. NEF initiative on religion and democracy in Europe. Available at: http://www.nef-europe.org/wp-content/uploads/2013/03/mosques-in-Europe-fullpdf.pdf [Last Access: 29/11/2016]

Among all the minorities it is necessary to mention in particular the Roma people who with an estimated population of 10 to 12 million, are the largest and most widespread ethnic minority in Europe and also the most subject to marginalization and exclusion by the societies where they live.

For further information, reports and surveys about Roma people in Europe check the Fundamental Rights Agency: http://fra.europa.eu/en/theme/Roma

[5] It is possible to mention as examples of terrorist attacks the following tragic episodes: Madrid (2004) and Barcelona (2017), London (2005, 2017) and Manchester (2017), Paris (2015) and Nice (2016), Belgium and Germany (2016, 2017).

in response to developments both internal and external to Muslim communities (EUMC, 2006: 33).

Nevertheless, the perceived 'challenge to Western values' has become a matter of preoccupation in Europe, as shown, for example, by the so-called *cartoon controversy*[6] that witnessed an apparently widespread perception that 'Muslims are making politically exceptional, culturally unreasonable or theologically alien demands upon European states' (Modood, 2003).

The presence of Muslim citizens and the question of how to accommodate them are considered a big challenge for European norms and values. The climate of fear has influenced institutions both at national and local level to the point that security and protection against a perceived Muslim threat forms a constant part of institutions' political agendas (EUMC, 2006: 33).

Indeed, the climate of suspicion toward Muslim habits has resulted in laws enacted with a view to regulating those Muslims habits that, although legitimate, are disliked by the majority of the population. In this respect particularly pertinent is the so-called 'veil controversy': the Muslim veil in public spaces has become the object of restriction through legislative intervention, for example in France (2004, 2010) and Belgium (2010).[7] Not to

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[6] On 30 September 2005 the Danish newspaper Jyllands-Posten published 12 drawings with the title 'The Face of Muhammad'. The controversy erupted because in Islamic tradition any depiction of Muhammad is forbidden. On the other hand, Western constitutions grant everyone the right to express his or her opinion and speak freely unless it is defamatory. The controversy, however, did not take place in a vacuum: the context is of paramount importance. The controversy concerns the Muslim community, which is mainly formed by immigrants and their descendants who everywhere suffer from marginalization and discrimination. Not only are they perceived as different because of their traditions and faith requirements but they are also considered inescapably permeable to terrorism. Moreover, the recent experience of international Islamic terrorism has reinforced this perception in European public opinion; consequently, Muslims have been targeted as dangerous and suspect. (Laegaard, 2007)

[7] For an overview see the BBC article: http://www.bbc.com/news/world-europe-13038095 [Last Access: 5/08/2017]. In 2004 France, among the European countries with the largest Muslim population, adopted a law (Loi n°2004-228) that bans the Muslim veil (*le foulard*) in public schools. The law has a dual aim: to safeguard the particular French form of secularisation, namely the *laïcité*, and to promote gender equality inside public schools. The ban has raised many ethical questions: on the one hand it seems a legitimate act in order to protect neutrality inside

deny the importance of many different issues concerning the integration of Muslims (and their customs), such as the headscarf or *halal* food, I will consider *specifically* the issue of the construction of mosques.

Although highly diversified, Muslim places of worship in host countries typically take two main forms: the informal 'prayer rooms' (also called *musalla*) and the *purpose-built mosques*, that are places built (or refurbished) as exclusively place of worship. Often they are characterized by the presence of a dome and minaret[8] (Allievi, 2009: 18).

Minarets, in fact, are considered the most controversial aspect of mosques. In 2009 in Switzerland[9] a referendum was organized in order to decide about a ban on minarets throughout the national territory. Unlike other countries, in Switzerland issues of law and policy are decided through popular referendum; so, because supporters of the ban won[10] with the 57,7% of the votes, a new article was added to the Swiss Constitution that

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French public schools, while on the other hand the law seems to jeopardize the freedom of religion inscribed in the Constitution. The issue of the Muslim veil ban was extensively addressed by Laborde (2005, 2008, 2017). Regading the possible justifications for the ban, she groups the reasons into three groups: 1. Those who are favourable to the ban argue that Muslim dress can be regulated because it belongs only to the field of 'practices' but not to the field of 'belief'. 2. Wearing the veil is not a religious obligation (it is not one of the five pillars of Islam) and even inside the Muslim community there is a high degree of disagreement. 3. Veiling is not a free decision of women and hence this practice does not respect women's status as autonomous beings (Laborde, 2017: 22-23). The law was presented as feminist and anti-racist and defending oppressed women. Yet feminists and in particular post-colonial feminists started to question this state of affairs and argued that actually the veil must not be considered as an enemy to fight against but rather as a part of Muslim women's lives. (Al-Saji, 2010; Delphy, 2006; Abu Odeh, 1993).

[8] It must be noted that in the French debate these are called *mosquées de proximité* and *mosquées cathedrals* (Allievi, 2009, 52).

[9] Muslims in Switzerland number slightly over 310,000 (2000 census), around 5% of the population. This is the result of recent immigration. 10,000 is the estimated number of converts. Muslims come primarily from the Balkans (Kosovo, Macedonia, Bosnia) and from Turkey. Only a small percentage of Muslims come from Arab countries but they usually take leading role in associations (especially in the French speaking part). (Mayer, 2011: 12)

[10] Supporters of the ban relied on two premises. First of all, the ban is permissible because minarets are not central to Islamic practice, so the ban does not breach Muslims' right to freedom of religion. Second, the preference of Christianity has a cultural aspect (it is not a matter of religion) so the ban does not violate liberal values of neutrality (Laborde, 2017: 138-139). According to Tariq Ramadan, Switzerland like other countries is facing a national reaction to the new visibility of European Muslims. The new visibility of Muslims is problematic and it scares voters who were drawn to the cause by a manipulative appeal to popular fears and emotions. The referendum, in addition, could be considered a message to the Muslim minority: the majority does not trust Muslims and so they prefer not to see their symbols (Guardian, 2009).

explicitly bans building minarets (Miller, 2014: 437). The Swiss referendum, despite its specificity that makes it difficult to compare with other countries, can be considered an example of a dispute about religious symbols in public space and in particular a dispute about Muslim religious symbols (Miller, 2014: 439).

Despite variation from country to country, the number of purpose-built mosques is consistently limited, so 'prayer rooms' have proliferated in order to meet Muslims' needs. These informal mosques have been established in private apartments, abandoned premises, sport halls, etc. However, despite the poor conditions of these places (often they are unsafe and provisional) they fulfill basic religious needs for believers and allow scattered communities to become socially reconstituted. Hence, these informal mosques can be considered a sort of landmark for the members of the community, since they are places of socialization where Muslims can also find support (with documents, accommodation, etc.) and where they can communicate in their mother tongue. In this way, cultural traditions are not only maintained but also transmitted from generation to generation (Maussen, 2005: 7).[11]

It is precisely the establishment of the purpose-built mosques that has raised concerns and prompted conflicts, with such sites perceived as controversial and 'loaded with meaning' (Maussen, 2005: 4). The main difference between purpose-built mosques and *musalla* lies in the fact that the first are built with visible signs such as a dome and one or more minarets (Allievi, 2010: 18).

Mosques are usually considered a visible sign of Islamic identity in European towns and are often depicted as a physical symbol of all the controversies concerning Islam and the

[11] The landscape of musalla is very diverse, changeable and unstable. However, the high degree of diversity of musalla is witnessed by the so-called 'ethnic' musallas: that is, those that are attended only by members of one ethnic group, usually on the grounds of language (non-Arabophone ethnic groups, for instance). In particular, there are prayer rooms for minority groups such as specific mystical brotherhoods (such as Sufi) or specific ethnic-linguistic groups (such as Senegalese *murid* and certain brotherhoods with an Indo-Pakistani origin). However, those attended mostly by converts have a strong inter-ethnic character (Allievi, 2009: 18).

integration of Muslim communities in Western countries. Wider discussions over mosques (often polarized between two factions: supporters and radical opponents) disentangle the role of religion in public space, immigrant integration and Muslim customs (Maussen, 2005: 4). For these reasons, institutions find it particularly difficult to accommodate Muslims' claims with respect to places of worship.

In the last decade the establishment of mosques, be they the Islamic Center in New York or the construction of the East London Mosque and Islamic Center, have caused heated disputes and polarized public opinion (Astor, 2012: 326). As Cesari (2004: 131) rightly highlights: 'if the prayer room goes unnoticed by the non-Muslim community almost by definition, the same can hardly be said of the [purpose-built] mosque.… The mosque transforms Islam from being invisible to being unwanted.'

Islam has become unwanted and mosques have been perceived as 'a form of symbolic ownership of land'. Citizens and militants of far-right and xenophobic movements have started to resist them because resistance has become a tangible sign of dominance over the territory; thus, the conflict surrounding mosques is, above all, a genuine conflict of power characterized by an asymmetry (Allievi, 2009: 38).

In the academic literature, the divisiveness of the Mosques has been addressed by sociologists and political scientists who have provided various explanations. First of all, scholars (such as Jonker, 2005 and Saint-Blancat and Schmidt di Friedberg, 2005) ascribed the increasing opposition to mosques to prejudices deriving both from a general suspicion of Islam and Muslims in Western societies and from global terrorism. Second, scholars, such as Allievi (2009, 2010) providing a clear and complete picture of the establishment of mosques in Europe, focused mainly on Islamophobia and in particular on the 'political entrepreneurs of Islamophobia' (Allievi, 2009: 64) who, according to him, are responsible (almost exclusively) for the exacerbation of conflicts with a view to gaining political consensus. Third, some scholars (such as Bowen, 2007 and Sunier, 2005) avoided reducing

opposition to mosques to fear or prejudice. They argue, instead, that disputes over mosques (and other physical markers of Islamic presence) are deeply rooted within more general debates over immigration, integration, and collective identity. Fourth, Maussen (2005, 2009) disentangles the complex array of motivations and dynamics that underpin opposition to mosques, arguing for a careful analysis of the processes that influence how mosques are made meaningful in the contexts where they are established (Astor, 2012: 326).

As the brief review shows, the issue has been mainly analyzed in the domain of disciplines such as sociology, anthropology, political science and urban studies. However, the issue of building mosques seems marginal in political theory. With the notable exception of Ceva (2011, 2015), Zuolo (2013), Galeotti (2002, 2015) and Carter (2011, 2013) – whose works will provide the starting point for my thesis – the question of 'building mosques in Europe' seems to lack a normative framework.

My aim is to fill this gap and I will focus mainly on the values and principles that ought to underpin laws and policies for building places of worship for minorities, with special attention to toleration and respect.

Typically, toleration has been invoked as the core principle that should inspire both the social policies and the laws that regulate minorities' lives in liberal democratic countries. For many theorists of liberalism, toleration should be invoked whenever concerns about how to treat minorities arise (Ceva, 2015: 633).

Against this backdrop, the research question is the following: is toleration the most appropriate political value to inform laws that will regulate the allocation of public space for religious minorities?

I argue that toleration (as non-interference),[12] because of the negative judgment about the tolerated object and because of the hierarchical dimension, is not strictly in line with those values such as equality, autonomy and self-determination of minorities that should be at the basis of liberal democracies.

Scholars such as Galeotti (2015: 101) argue that toleration as non-interference is unfit to understand conflicts determined by social asymmetries because what is crucial to solve intolerance against minorities is the 'recognition of minorities members with their different practices and customs as equal members of the polity worth equal respect as members of the majority' (Galeotti, 2015: 93).

Nevertheless, as Ceva and Zuolo (2013: 240) point out, there are two main problematic aspects of toleration. First, toleration cannot capture the problems deriving from the unequal socio-political *participation* of minorities. Second, relationships of toleration are still considered based on a negative judgment by one group towards certain beliefs or practices of the minority.

Given the limits of toleration, I propose to focus on respect. According to Bagnoli (2007: 113) respect can be defined in the following way: 'Respect is a moral attitude typically addressed to persons in virtue of their being persons'. Treating people with respect means treating them as a moral agent. It implies in the first place giving them 'space' in which they can act according to their plans and in the second place it means also granting them a sphere of freedom and giving value to the choices for which they are responsible (Carter, 2013: 197).

My aim is not to dismiss toleration but to complement it with respect whenever minority issues arise and need to be addressed by institutions, such as in the case of the mosque-

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[12] The term 'toleration'—from the Latin *tolerare*: to put up with, countenance or suffer—generally refers to the conditional acceptance of or non-interference with beliefs, actions or practices that one considers to be wrong but still 'tolerable', such that they should not be prohibited or constrained (Forst, 2012a).

building issue. In particular, it can help us to understand the origin of the asymmetry between majority and minority and also to correct it. Hence, in order to enact fair laws, institutions should treat minorities with respect, understood as *opaque*: an attitude that requires abstaining from evaluation of the capacities of the moral agent up to a minimum level of agential capacities (Carter, 2011: 551-552).

The most direct implication of this focus on individuals is that deliberations about how to act and what to do become of paramount importance and that other individuals are obliged to give appropriate weight to their personhood (Darwall, 1977: 39-40; Ceva and Zuolo, 2013: 244).

The commitment to equal respect for individuals goes hand in hand with the goal of granting to all members of society an equal chance to have a say in the decision-making process. In this way, each minority member can regard herself 'both as the author and the addressee' of the rules that govern the formulation and pursuit of her life plan (Ceva and Zuolo, 2013: 245).

However, I would like to add further nuances to this formulation of respect. In particular, I wish to underline that respect is characterized by a '*destruens'* component and a '*contruens'* component. Indeed, I argue that it can be used as a magnifying glass that allows us to see those aspects of a law (or a policy) normally not 'visible' from the unique perspective of toleration but that are unfair and produce further marginalization for the minority. Through respect it is possible at the same time to identify unfair aspects *and* which values institutions should draw upon in deciding on laws and policies to safeguard minorities' rights.

In order to extrapolate these two components of respect I will use a 'deductive method' and I will focus on a specific case of disrespect, that is Lombard Law n° 2/2015, the so-called

'anti-mosque law'[13]. Through analyzing this law, it is possible to understand how respect is a crucial factor to consider when the rights of a marginalized minority are at stake.

The Lombardy region, a case unique in Europe, enacted the law with a view to making rules for building places of worship of non-established religious denominations harder.[14] In fact, the law revised the rules that concern planning for building places of worship and other structures for religious purposes. In public debate this law was immediately dubbed the 'anti-mosque law' because it was clear that, despite its apparent neutrality, the aim was to prevent Muslim communities from building places of worship, as the Muslim community is the biggest community in Lombardy without proper worship facilities (Anello, 2015).

Hence, the study of the Lombardy Law, despite its local character and limited scope, can be considered a clear example of a law discriminating against a disliked minority and, from this perspective, its analysis can acquire a universal character. The Lombardy Law disrespects Muslims and bears witness to a structural discrimination against them because their status as a minority implies marginalization at social and political level, due to their disenfranchisement.

As a case of mistreatment of a minority its analysis can provide general lessons about discrimination against minorities. It can be used as a sort of 'laboratory' to explore fairer laws that could regulate the lives of minorities.

At this point, I would like to answer this further question: Why can respect be useful for the study of the Lombard law?

Seeing the law through the lens of respect, I argue, it is possible to disentangle controversial and hidden discriminatory aspects not visible with the mere use of toleration. Respect thus

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[13] Regional Law n°2, 3rd February 20015, Legge Regionale 3 febbraio 2015 , n. 2 Modifiche alla legge regionale 11 marzo 2005, n. 12 (Legge per il governo del territorio) -

[14] Catholics are exempt from this regulation.

allows us to understand that the Lombardy Law is unfair not only because it jeopardizes freedom of worship but also because of the lack of self-legislation and autonomy that results from the unequal treatment of the minority.

These controversial aspects, that make the Lombardy Law unfair, are not visible through a legal analysis on its own but, if we apply respect, it is possible to see that Muslims did not have the chance to take part in the law-making process due to a lack of self-legislation and participation.

Treating people as self-legislators substantiates the egalitarian character of democracy because it endeavors to treat *all* members of the society on an equal basis despite their status as citizens or immigrants (Ceva and Zuolo, 2013, 244). Respect can underpin laws and policies that aim at a full inclusion of minorities in society through their political participation. That means that laws regulating minority life should focus *also* on the procedures and not only on the results (the presence of mosques).[15] Treating people with respect, in this sense, means including citizens as much as possible in the legislative process in order to give them the opportunity to have their say whenever regulation in their life is required (Ceva and Zuolo, 2013)

To do this, it is necessary to expand the *demos* to include as many new residents as possible (Miller, 2009: 201 and Abizadeh, 2008: 37-65) and in order to give more space to minorities to make decisions about their lives, it is crucial to focus on the procedures of participation of the minority at *local level*. Following Bauböck (2015: 821), I therefore propose 'a multilevel architecture of enfranchisement', because participation should be granted through differentiated membership rights substantiated by voting rights. This means that enfranchisement should be determined in a different way at national and local level (Bauböck, 2015: 826). According to this model, the general normative principles for inclusion both in the citizenry and in the *demos* must be specified for each type of polity and

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[15] This would adhere more closely to the idea of the equality of all members of society (Ceva, 2012).

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regime (Bauböck, 2015: 826). In practice, at national level, voting rights should be granted to a large numbers of newcomers and at local level voting rights should be granted to all the residents in the territory without difference of status.

The focus on local level is indeed important because as Rath et al. (2001: 193) explained, 'the local authority is always the pivot upon which everything moves'. Indeed, it is precisely in the local sphere where the 'political principles' that regulate the role of religious minorities in society need to be translated into a set of specific, coherent, and worked-out policies (Griera, 2012: 570). Local institutions should use proper tools to improve the participation of all members of the society, for example establishing advisory bodies that can support the work of the local institutions when they have to deal with topics related to migrant life (Calder, 2011).

On the other hand, even voting rights for immigrants are not sufficient. I assert that it is necessary to allow at local level the minority to carry extra weight whenever their rights are at issue in order to adjust the unbalanced system of power. The law-making procedures should, then, be based on a *proportionality principle* (Brighouse and Fleurbay, 2010) instead of a pure democratic principle, in order to resolve the tensions between democracy (majority rule) and social justice (protection of minority interests).

Improving the political participation of minorities, however, will not affect only the law-making procedures but also minority their integration into society. A discriminatory top-down imposed law, such as the Lombardy Law, not only restricts the freedom of the minority, but also further marginalizes a community already marginalized. Moreover, municipalities should establish both specific advisory bodies regarding minority issues and opportunities (such as meetings, roundtables, specific projects, etc.) where members of society can discuss freely (without receiving labels) and where they can obtain information about their fellow citizens.

The Lombard Law, even if partially invalidated and hence not operative, has the potential to reverberate throughout society because it contributes to a hostile environment for Muslims. In particular, because of the suspicion of Muslims and the consequent public debate generated, the law has reinforced the stereotypical perception of the Muslim minority by the majority. Muslims are stereotypically depicted as *tout court* a threat to security, and mosques portrayed as shelters of terrorists, fueling the sentiment that Muslims need to be governed through exceptional, specific or more complicated rules because they are not able to self-govern. Consequently, the law may further marginalize the Muslim community, seen as suspicious by other members of society, thus preventing their full social integration. Nevertheless, what is crucial as regards the bans on Muslim religious symbols (minarets or mosques) is that such a prohibition is always wrong because it excludes (not only) a symbol but in practice, it also excludes the minority. Any ban sends a message of exclusion if not properly justified and discussed with the minority affected (Laborde, 2017: 139).

Beside the ability of respect to highlight the moral problems with the law, it also has the capacity to underpin fairer laws. In the last chapter, I focus on the Catalonia Law on centers of worship (*Llei 16/2009, del 22 de juliol, dels centres de culte)* as an example of a law regulating building of mosques, noting that it contains some respect-inspired principles.

The Catalonia law is aimed specifically at settling the high level of conflict over mosques in the region and at 'minimizing misunderstandings and disputes around the establishment of centers of worship through harmonizing and clarifying municipal licensing requirements' (Astor, 2015: 259).

What makes this specific law worthy of consideration is the fact that Catalan institutions not only tolerated minority religious groups but also granted them the space to participate in the law-making process. Indeed, Muslims were considered as actors in the process and not just as recipients of the regulation, because the law prescribes Muslims' active participation both in the law-making process and in the management of the places of

worship.

The Catalan law gave Muslim associations recognized status and inclusion in presiding institutions (DGAR and OAR) in order to set up a dialogue between the minority, the municipalities and the Region. However, the Catalan law is part of a broader context of accommodation of religious minorities as a result of the 1992 agreement between the State and the Muslim community.

The law contains respect-related values such as participation of the affected minority[16] and sets the basis for a dialogue with institutions through dedicated bodies. In particular, the law prescribed autonomy and self-determination over the running of the mosques. Like in the Lombardy Law there is a list of rules[17] but they merely aim at governing the issue (and not prohibiting the building of the temples) and at avoiding arbitrariness and disparity.

The *lley* can be a source of inspiration both for the Lombardy Region and for all those authorities writing legislation for building places of worship. At the end of the chapter, with the aim of empirically grounding the principles previously analyzed, I will translate respect and related values into guidelines that can be useful for all those institutions aiming at respecting minorities and not merely tolerating them.

A law that respects a minority (and does not merely tolerate it) opens a dialogue with the minority's members, improves immigrant political participation especially at national level (citizenship law and voting rights) but also at local level through specific bodies for participation. It involves Muslims *qua* Muslims in the development of the law through specialized institutions. In addition, a clear law aims at avoiding arbitrariness and

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[16] Article n° 5.2 reads as follows: 'churches, faiths and religious communities are entitled to participate in the planning process' (*tenen dret a participar en el procés de formulació del planejament urbanístic*) through the channels established by public participation programmes (*participació ciutadana dels plans d'ordenació urbanística municipal*) for municipal town planning and participation in the public consultation that establish legislation for processing town planning (Section 5.2 of Law 16/2009).

[17] Art. 8 states the rules related to hygiene, dignity and security: '*condicions adequades –i proporcionades a l'activitat– pel que fa a la seguretat, la higiene i la dignitat dels locals de culte*'.

oppression, and promotes transparency and symbolic recognition. The law may be a goal in itself but also part of a broader strategy for integration of immigrants and for putting in practice those values that underpin liberal democratic societies, such as coexistence, respect for plurality, and equality in democratic rights.

A note on method. In order to consider the Lombard and the Catalan Laws I analyzed the texts directly and read related academic literature. In the case of the Lombard Law I also considered the judgment of the Constitutional Court. However, in addition to academic literature on the topic and with a view to reconstructing the context and political-institutional sequence of events I took into consideration articles from both national and local newspapers. I analyzed also the content of the two regions' websites especially to understand which channels of participation (if any) Lombardy and Catalonia have established and the degree of transparency of the institutions.

In order to develop my argument, I have structured the thesis as follows.

In the first section, I provide an overview of the main accounts of toleration and respect developed in recent years. I focus on the following scholars: Bader, and Galeotti (2002, 2012, 2015) for their account of toleration and Carter (2011, 2013), Ceva (2011, 2015) and Zuolo (2013) are considered for their analysis of respect.

In the second section I present the Lombardy Law from a juridical point of view and I will put it in the broader context of immigration in Lombardy (Ismu, 2016; Blangiardo and Menna, 2016; Moroni and Chiodelli, 2017). I then analyze it through the 'lens of toleration' in order to show its unjust aspects from a moral point of view. The law is intolerant toward Muslims because it interferes with Muslim life, denies the right of a community to be autonomous (Cohen, 2007; Dryden, 2017; Christman, 2004) and breaches the right of justification (Forst, 2010; Gaus, 2005). In addition, if seen through the 'lens of toleration as recognition' it denies recognition of Muslims as equal with the majority (Galeotti, 2002;

Laegaard, 2012, Taylor, 1994) and hence the laws humiliate Muslims and undermine their self-respect (Rawls, 1971; Leitinen, 2009).

In the third section, however, I analyze the Lombardy Law through the 'lens of respect'. Respect also highlights that the law is unjust toward Muslims because it does not grant self-legislation, denying Muslims (*qua* migrants) political participation and participation in the law-making process. On the contrary, in order to ensure self-legislation, institutions should expand the *demos* to include as many resident immigrants as possible (Miller, 2009: 201 and Abizadeh, 2008: 37-65). Following Bauböck (2015: 821), participation should be granted through giving differentiated membership rights. At national level this means expanding the *demos* and at local level minorities' views should be given greater weight whenever minority rights are at stake (Brighouse and Fleurbay, 2010)

The fourth section focuses on the analysis of the Lombardy Law through the opacity of respect: the Lombardy Law is unfair because it makes an unnecessary judgement about the capacities of Muslims with the result of further marginalizing them at social level. Autochthonous citizens, in fact, will start to consider Muslims as unreliable and in need of regulation by institutions.

The fifth section is dedicated to a comparison between the Lombardy Law and the Catalan law n°16/2009 in order to elucidate the two different approaches (Astor, 2015) and to show how (and why) the Catalan law can be an example for Lombardy and other regions that need to address the issue of building places of worship for minorities. I dedicate the last section of the chapter to writing a set of values that institutions should consider when they have to deal with laws regulating places of worship.

CHAPTER I

Toleration, Acceptance, Respect: Liberal democratic treatment of minorities in plural contemporary societies.

INTRODUCTION

Toleration has often been invoked as the core principle that should inspire both the policies and the laws that regulate minorities' lives in liberal democratic countries. For many theorists of liberalism toleration has become a sort of a 'free pass' not only at academic but also at political level whenever concerns about how to treat minorities arise (Ceva, 2015: 633). Some thinkers – under scrutiny in the following sections – have started to question the principle of 'toleration as non-interference' as a unique key to solving those concerns arising from minority-majority relations, so for this reason, a more nuanced idea of toleration, 'toleration as recognition' and the idea of 'recognition respect' have both been added to this negative principle.

I argue that in plural societies liberal democratic institutions should base their policies and legislative environments upon respect because, unlike toleration, respect does not entail a hierarchical relationship between the powerful authority (or majority) and the minority but rather entails treating the minority on an equal footing to the majority and ensuring enough space for members of minority communities to decide autonomously about their lives.

I will address the issue of toleration and respect as underpinning laws and policies for minorities through the analysis of the recent scholarly debate that has focused on the issues of toleration and respect in relation to pluralism in contemporary societies. In particular, I will analyze those theories of toleration and respect as discussed by Bader (2007), by Galeotti (2002, 2a015), Carter (2011, 2013), Ceva and Zuolo (2013). In particular, I will

consider the work of European Research projects, *Respect Project*[18] and *Accept Project*[19] that focused respectively on equal respect and toleration.

In this literature it is possible to distinguish at least three theories of toleration. First of all, there is a traditional version of toleration that is 'negative toleration' (understood as non-interference), one of whose main defenders is Bader, who argues for a minimal conception of toleration, what he calls 'gritted teeth tolerance' (Bader, 2013: 22). Second, there is a 'positive' version of toleration as presented by Galeotti: toleration as recognition, whose core is the acknowledgment of differences as legitimate options in contemporary societies (Galeotti, 2015: 101). On the other hand, Carter (2011) and Ceva and Zuolo (2013) argue for moving beyond toleration and for complementing it with the value of respect (equal, democratic and opaque) whenever majority-minority relations are at issue.

Respect is a 'moral attitude typically addressed to persons in virtue of their being persons'. (Bagnoli, 2007: 113). Carter (2011, 2013), in addition, specified that respect must be 'opaque'; therefore opacity respect describes a specific approach toward individuals that seeks to avoid the assessment of the ability of the moral agent up to a minimum level. The moral capacities supervene on other capacities, such as mental, cognitive or intellectual (Carter, 2011: 551-552). Moral personality consists, specifically, in the *capacity to self-legislate* which relates to forming and pursuing a life plan organized by laws that 'she can regard both as the author and the addressee' (Ceva and Zuolo, 2013: 240). Treating people as self-legislators underpins a democratic (and hence egalitarian) treatment of minorities (especially

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[18] Respect project. Towards a 'Topography' of Tolerance and Equal Respect. A comparative study of policies for the distribution of public spaces in culturally diverse societies'. Research project funded by the European Commission's 7th Framework Programme (GA no. 244549). Due to temporary unavailability of the Respect web site, it is possible only to mention this web site with basic information about the project: http://www.iusspavia.it/eng/index.php?id=317#.WBIMX_myNBc [Last Access: 22/10/2016]

[19] Accept project. 'Tolerance, Pluralism and Social Cohesion: Responding to the Challenges of the 21st Century in Europe - ACCEPT PLURALISM'. Project funded by the European Commission 7th Framework Programme (Project ID: 243837). Accept Pluralism official web site: http://accept-pluralism.eu/Home.aspx [Last Access: 23/10/2016]

those marginalized) because it implies treating all the members of the society on an equal basis (Ceva and Zuolo, 2013: 244).[20]

By endorsing respect, the possibility of creating ranks or a hierarchy between people is rejected, since respect is due to everyone by virtue of the very fact of being a person. This is true especially in formal relations (rather than in private relations) and in particular in relations mediated by institutions (intended as liberal and democratic). Respect, in particular, means ensuring the possibility of deciding about the most private aspects of life both for individuals and societies; so respecting people at society level means granting every member of the society (individual or groups) the opportunity to participate in the society where they live in order to be involved in the decision-making process.

Participation is a discriminatory factor and distinguishes respect from toleration. Focusing on respect – meaning (also) participation – could help to uncover those discriminatory factors that produce the political marginalization and disenfranchisement of the minority. From a respect perspective, then, not only the final outcome of a law or policy is relevant but also the process that results in the outcome. If the procedures are affected by political marginalization of minorities, those procedures must be revised since they present a certain degree of unfairness.

Nevertheless, toleration should *not* be dismissed but incorporated in a model based on toleration as non-interference, i.e. as a minimum level of toleration to which every member of the society should adhere. Institutions, on the other hand, are required to adopt a more reconciliatory attitude toward minorities and are therefore required to recognize contested differences and put in practice any actions useful to remove the obstacles that prevent the equal treatment of the minorities enjoyed by the rest of society (Galeotti, 2002: 2015). In

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[20] This interpretation is profoundly egalitarian: everyone deserves to be treated as moral agents by virtue of the equal possession of 'the morally relevant capacity to form and pursue a life plan'. Every person has equally the morally fundamental capacity for self-legislation that is an individual's capacity to form and pursue a life-plan 'articulated through rules of which she can regard herself both as the author and the addressee' (Ceva and Zuolo, 2013: 240).

any case, even toleration as recognition has some limits because it does not specify the role of the minority in the definition of those laws and policies that will regulate their life. To fill this gap, it is necessary to complement toleration with respect, which should inspire the way that institutions treat minorities when their rights are at stake.

This chapter is structured as follows. First of all, I sketch Bader's conception of toleration. Second, I present the idea of toleration as recognition as presented by Galeotti. I then turn my attention to the concept of respect as developed first by Carter and then by Ceva and Zuolo. After this overview I explain why a fair model of toleration should take account of all three of these theories: toleration (both negative and positive) for relations between fellow citizens but recognition respect for the relationship between citizens and institutions. In particular, I will focus on recognition respect as a crucial value that not only allows unfair aspects of legislation to be highlighted but furthermore highlights which values a law must be built upon in order for it to be part of a more just society.

1.1 Toleration

The term 'toleration' derives from the Latin *tolerare* that means "to put up with", "countenance" or "suffer". Generally, it refers to the conditional acceptance of or non-interference with beliefs, actions or practices that one considers to be wrong but still tolerable, such that they should not be prohibited or constrained (Forst, 2012).

According to Cohen (2004: 68) toleration has been called 'the substantive heart of liberalism' but, despite its centrality in liberal thinking, defining 'what toleration is' seems particularly troublesome because the concept is characterized by a high degree of volatility. Cohen defines toleration in the following way:

'An act of toleration is (1) an agent's (2) intentional and (3) principled (4) refraining from interfering with (5) an **opposed** *(6)* **other** *(or their behavior, etc.) (7) in situations of diversity, where (8) the agent believes she has the* **power** *to interfere'* (Cohen, 2004: 78-79).

There is general agreement among scholars about the essence of toleration, namely the refusal to interfere with a practice that is considered objectionable, despite the fact that the person who tolerates the practice has the power to interfere (Horton, 1996: 28). There is thus agreement about three main components of toleration: 1. Negative judgment; 2. Power to interfere; 3. Reasons to interfere. A behavior, in the end, must have all those three characteristics simultaneously to be considered 'tolerant' (Forst 2012a: 17-26 and Fiala, 2004 and 2007).

Nevertheless, according to Forst (2012a), it is necessary to specify the limits of toleration: so, to *objection* and *acceptance* he also adds the *rejection* component. The limits of toleration can be found where there are motives for rejection that are stronger than the reasons for acceptance (Ceva, 2013).

From the standard definition of toleration derive different theories. Forst (2012a: 28-31 and 2007) in particular distinguishes three different elaborations of toleration intercourse in history. The first type of toleration is called *permission conception*. In this case the authority (or majority) has the power to interfere with the minority, but tolerates it as long as the minority accepts the hierarchy dimension and the privatization of the difference. This type of toleration is exemplified by the Edict of Nantes[21] (1598), which in fact demonstrates how this toleration is fragile because the majority can revoke it at any time.

The second is called *coexistence conception*, and in this case the majority also considers toleration as the best means to end or avoid conflicts. However, the difference lies in the fact that the relation is between two groups of equal power. The two groups look for toleration as the best way to maintain social peace and pursue their own interests. In this case there is also a lack of stability because when the balance of power changes, the

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[21] With this Edict, the Huguenots became protected by law but their protection was a sort of 'favor' rather than a right granted on equal basis. Toleration given by the Edict of Nantes was not reciprocal but simply given by the authority. Moreover, it was temporary: the Edict was revoked in 1685 with no reason provided (Forst: 2012a, 28).

strongest group can reject its tolerant behavior. The Augsburg Peace Treaty of 1555 is an example.

The third kind of toleration is called *respect conception,* which takes place when tolerating parties, even if they have incompatible differences about their ethical beliefs, the good way of life and cultural practices, recognize each other as equals. They are inspired by norms that the parties can equally accept and that do not advantage one specific ethical or cultural community.

The fourth is the *esteem conception* that implies a more demanding notion of mutual recognition between citizens. The tolerant agent not only respects the different other but also has a kind of ethical esteem for their beliefs, which is considered as ethically valuable.

The modern liberal idea of toleration, despite having its roots in the past[22] and in the early Christian traditions[23], emerged in Europe after the Protestant Reformation and the religious conflicts culminated in the Thirty Years War (1618-1658)[24]. First the Reformation and then the Counter-Reformation influenced the liberal discourse about the relations between State

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[22] For further information about the stoic account of toleration (Cicero, Epictetus and Marcus Aurelius): Fiala, 2003. See also Nussbaum (1997) for the traces of stoic cosmopolitanism in Kant's thought.

[23] In Medieval Christianity the most important thinker who was concerned with toleration was St Augustine (354-430). In 'The City of God' and in the Letters, Augustine addresses the issue of toleration of heretics and he justifies toleration with different arguments. The argument of freedom and the non-coercibility of conscience had a great impact on later philosophers that dealt with toleration (or intolerance) (Forst, 2012a: 48-50). Beside the Christian tradition of toleration, it is important to remember that in the 12th century two prominent non-Christian scholars provided arguments for toleration, understood as freedom of conscience. The first one is the Jewish scholar Maimonides (1135- 1204), who in his most important work 'The Guide for the Perplexed' (1190) addressed the topic of the relationship between philosophy and faith. In particular he argued philosophy should interpret faith in the light of reason. His aim was to reconcile Aristotelian philosophy and Jewish faith (Attali, 2004 and Forst, 2012a: 81). Despite its being a pillar of Liberalism and Western culture, the idea of toleration is also present in other civilization; in this respect see also: Amartya, S. (2006). Parekh, B. (2003); Spinner-Halev, Jeff. (2005): 28-57.

[24] For further information see: Dictionary of Social Science, s.v. 'Toleration': http://www.oxfordreference.com/view/10.1093/acref/9780195123715.001.0001/acref-9780195123715-e-1689 [Last Access: 15/10/2016].

and Religious communities[25]. With the European wars of religion, in particular, the notion of religion has become central to the elaboration of western liberalism (Laborde, 2017: 1).

If in the past toleration was a remedy for persecution, exile or forced conversion of the minority, nowadays because religious freedom, freedom of expression and association are not questioned anymore (at least not their essence), toleration has gained further nuances. Indeed, contemporary issues of toleration are generally related to the presence of minorities in contemporary societies, which are challenged every time they are called upon to accommodate an alien way of living. Particularly challenging is the accommodation to traditions considered at odds with a 'Western' way of living. This is particularly apparent with traditions related to religious practices.

Contemporary liberalism, on the other hand, can be considered an extension of the principle of religious tolerance, but it is important to remember that religious tolerance in the West has taken a very specific form: the idea of individual freedom of conscience, which is further reflected in the right to worship freely, to propagate one's religion and to change or renounce religion. These principles are part and parcel of every liberal democratic

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[25] Due to space limitations, it is not possible to mention here all the philosophers that contributed to development of the idea of toleration. I mention here only Locke and Bayle. John Locke (1632-1704) through his writings, especially 'Epistola de Tolerentia' (or 'A letter concerning toleration' 658 and in his 1667 'An essay concerning toleration') proposed a peculiar idea of toleration based on the division of the powers and the uselessness of coercion for inculcating true doctrine. These were the main concepts that underpinned Locke's idea of toleration, whichbasically transformed the idea of toleration from an internal issue of Christianity to a matter of purely civil significance, which is the way toleration is understood also today (Stanton, 2006: 86). Religion, according to Locke, concerns exclusively the salvation of soul. The state must not have any role (coercive or leading role) in such aspirations. The state must not have any authority to compel inward belief nor must it be in charge of distinguishing between true and false beliefs. Locke's works constitute the foundation of the liberal political theory of religion. The state's aim must be limited to the protection of the material aspect of life, such as money and land. On the other hand, churches must avoid interfering with the business of the government. On this issue, Locke pointed out the need 'to distinguish exactly the business of civil government from that of religion, and to settle the just bounds that lie between the one and the other'. According to Laborde (2017: 15) this idea actually did not remain isolated but rather evolved and in the contemporary version of liberalism this idea has taken the form of 'two-way protection' as theorized by Amy Gutman: that is, protection of religion from the state and protection of the state from religion. Pierre Bayle (1647-1706) conceived a different and modern form of toleration: he went beyond the limited and temporary form of toleration ratified by the Edict of Nantes. His conception of toleration was not a privilege granted by the sovereign, but a right that everyone was entitled to have, because everyone has the light of conscience in common. In 1685 Bayle wrote the Commentaire Philosophique, which, like Locke's Epistola de Tolerantia, is one of the pillars of the modern conception of toleration (Forst 2013: 240)

constitution in the West and the restriction of an individual's exercise of these liberties is a serious violation of a fundamental human right. (Kymlicka, 1996: 156).

1.2 Rawls on toleration

John Rawls (1921-2002) defended energetically the idea of political toleration by contributing to its development. In addition, and most importantly, he also created a new paradigm to which philosophers refer whenever they have to deal with pluralism in contemporary societies. For this reason, it is necessary to focus on his contribution to the debate. Rawls attempts to be neutral about moral values in order to establish political principles of toleration. Rawls argues for toleration in a pragmatic way: it helps society to achieve political unity and a type of justice among diverse individuals. Rawls considers toleration not only as a notable historical solution to the religious wars in early modern Europe but also as a *political principle* on which may be established a society characterized by a 'diversity of doctrines' and a 'plurality of conflicting and […] incommensurable conceptions of the good affirmed by the members of existing democratic societies' (Rawls, 1985: 225; Fiala, 2016).

Briefly, Rawls' idea of political toleration claims that individuals will end up tolerating each other reciprocally in virtue of the 'overlapping consensus'. According to this idea, individuals who support different (or even conflicting) reasonable comprehensive doctrines[26] can agree about certain principles of justice, and these will include principles of toleration (Fiala, 2016).

Rawls developed a complex liberal response to the proliferation of religious (and non-religious) ethos in plural contemporary societies (Bailey and Gentile, 2015: 4).

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*[26] By the term 'comprehensive doctrines' is meant systems such as religious, political or moral that shape a person's way of living and thinking, especially about moral problems. By 'comprehensive doctrines' Rawls means religions such as Islam, Christianity or Buddhism but also non-religious doctrines such as utilitarianism, socialism or perfectionism (Bailey and Gentile, 2015: 3).

Rawls starts his speculation about pluralism by asserting that the freedoms that characterize liberal societies inevitably determine a plurality of 'comprehensive doctrines'. On the other hand, these doctrines are not relegated to influencing exclusively private life but they also influence the way citizens relate to each other (Bayle and Gentile, 2015: 3).

In contexts where citizens hold different comprehensive doctrines, a justification of political authority, nevertheless, cannot be based exclusively upon any specific doctrine. In addition, Rawls argues that citizens, instead on comprehensive doctrines, may approve political authority based on a further notion of 'mutual respect'[27] as long as it is enshrined in the rules of social cooperation (Bailey and Gentile, 2015: 3).

Given these premises, Rawls asserts that it is possible to derive a conception of political authority that citizens may share, despite their different comprehensive doctrines.

According to Bailey and Gentile, Rawls' 'exclusion of religions' is actually limited and qualified, because he provides for an extensive accommodation of religions in political life.

Rawls's treatment shows how liberal senses of freedom, equality, and pluralism can be upheld without requiring citizens to forgo religious reasoning for the sake of a substantial "secular" conception of political life. Instead, it is sufficient that both religious and nonreligious comprehensive doctrines be excluded from a narrow "political" realm, while being left entirely unrestricted in other political contexts (Bailey and Gentile, 2015: 7-11).

1.3 Institutions and minorities

With respect to liberal democratic institutions, it is necessary to point out that they have a central role in reconciling claims coming from minorities. Institutions, in fact, have the power both to interpret democratic values and to apply them to laws and policies that regulate minorities' lives. Nevertheless, their interpretation may often be different and more

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[27] Rawls defines mutual respect in terms of fairness, civic friendship, reasonableness and reciprocity (Bailey and Gentile, 2015: 3)

restrictive when the object at stake is a minority that is particularly marginalized in that society. This is the case for example with regard to the Muslim community in Europe: a stigmatized and marginalized minority. Very often when issues concerning the relationship between the majority and the Muslim minority arise, limits to toleration are interpreted in a restrictive way determining arbitrariness of treatment concerns, providing no justifications and applying double standards (Galeotti, 2015: 99).[28]

It is crucial to remember also that liberties are not absolute but, on the contrary, in a democracy they can be limited and limits can be negotiated whenever minority rights are at stake (Galeotti, 2015: 99-100). The limits, on the other hand, are fundamental because they determine the scope of the set of liberties typical of liberal democratic societies, such as religious freedom, freedom of expression and association.

Institutions must tolerate only those habits, traditions and aspects of a minority that in any case do not work to the detriment of the dignity and freedom of the individual. On the contrary, those traditions that jeopardize bodily integrity and dignity (female genital mutilation, for instance[29]) or deny the 'right of exit' from a culture should be denied the space to be practiced. Indeed, liberals must always be committed to endorsing the right of individuals to freely and autonomously decide about their lives: liberalism is therefore attached to the view that individuals should have the freedom and 'capacity to question' and revise the traditional practices of their community (Kimlicka, 1995: 153).

After this brief recapitulation of toleration, I will focus on four different contemporary views. The first view will be Bader's conception of toleration. Bader's investigation starts from the observation that the high level of religious diversity pushes our societies to rethink

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[28] This is the case, for example, with the ban on the headscarf in French schools (2004); the Burqa ban in public spaces (France, Lombardy, Belgium) and the prohibition on building of places of worship, first in Switzerland with the referendum in 2009 and later in Lombardy with a regional law (2015) that prohibits de facto the building of Muslim places of worship by imposing undue obstacles on Muslim communities, as shown in the chapters to follow.

[29] For further infomation about this: Galeotti, 2007.

moral principles and institutional models that shape relations between religions and states and also traditional models of integration (Bader, 2007: 291).

1.4 Bader. Moral minimalism and more demanding moralities.

Bader contributes to the debate about toleration by defending a minimal approach to this value that he defines as 'gritted teeth tolerance' (Bader, 2013: 22). He argues that toleration 'should be defended both analytically and normatively from more demanding concepts such as liberal and equal respect and the recognition of cultural differences or pluralist difference' (Bader, 2013: 22). In addition, this version of toleration should be considered as part and parcel of any minimalist morality and of any decent polity. Bader, in fact, points out that liberal-democratic constitutions require individual tolerance and also a more demanding but still minimalist form of equal respect' (Bader, 2013: 22-23).

Bader claims that 'recognition of collective identities' should not be the 'business of the state' but, on the contrary, 'full freedom of political communication' should be defended. This minimalist approach must be committed to recognition of minority cultural practices of 'diversity'. As a consequence, Bader explains that differences can be praiseworthy *only* if these principles and policies do not infringe but strengthen a minimalist conception of toleration' (Bader, 2013: 23).

Bader's main concern is not whether going beyond toleration is desirable but '*how* to go beyond toleration' (Bader, 2013: 34). Bader argues for a more demanding conceptions such as equal respect, more substantive equality and institutional accommodation of ethno-religious diversity. Bader also argues for affirmative actions and for public and institutional accommodation of ethno-religious diversity (Bader, 2013: 34). Yet, and here lies the novelty, Bader firmly points out that to go beyond toleration' makes sense *only* if [it] does not infringe toleration.

Bader argues that toleration is a contested and ambiguous concept that can be interpreted in a maximalist or minimalist way (Bader, 2007: 77). Toleration (both collective and individual) has been learned in situations in which exhausting religious conflicts did not end in one party's victory and collective toleration did not imply individual freedom. Individual tolerance was learned at the beginning in a strategic sense and later adopted morally when the élites became aware of the impossibility of changing people's inner convictions through coercion and also of its counter-productiveness (Bader, 2007: 77).

Collective tolerance (and its non-liberal regimes of toleration) is a form of 'permission conceptions'[30]. The problem from a liberal democratic point of view is that in this form of toleration 'inclusion and exclusion, recognition and disrespect have been mixed and defined by the authority alone' (Bader, 2007: 77).

Time after time, permission conception was replaced by 'respect conceptions'. According to this conception, recognition of individual freedom of conscience is fundamental. In addition, democratic citizens have to recognize each other as equals, rejecting the hierarchy typical of toleration (Forst, 2012; Bader, 2007: 77).

Bader reconciles the concept of toleration and the moral minimum: the moral minimum implies 'a sober respect conception of individual tolerance, incompatible with any ban or persecution of changing or renouncing one's religion' (Bader, 2007: 78). The moral minimum addresses demanding tensions between collective and individual freedom of religion often ignored by 'emphatic prophets of individual autonomy' (Bader, 2007: 78).

The advantages are as follows. First, its standard is stronger and it can mobilize more support. Second, it is easier to enforce (Bader, 2007: 79-80). Consequently, 'thin but strong minimal morality combines fairly universal support with important strategic reason' (Bader, 2007: 80).

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[30] See Forst (2013).

The essential values of minimalism – *life*, *liberty* and *peace*[31] – are important in themselves and cannot be taken for granted (Bader, 2007: 78). 'Smaller values' of moral minimalism, of living together, can promote: 1. Some greater values of living well; 2. the respective more demanding moralities of liberal-democracy (adding the fuller set of nondiscrimination rights and political rights); 3. more egalitarian justice (adding substantive equality); and 4. a more comprehensive liberal morality and a morality of pluralism. Bader argues that their realization can help 'to make minimalism more stable' (Bader, 2007, 81).

Nevertheless, it must be noted that 'greater values and more demanding moral standards' can be promoted but 'in the right way': that is, through persuasion, interest, good practices instead of imposition by legal sanctions reinforced by the threat of violence and 'enforced cultural assimilation' (Bader, 2007: 81). Put in a different way, more demanding moralities must not jeopardize 'smaller values and moral minimalism' (Bader, 2007: 81). Bader calls this the 'non-infringement proviso'.

Nowadays, in terms of basic rights, the essential core of moral minimalism would clearly not only include basic rights (we can mention, for example, freedom, life, bodily integrity) but also basic rights to subsistence and those rights that refer to health care, education, access to justice, freedom of conscience, minimal (not fully 'equal') respect and, minimal equal representation for all those are affected by political decisions (See also Tasioulas, 2002) (Bader, 2007: 72).

Nevertheless, Bader criticizes long list of rights because the longer the list is, the less basic (and more culturally sensitive and contested) the rights become. The capability approach theory may be an example of this because of its set of capabilities elaborated by Sen and, particularly, by Nussbaum (Bader, 2007: 72).

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[31] Bader (2007: 72) list certain minimal rights: Basic rights to security and subsistence, Rights to life, liberty, bodily integrity, protection against violence; Rights to basic subsistence, basic education, basic healthcare; Minimal due process rights; Minimal respect; Collective and individual toleration (freedom of conscience); Agency and legal autonomy.

Bader, on the other hand, proposes an alternative to these approaches based on four different levels of morality: 1. 'minimal morality and rights'; 2. 'more demanding minimal morality of liberal-democratic constitutional states', including political freedom, political equality and political autonomy and equal respect (modern nondiscrimination); 3. a more demanding egalitarian morality of substantively more equal chances; and 4. the most demanding morality of comprehensive liberalism with its core values of autonomy as 'rational revisability' (Bader, 2007, 75).

Bader's interpretation is more detailed and demanding than a strict minimum limited to protection against death or irreparable physical harm but it is obviously more restrictive than the minimum standards as proposed for example by Parekh (2000). This approach implies not only the long list of international and European human rights but also thicker 'shared values, understood in an institutional sense' as the operative values of British society (Bader, 2007: 73). It is also much more restrictive than the long list of civil, political, socio-economic and cultural rights in human rights declarations and treatises. Yet, it contains not only 'negative' liberties but also essential 'positive rights' (Bader, 2007: 73).

As already mentioned, Bader argues for a 'non-infringement proviso' that is at stake every time overcoming smaller values is avoided. In the course of history, this proviso has been violated with devastating effects for people. Examples include the 'crusades' under the banner of 'Religious Truth' or Western Civilization and more recently the crusades under the flag of 'Freedom and Democracy' at global level and of 'Autonomy and Free Choice' at national level (Bader, 2007: 81).

The role of Minimalism is crucial because it works as a 'brake' against 'sacrificing ordinary values like toleration' (Bader, 2007: 81). In order to develop his argument Bader refers to Williams (2005: 38-40) and argues that the basis of a 'more creative', 'more humane and less dogmatic liberalism, that can be called as a 'tolerable liberalism' requires according deliberative priority to peace and social cohesion (Bader, 2007: 81).

Minimal morality should be imposable and punishable by the threat of legal violence. Before resorting to this, however, it is more important to try to persuade decent but non-liberal and non-democratic minorities. However, it is important to make space for 'exemptions' and 'accommodations' for those minorities who are 'theocrats but reluctantly accept the minimal rules of law and democracy in the polity' (Bader, 2007: 81-82).

To conclude, Bader's interpretation of minimal morality 'requires minimal but not necessarily 'equal respect and concern' in a modern liberal-democratic interpretation of nondiscrimination' (Dworkin 1977: 180-183 and Bader, 2007: 74). With a view to the way dissenting non-liberal but decent minorities should be treated, Bader argues that they should have autonomy granted but within limits, especially in faith-based organizations in care and education. In addition, Bader points out that equal representation for all those affected by political decisions should be a sort of soft requirement: that is, it need not have been fully granted (Bader, 2007: 74).

1.5 Toleration as recognition. Galeotti's account of toleration

In contrast to Bader who adheres to a 'minimalist' idea of toleration, Galeotti's account of toleration is based on the *recognition* of the minority and hence requires a commitment from institutions, which must consider minorities' claims as worth of attention on the same footing with those of the majority.

On the other hand, in my view, a minimalist approach should not be completely dismissed because focusing on the enforcement of a core of basic rights is fundamental, especially in those societies that are highly divided and which have a high level of internal conflict. Nevertheless, in liberal democratic societies already equipped with a strong set of rights and with liberal democratic institutions, this approach must be complemented with some other devices that allow the real causes of intolerance to be exposed.

The same can be said for the simple appeal to the equality and freedom of individuals as enshrined in constitutions. Indeed, it does not seem appropriate to solve problems related to unequal treatment of minorities because it does not expose the group dimension of the inequality and the asymmetrical power relation between the majority and the minority group(s) that characterize today's toleration-related issues, which are frequently determined by minorities' use of public space (Galeotti, 2015: 98).

As Galeotti argues (2015: 99) the lens of toleration is still *necessary* because these issues deal with the necessity of leaving minority members free to pursue their way of life and creeds without the *interference* of the authority/majority in public space as much as possible. On the other hand, instances of intolerance restrict the personal liberty of members of minorities and this restriction is unjustified if it is grounded on disputable and unfair interpretations of harm and self-defense. Moreover, intolerance also undermines minorities' full inclusion into society (Galeotti, 2015: 101).

Contemporary issues of toleration arise typically with regard to the visibility of the characteristics of the minority in the public space. The most important source of conflicts does not deal with moral disagreement but with 'asymmetries in social standing, status, respect and public recognition which then sustain ideological and cultural contrasts' (Galeotti, 2002: 5). The habits that usually result in conflicts relate to, for example, the way of getting dressed, some dietary requirements, or creeds that are viewed with suspicion. In particular, the differences that can provoke a conflict are those habits questioned by the majority or considered at odds with the so-called 'western way of living' (Galeotti, 2002: 98). Intolerance of the majority over the minorities 'is politically relevant' because it makes it harder for the disadvantaged members of the society to acquire resources and opportunity and this determines social injustice: intolerance excludes minorities from 'full participation in democratic citizenship' (Galeotti, 2002: 9).

Actually, toleration can be considered a tool that translates in practice freedom and equality for minorities (autochthonous and aliens) that often are not granted the same access to public space on equal footing with the majority. Nevertheless, it is necessary to make explicit *which kind of toleration* is fit to solve majority-minority conflicts. Galeotti considers the standard notion of toleration (toleration as noninterference)[32] as unfit to disentangle conflicts determined by social asymmetries. Indeed, she argues that every time issues of intolerance of a minority arise, there is at stake not only toleration, understood as equal liberty of minorities, but also the 'recognition of minority members with their different practices and customs as equal members of the polity worth equal respect as member[s] of the majority' (Galeotti, 2015: 101). Toleration as recognition, not only aims at granting equal liberty rights but also aims at 'the recognition of the contested differences as legitimate components of contemporary pluralism' (Galeotti, 2015: 101).

Recognition, as interpreted by Galeotti (2002: 14-15), means promoting a specific and positive value of the differences without assessing or evaluating it. From this point of view, not only should political authorities be secular and impartial but they should also make an effort to widen the limits of toleration to include on an equal footing as many people as possible who are different from the majority. Currently, in Western societies and in Europe in particular, religious issues are more visible than ever, not only in public debate but also at legislative level: the French law about religious symbols in public schools, or the judgment of the European Court of Human Rights about displaying the crucifix in Italian public

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[32] The standard notion of toleration was the appropriate political tolerance only in an absolutist state because it was a 'discretionary act of sovereign grace'. By contrast, the liberal state conceives toleration as 'the political principle prescribing universal rights of liberty' because it is removed from the 'domain of discretion' and put into the 'domain of justice'. 'Yet, the conception of political toleration along the neutrality principle is insufficient to grasp and address the issues of toleration arising in pluralistic democracy' (Galeotti: 2005, 102).

schools (Lautsi v. Italy)[33] have raised deep questions about the scope and limits of religious toleration (Forst 2010: 1).

Toleration as recognition is the normative theory of toleration suitable for liberal democracy in the context of contemporary pluralism. However, it does not mean that the standard notion of toleration must be entirely dismissed. On the contrary, Galeotti points out that it is adequate only if applied in a horizontal relationship, but institutions should be committed to inform *liberal politics of recognition* (Galeotti, 2015: 102). This is especially true when politically relevant and divisive issues of pluralistic democracy demand to be solved. Recognition means to endorse the intrinsic value of the differences through the inclusion of the different traditions, habits, and behaviors into the normal options of an open society. Unlike a difference-blind approach, toleration as recognition focuses on the bearers of social differences and on their social exclusion from social standards. Thanks to this approach it is possible to remove from the majority community the label of 'normal' and from the minority the label of 'different' (Galeotti, 2002:98).

In this respect, the power dimension is crucial because it is from power asymmetries that the way in which habits and practices are considered by society is derived. Indeed, usually the commo practices of a social majority form part of social standards or norms and for this reason they are perceived as 'normal' and as a 'standard' by which to assess minorities' habits (Galeotti, 2015: 99).

Also a conception of toleration based on the neutrality principle – meant as *blindness of institutions toward differences* – is focused principally on granting equal liberty rights, and according to Galeotti (2015: 94) this principle is not enough to comprehend problems concerning pluralism and to provide an acceptable normative response every time questions related to pluralism in contemporary society arise, because whenever political authorities or

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[33] Follow this link to read the complete judgment issued by ECHR: https://hudoc.echr.coe.int/eng?i=001-104040# [Last Access: 29/11/2016]

institutions adopt the principle of neutrality they take for granted the social differences that characterize the social majority: these differences are taken as part of an immutable landscape and not as an outcome of social and historical development that can change in the future (Galeotti, 2015: 101).

If a majority asks institutions to limit the traditions of the minority, the response of the institutions should be to reject the request (as it is not properly justified) and on the contrary to favor these differences as 'legitimate options of a liberal democracy characterized by pluralism' (Galeotti, 2015: 101). This approach results in some potential consequences. First, differences may be allowed to become part of the landscape. Second, social standards could be re-tailored in order to include the bearers of difference into the polity with the same dignity as the majority (Galeotti, 2015: 102).

It is important to notice that recognition of an option does not imply an appreciation of it, but it implies the consideration of the option as a legitimate one among many other legitimate options.[34] Put in this way toleration as recognition achieves legitimation of the practice and a public declaration of being a possible option. First of all, in virtue of its being legitimate, no one should be asked to justify her choice, whether as a religious duty, a cultural imposition or something else. In addition, this choice cannot be a reason for discrimination but the person should be considered on the same level with other fellow citizens (Galeotti, 2015: 102).

1.6 Respect

After having analyzed toleration, the aim of this section is to unpack the concept of respect. However, before focusing on respect as a philosophical concept, I would like to analyze its etymology because it can help to put the concept in a broader context.

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[34] An option, in order to be considered as worth of recognition, must not infringe other people's rights.

According to the English dictionary "respect" means: regard, consideration, gaze[35] and also admiration felt or shown for someone or something that one believes has good ideas or qualities. The word "respect" entered the English language thanks to Old French and it was used to indicate 'relationship, relation; regard, consideration'. However, it comes from Latin *respectus* and it is composed by the prefix *re-* that means back; and by *–spectus* that is the past participle of the verb *specere* ('regard, a looking at'). Respect means literally '*look back at, regard, consider*' and it describes a precise action: to go ahead but at the same time to look back in order not to lose the person who must always be in one's field of view.

With time it became a word used to describe 'a feeling of esteem determined by actions or attributes of someone or something'. The meanings of 'Courteous or considerate treatment due to personal worth or power' are from the 1580s, as is its further meaning of sense of 'point, particular feature.'[36] (Oxford English Dictionary, 2016).

Despite its general use in everyday life[37], appeals to respect have emerged also in some recent discussions with a view to moral problems. Respect does not only describe behavior that people should have in private – with, for example, relatives and friends – but it also describes our behavior with fellow citizens in the community (Dillon, 2016).[38]

In particular, respect in political theory is used in relation to majority-minority issues. Nowadays, indeed, the concept of respect is claimed not only to inform general liberal democratic theories but also to inform multicultural theories (Carter, 2013: 195). According to Bagnoli (2007: 113) respect can be defined in the following way: 'Respect is a moral

[35] For the history of the word respect in the English language check the Oxford English Dictionary (OED) http://www.oed.com/view/Entry/163779?rskey=OIvBDI&result=1#eid [Last Access: 15/04/2016]

[36] For the complete ethimology please check the Online Ethimology Dictionary: http://www.etymonline.com/index.php?term=respect&allowed_in_frame=0 [Last Access: 15/04/2016]

[37] For example, just to mention some example, respect is due to elders, parents, teachers or respect of rules and traffic laws (Dillon, 2016).

[38] This is the case for example with issues related to sexism and racism that are discriminatory ways of regarding and behaving toward others and hence inconsistent with the respect to which all persons are entitled. With regard to sexism, for example, pornography is considered by some feminists as a way to disrespect women because it de-humanizes and degrades women (Garry, 1978).

attitude typically addressed to persons in virtue of their being persons'. Treating people with respect means treating them as moral agents. It implies from one perspective giving them 'space' in which they can act according to their plans and from another perspective it means also granting them a sphere of freedom and giving value to their choices toward which they are responsible (Carter, 2013: 197).

The appeal to respect as something to which all persons (without any discrimination) are entitled marks much recent thought on moral topics (Darwall, 1977: 36). All citizens must enjoy rights because respect is due to them in virtue of their being persons. Because of the idea of equality of all citizens, respect for persons has been claimed as the value that should inform liberal democratic societies (Carter, 2013: 195).

1.7 Recognition respect and appraisal respect

As stated above, respect is owed to persons just *qua* persons. However, there are (at least two) different kinds of respect important to consider. Darwall (1977) draws a distinction between *appraisal respect* and *recognition respect*. Appraisal respect is an attitude of 'positive appraisal' of a person's particular natural abilities, personal characteristics or capacities in doing something that makes her deserving of such positive appraisal. For example, one may have such respect for someone's integrity, for someone's good qualities on the whole, or for someone as a musician. Appraisal respect is a positive appraisal, it is like esteem or a high regard for someone: when someone is said to merit or deserve respect, appraisal respect is invoked (Darwall, 1977: 36-39).

The other kind of respect identified by Darwall is *recognition respect*. According to Darwall recognition respect is an action through which is possible 'to weigh appropriately some feature or fact in one's deliberations' (Darwall, 1977: 38). The crucial point is that to conceive all persons as entitled to respect is to have some conception of what sort of consideration the fact of being a person requires (Darwall, 1977: 38). To have recognition

respect for persons means to give proper weight to the fact that they are persons. The most direct implication of this focus on persons is that deliberations about how to act and what to do become of paramount importance and other persons are obliged to give appropriate weight to their personhood (Darwall, 1977: 39-40; Ceva and Zuolo, 2013: 244, Ceva, 2017: 323).

Both kinds of respect have as their object the person, but, despite this common aspect, the attitudes they require toward the individual are totally different. To appraise a person means to recognize that the person has some unique characteristics that make her excel or deserve prizes, good marks etc. According to these characteristics it is also possible to determine rankings, for example based on the degree of merit that each individual deserves. On the other hand, recognition respect does not imply degrees or ranks because it is a kind of respect that is given to people just because they are persons (Darwall, 1977: 39).

This conception of recognition respect derives from the Kantian conception of respect: 'Such a being is thus an object of respect and, so far, restricts all (arbitrary) choice' (Darwall, 1977: 45). Put in this way, recognition respect for a person coincides with recognition respect for the moral (Darwall, 1977: 45). Recognition respect is exclusively attributed on the basis of the acknowledgment of the other as a person, '*loci* of moral worth', that is hence able to make moral judgment and autonomous choices and co-legislator of moral law (Galeotti, 2010: 87).

Kant was the first major western philosopher to consider respect for persons as the focal point of the moral theory. The German philosopher, indeed, paved the way for subsequent scholars who analyzed the concept of respect and its application. Bagnoli (2007: 113) underlines that respect, as intended in the Kantian tradition, is due to persons *qua* persons, that it is a way of recognizing others as persons and that it is due to (and required for) each person without exception (Bagnoli, 2007: 114). According to Kant, the definition of respect

is the following: '*the feeling of an incapacity to attain to an idea that is a law for us*' (Bagnoli, 2007: 115).

At the heart of Kant's ethical theory lies the presupposition that persons must always be an end in themselves and their dignity is not negotiable. Consequently, the proper response to an individual is *always* respect (moral recognition respect). Respect is made real whenever a person's attitude and conduct are acknowledged and considered as an end in itself (Bagnoli, 2007).[39]

Recognizing her 'status as moral agent' means to recognize that an individual (moral agent) has certain basic capacities, such as the capacity *to set ends* and to *make rational choices*. Individuals are moral agents because they have a minimum of agential capacities. Respect, as substantial moral attitude, involves 'abstaining from looking behind the exteriors people present to us as moral agent' (Carter, 2011: 551).[40] Recognition respect is inalienable and implies from one side *attitudes* and from the other a *disposition to act* in a determinate way, that is a respectful way that constrains the conduct of one person toward another person (or persons) (Galeotti, 2010: 89)

To respect a person means to give her the highest status possible. This high status is something that deserves respect, because to respect a person means to accept the fact that she possesses a certain degree of authority over her life (Carter, 2013: 197). The status of a person as moral agent is something that people must acknowledge in the deliberation process.

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[39] Respect for persons is a fundamental of morality, and morally right actions are all those actions (or even laws and policies) that express respect for persons as ends in themselves. On the contrary, morally wrong actions are those that express disregard for persons because they do not consider them as ends in themselves (Wood, 1999: 11; Dillon, 2016).

[40] According to this view, treating a person with respect means to consider him/her valuable and absolute: any comparison or classification must be avoided. In moral and political philosophy this conception of respect means a kind of respect that all people are owed morally and this is often expressed in term of rights: persons have fundamental moral rights to respect just as persons regardless of merit. (Dillon, 2016)

Procedures that respect persons allow us to consider each individual's moral claims as unique but with an equal dignity because of the shared capability of defining moral ends. However, it is important to notice that respecting others' dignity does not mean necessarily agreeing with another. On the contrary, disagreement can be respectful as long as disagreement is explicit and genuine (Bagnoli, 2007: 117).

Bagnoli focuses therefore on a 'dialogical dimension' of respect that, she claims, should be at the basis of any moral community: such communities are governed by moral and morally correct relations if respect informs laws and policies and if it is developed through the dialogue of the opposing parties. From this point of view respect as dialogue can be considered a litmus test to check how societies treat vulnerable groups (Bagnoli, 2007: 121).

To clarify this point, I would like to refer to an enlightening example as provided by Galeotti (2010: 92). Galeotti explains that institutions can express respect (or disrespect) through the behavior and actions of public officials. In 2006 what has been called the 'Danish Cartoon Controversy' took place: that is, the controversy about the publications of cartoons painting the Prophet. The imams of the Danish Muslim community pled for stopping the publication of the cartoons because they were considered offensive to Muslim sensitivities. The government rejected the claim because it would have meant breaching freedom of the press. From the perspective of respect, the decision is not necessarily problematic in itself but, as Galeotti rightly observes, the problem is the way imams were treated, because institutions refused to discuss the issue with them, and imams were simply dismissed as people not worthy of being listened to. This is clearly a way in which Muslims were disrespected.

This example provides the opportunity of clarifying that respect – which has been analyzed in the previous sections – can have strong implications at political and social level. Equal respect, is not only a moral principle but also a *basic* political principle that has become particularly relevant in the struggles for recognition of those groups particularly

marginalized and oppressed (Galeotti, 2010: 78).

Marginalization of some groups cannot be solved through rights (equal and constitutional granted) because the extension of rights generally 'takes an impersonal form' (Galeotti, 2010: 94), but in order to resolve marginalization an act of recognition is necessary so that the members of previously excluded groups can feel respected for what they are, for their characteristics, and not *despite* their identity.[41] Respect-claims are generally considered as rights-claims. Actually this is not always the case, for there is an overlap between rights and respect, because disrespect, for example, can be put into practice even if rights are preserved (Galeotti, 2010: 94).

However, the study of respect is not an aim in itself but has political and social implications. Politics of respect-recognition must not be understood as in contrast to liberal democracy but as a way to readdress a particular form of injustice, characterized by unequal respect given to members of misrecognized and mistreated groups'. Claims for building mosques, for example, must be considered as 'universal claims to equal respect'. These claims can be satisfied through specific measures, that is certain procedures or behavior (Galeotti, 2010: 95).

1.8 Respect implications: self-legislation, autonomy and equality

After having presented the concept of respect, in particular recognition respect, I would like now to focus on the implications of respect: self-legislation, autonomy and equality.

Self-legislation means legislating moral laws that are valid for all rational beings. Granting self-legislation means preserving the consciousness and integrity of each individual. In fact, self-legislating also means not forcing an agent to abide by those norms considered as morally questionable (that is, norms that she would never conform to if free to act), because forcing her to do so would undermine her moral integrity (Ceva, 2011: 16).

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[41] For the relation between Liberalism and Identity see: Bilgramy, 2017

Individuals have the capacity to freely resolve and act in accordance with moral laws that are self-imposed by their own desires and inclinations. Self-legislation implies the capacity of an individual to be autonomous, which means to freely direct, shape and determine the meaning of her own life and be morally responsible for her actions.

In particular, every person must have the opportunity to direct her life especially in those areas where it is important to conduct a life according to personal values, goals, plans of life. The individual should enjoy a certain degree of sovereignty when personal thought and behaviors determined by religion and conscience-related issues are at issue (Patten, 2011: 251-270).

The right to live according to one's understanding of a good life is enshrined in the idea of *autonomy*: the right to be autonomous can be considered a fundamental aspect of our humanity because 'to respect autonomy is to accept a person who has the right to hold views, make choices and take actions based on personal values and beliefs' (Herring, 2012: 25).

If autonomy is the recognition of the capacity to act on the basis of reason, to consider persons as autonomous' means to consider them as 'self-originating sources of valid claims' (Rawls, 1980: 546). However, it is important to notice that supporting and respecting autonomy does not *always* mean to consider an individual's choice as the best choice: it is possible to disagree with it, but what is important is that the choice deserves to be considered valid[42] (Bagnoli, 2007: 113).

As already mentioned, the capacity to self-legislate on the basis of reason is the essence of being a person, so the right to autonomously decide about one's life should be granted to

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[42] The principle of self-determination is considered particularly important (but not addressed in this chapter) when we talk about people's health because the individual's autonomy is one of the most prominent principles in medical ethics: the doctor is not allowed to impose any treatment on a patient, unless its absence can cause harm to others (Herring, 2012: 25).

every member of the community on an equal footing. Treating people with respect means precisely to consider the activity of deliberation as based on the fact that deliberation is a capacity common to every person, each being able to perform her own deliberations (Bagnoli, 2007: 126).

Hence, the concept of recognition respect gives us the ability to justify and simultaneously morally ground both the commitment to individual rights to self-legislate and the commitment to equality that is a basic requirement in liberal democracies. Indeed, rights, in a liberal democratic context, can be equal rights precisely because constitutions prescribe treating individual as equals and because individuals are equal in a morally relevant sense (Carter, 2013: 199).

Treating people with respect means to treat them as equals (Carter, 2011: 538) and as self-legislators: that is, as a self-originating source of valid arguments. This kind of treatment marks a substantial difference with toleration: treating people with respect does not only mean non-interference with each other's choices but also supporting them in their choices. As Bagnoli asserts (2007: 125): 'to help others in the pursuit of their ends is a fundamental way in which we show respect for them'.

If treating people with respect means supporting them in the pursuit of their ends, it also means that policies and laws that regulate minorities' lives should be oriented toward supporting minorities in reaching their goals through their participation in law-making and policy-making process as well.

Respect thus sets the goals of institutions and prescribes the procedures through which those goals can be reached. Indeed, policies and laws should not be imposed top-down because this would undermine the principle of self-legislation. Rather, minority members should be allowed to take part in the definition of policies and laws. Treating people with respect means that the decision-making process should be inspired by the value of self-

legislation. The commitment to equal respect for persons should be at the basis of a democratic commitment to grant all members of the society an equal chance to have a say in the decision-making process. In this way, each member of a minority can regard herself both as the author and the addressee of the rules that limit the formulation and pursuit of her life plan (Ceva and Zuolo, 2013: 245).

1.9 Carter's account of respect: opacity respect

In what follows, Carter's account of respect will be presented. Carter introduced a particular version of respect, recognition respect: that is, 'opacity respect' (2011, 2013).[43]

The starting point of the speculation about opacity respect is the fact that people are not equal in terms of abilities, skills, capacity to reason etc. Less basic capacities such as the intelligence needed to obtain a university degree, skills, talents, aesthetic or behavioral evaluations can be considered without calling into question basic agential capacities such as the ability to form and pursue a conception of the good or the capacity for a sense of justice (Carter, 2013: 202).

However, recognition respect has nothing to do with degrees of qualities or characteristics (as described by Darwall). As Carter points out (2013: 201) recognition respect depends on the 'equal freedom and rationality of persons as noumenal beings'. Hence, recognition respect is due to people not in virtue of their merits but in virtue of their *moral personality* and it is based on a commitment to take the distance and to exclude the evaluation of people's agential capacities in deliberation about how to treat them (Carter, 2013: 202).

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[43] This concept implies that equal status of persons as moral agents (Carter, 2013: 200), helping to explain why it is possible to attribute to individuals the property of moral personality. Respect for persons consists in the recognition of variable empirical agential capacities: 'the relevant agential capacities are recognized to exist in some degree at or above an absolute minimum threshold. And once they are recognized to exist in this way, adopting a respectful attitude implies abstaining from taking account, in one's practical deliberations, of their degree above that absolute minimum threshold' (Carter, 2013: 200).

The concept of respect can hence be defined in the following way: 1. Respect is a *substantive moral attitude* that implies refraining from evaluating people's agential capacity that will not motivate the way they are treated. 2. Respect involves *taking the subject as given* without further questions regarding *her capacity to pursue the good* or to *understand the nature of the moral or aesthetic good life* (Carter, 2011: 551).

It can be claimed that respect is an unfeasible virtue because it obliges people to love each other and this is impossible or even undesirable. This counter-argument is not plausible because, as Kant also said, respect implies *keeping distance* from the person to whom respect is due, which is exactly the opposite of love, because loving requires proximity (Carter, 2013: 201).

In addition, it is important to specify that respect entails adopting an 'external' perspective: that is, adopting a perspective that avoids evaluations of the *agential capacities* on which moral personality supervenes. Carter assumes that moral personality supervenes on a number of agential capacities such as setting and reaching goals or formulating a life plan (Carter, 2011: 552). Refraining from the evaluation of the agential capacities is a way to respect a person and this kind of respect can be defined as *opaque*.

Opacity respect can be defined in the following way: **opacity respect is an attitude that requires to abstain from evaluation of the capacities of the moral agent up to a minimum level of agential capacities** (Carter, 2011: 551-552).

Let us now explore this concept in greater depth. To adopt the attitude of opacity respect toward a person is not only to acknowledge that a person has 'certain basic agential capacities' (Carter, 2013: 200) but also implies almost ignoring (turning a blind to) possession or lack of certain capacities when we have to deal with practical deliberation (Carter, 2013: 200). The adverb 'almost' is used here in order to show that a minimum level of agential capacities is necessary but above this threshold the possession or not of these

capacities is not fundamental anymore when deliberation is at issue. Treating people as completely opaque – that is, ignoring their agential capacities – would be too extreme because it would preclude those assessments necessary to verify they have some agential capacities (Carter, 2011: 552). Below this threshold, on the other hand, treating them in a different way would be legitimate. However, once the minimum is recognized, in other words once the agents are above the threshold, opacity becomes a factor and consequently there are *no reasons to focus on individual agential capacities* that would imply locating them along a scale or dividing them into classes (Carter, 2011: 553).

Opacity respect is a 'independent, plausible moral requirement' (Carter, 2011: 554) and it is a value that can be invoked whenever a commitment to treat people as equal is necessary. This means that it is not a tool valid every time relations between people are considered but it is appropriate *only* in some spheres of life. Indeed, in very close human relations opacity respect is an improper attitude because in private relations (for example between parents and children) transparency is a basic requirement. Also in formal relations, such as in a professional context, opacity respect is improper because the evaluation of capacities is necessary and even mandatory. Opacity respect is thus not required in intimate relationships but it can rather be considered as lens through which to analyze relationships in public life[44] and which requires considering other people as agents (Carter, 2011: 556-557).

Carter (2011: 557) focuses – among all possible kinds of public relations – on public relationships between political institutions and citizens. In a political context, respecting people means ensuring that people enjoy a set of rights through which they can exercise their political agency and the right to benefit from the provision of certain public goods. In particular, political agency is exercised through the right to vote and to hold office. If individuals are agents, and this status is an equal status, then respecting individuals therefore implies recognizing their equal rights to these goods (Carter, 2013: 197).

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[44] By the expression "public" we mean socio-political relations at both vertical and horizontal levels: that is, both between institutions and members of society and also among members of society (Ceva and Zuolo, 2013, 246).

The next section will go a step further in studying respect and in particular I will consider Ceva and Zuolo's understanding of it.

1.10 Ceva and Zuolo's account of respect. Majority-minority relations, toleration and respect.

As already mentioned, toleration occurs whenever the majority refrains from using its power to interfere with those minority practices or beliefs considered at odds with those of the majority. When minorities question decisions taken by the majority, issues of toleration arise. Such decisions could include laws that are enacted by institutions led by the majority and which affect minorities' ways of life. Against this backdrop, Ceva and Zuolo argue that whenever majority-minority relations need to be reconciled, the value of respect offers a different perspective with which to understand and address them (Ceva and Zuolo, 2013: 239-241).

There are essentially two problematic aspects of toleration. First, toleration cannot eliminate the problems deriving from the unequal socio-political participation of minorities. Toleration, in effect, focuses on what minorities are allowed to do and whether they are allowed to live their lives according to their beliefs and practices, but it does not focus on the process through which laws that will regulate their lives are formulated. Second, relationships of toleration are usually considered based on a negative judgment of a majority group, or part of it, towards some beliefs or practices of the minority. This relationship contrasts with the basic liberal idea that some areas of personal life should be immune from 'others' scrutiny' and the subsequent evaluation should not count as 'morally relevant' when a decision about how to treat the persons involved must be formulated (Ceva and Zuolo, 2013: 240).

So, according to the authors, the idea of respect most compatible with liberal-democratic values is the '**democratic opacity respect for persons**', which derives from Darwall's

definition of respect (1977) and from Carter's idea of opacity respect (Ceva and Zuolo, 2013: 240). This particular version of respect is egalitarian: all persons should be treated as moral agents because they all have the 'morally relevant capacity for self-legislation'. Self-legislation is in fact the capacity of formulating and pursuing a life-plan through rules of which she can regard herself as both the author and the addressee (Ceva and Zuolo, 2015: 240). Because self-legislation is something common to everyone, every person must be treated as a moral agent (Ceva and Zuolo, 2013: 244). Treating people as self-legislators is also egalitarian because it implies treating all members of society on an equal basis (Ceva and Zuolo, 2013: 244).[45]

Denying self-legislation is an act of disrespect. An example of a disrespected minority might be the case of the Muslim community, which is considered – everywhere in Europe – a danger to mainstream society or its standards (Ceva and Zuolo, 2013: 242). Muslim places of worship in particular are considered challenges to public security. Often issues related to mosques are characterized by intolerance both at vertical level, with bans on mosques and minarets, and at horizontal level because of the negative judgment of the majority[46].

However, the authors question the idea that toleration is the most accurate way to respond to the problematic nature of majority-minority relations. Ceva and Zuolo (2013) discuss two sets of objections toward toleration as a suitable means to solve problematic relationships between majority and minority.

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[45] This interpretation is profoundly egalitarian: everyone deserves to be treated as a moral agent by virtue of the equal possession of 'the morally relevant capacity to form and pursue a life plan'. Every person has equally the morally fundamental capacity for self-legislation that is an individual's capacity to form and pursue a life-plan 'articulated through rules of which she can regard herself both as the author and the addressee' (Ceva and Zuolo, 2013: 240).

[46] In addition, those Muslim habits considered in a negative way have been the object of legislation in many countries with a view to regulating them or even prohibiting them. This is the case for example with the ban on the headscarf in French schools (2004); the Burqa ban in public spaces (France, Lombardy, Belgium); an overview here: http://www.bbc.com/news/world-europe-13038095 [Last Access: 10/06/2016]. In addition, it is possible to mention the prohibition on building proper places of worship in Switzerland (2009 referendum) and in Lombardy (2015), with a regional law that prohibits de facto the building of Muslim places of worship through imposing undue obstacles on Muslims (further details in the next chapter).

The first set of criticism deals with the insufficiency of a toleration based approach. The authors claim that if we focus only on the social outcomes of intolerance (for example, a lack of mosques or the ban on the Muslim veil) it is not possible to understand the problem completely because a tolerant arrangement that would allow a minority to preserve its customs could in any case coexist with 'structural inequalities' suffered by the minority (Ceva and Zuolo, 2013: 243). Put in other words: toleration addresses only the visible part of the problematic relationship but does not consider the main causes of it, namely the structural marginalization of minorities at social and political level

The second set of criticisms toward toleration revolves around the *objection component* in the definition of toleration: majority-minority relations are informed by some kind of negative judgment of the majority toward the minority (Ceva and Zuolo, 2013: 244).[47] Often, this aspect is expressed by prejudices and biases against the minority that can potentially influence law-makers. As shown in the next chapter, prejudices against Muslims are very common, often these prejudices are deeply rooted in the assumption that Muslims are terrorists. This widespread prejudice is likely to be at the basis of laws with a 'securitarian approach'.

In addition, respect has important implications if applied to the lawmaking process, because it means giving **all members of the society** an equal chance to express their opinions in the decision-making process. This is fundamental in order to guarantee to each person the possibility of considering themselves not only as the addressee but also as the **author** of the laws that will regulate their lives and will condition the pursuit of their life-plan (Ceva and Zuolo, 2013: 245).

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[47] The authors mention as an example of judgments affecting minorities' lives the case of Roma people. On the basis of a negative judgment based on prejudice they are not able to pursue their way of life freely because of their nomadic lifestyle – Roma have been discriminated against and marginalized everywhere in Europe (Ceva and Zuolo, 2013: 244).

Because of its characteristics, the idea of respect appears to adhere more closely than toleration to the liberal democratic principles that promote the equal participation in the socio-political process of all the members of the society (Ceva and Zuolo, 2013: 248). Indeed, according to the idea of respect, individuals are treated equally only if they have been granted access to political participation with a view to cooperating in the definition of the laws that will shape their lives.

1.11 Respect implications: fairness of procedures

According to respect theorists, if majority/minority relations are reframed according to respect (opaque and democratic) it is possible to see that the marginalization of some minorities is the outcome of exclusion from political life. Moreover, it is also due to the fact that often they are treated as 'patients' and are considered unable to have an active role in societies in general and in the law-making process in particular (Ceva and Zuolo, 2013: 249).

Every time interactions between institutions and citizens are at stake, not only are their outcomes crucial but how these interactions take places is also relevant. In particular, if the focus is on the 'outcomes' of institutions, that is laws and policies, not only is it important that the legislative and policy environments are fair *per se* but also that the procedures followed by the institutions are fair (Ceva, 2016: 81).

Those who oppose the idea of respect centered on procedures include, for example, Balint (2016), who actually endorses a liberal neutralist version of toleration and defends toleration from long-lasting criticisms. Balint therefore proposes a theory of toleration determined by the outcome of strengthening individual liberty and at the same time promoting a society where individuals, although they have differences in terms of their ways of life, can live freely and are limited exclusively by minimal social and political restrictions (Galeotti, 2017).

Therefore, toleration is not 'a virtue' (Horton, 1996) but the most appropriate political principle to accommodate differences (Balint, 2017).

Although Balint's book presents an articulated examination of toleration, I would like to focus exclusively on his critique of respect, which is particularly relevant for the purpose of elucidating the importance of procedures whenever institutions deal with majorities.

Balint (2017: 107a) specifically argues that every time accommodation of difference is at stake what is crucial is the outcome: outcomes, in fact, are definitely more important than 'motivating reasons'. However, I think this approach presents some weakness. If the specific case of mosques is considered, I think that accepting the outcomes without questioning the procedures could justify the lack of purpose-built mosques because someone might argue that musallas actually satisfy the need of gathering places for Muslims and that it does not really matter if Muslims cannot build purpose-built mosques as long as they have places to gather and pray. However, limiting Muslims to only praying in temporary buildings prevents Muslims from accessing public space. In addition, with this approach it is not possible to verify whether the outcome was reached also with Muslims' consent, whether they played a role and were involved in the process. The outcome of a law or policy independent from procedures, then, may be the result of luck or the result of an act of granting a favor.

Yet outcomes that are simply a favor or the result of luck result in consequences for society. If Muslims can receive different treatment from town to town without a plausible reason there is necessarily a discrepancy between places with towns equipped with mosques and those without mosques. In addition, a simple outcome-related approach could favor the creation of grey-zone where rules are not clear and misconduct - such as corruption - can take place.

The distinction between outcomes and procedures is not trivial but it is relevant because it concerns justice, or better: where justice is located, that is whether it is in the outcome or in the procedures. Justice, for theorists of outcome, pertains to outcomes, while procedures have only an instrumental value. Proceduralists, on the other hand, locate justice in fair procedures that have an innate value. Justice is an intrinsic characteristic of procedures, and it is independent from the quality of the outcomes that through procedures must be reached (Brettschneider, 2005: 424 and Ceva, 2016: 64). Procedural theories depend on the idea that human interactions are intrinsically fair, as long as they treat individuals in an 'inherently morally acceptable way' (Ceva, 2016: 64).

Procedures, on the other hand, certainly have an 'expressive function' (Ceva, 2016: 82) and they can actually reveal the degree of consideration that institutions have both for each individual citizen and for the society as a whole. This expressive function of procedures may be relevant to analyzing the status of minorities. Minorities are in fact often marginalized because procedures used by institutions express their attitude toward them. In contrast, it is necessary to point out that genuine 'democratic egalitarian procedures' must express their consideration of minority communities' members as equal with other citizens (Ceva, 2016: 82). Majority-minority relations are characterized by disrespect whenever minorities are not granted the same opportunities to have a say in the institutions.

This marginalization under the procedures is particularly evident in law-making procedures, where minorities are often marginalized because at social and political level they do not enjoy the same rights of participation (Ceva and Zuolo, 2013: 249). Brettschneider (2005: 423) explains that rights of participation are basic rights and citizens, if cannot enjoy a procedural right to vote, do not see actually their right to self-rule guaranteed. Moreover, procedures have an intrinsic value because through them citizens can exercise their own autonomy 'in a way consistent with their status of equal citizens' (Brettschneider, 2005: 424). Actually, exclusion of minorities at political level happens particularly in those countries such as Italy where immigrants are denied the right to vote and stand for public

office because only citizens can vote (Ceva and Zuolo, 2013: 249). Social participation through for example associations, NGOs and trade unions is usually widespread in every European country (even in Italy) but it cannot be a substitute for political participation: only political participation (understood as the right to vote and the right to stand for public office) makes all the members of a society equal.

If respect is understood to inform a political agenda about treatment of minorities, participation should have a prominent space in definition of the policies and laws that are enacted to regulate minorities' lives. Consequently, respect entails as a priority granting social and political participation in the institutions. That means, first, granting voting rights to the largest group of people possible and not limiting this right only to citizens. Second, the establishment of assemblies and advisory bodies can improve the degree of participation, especially at local level, and these can make institutions more aware of minority needs.

These two devices (voting rights and advisory bodies) are *not interchangeable nor exclusionary* because only voting rights address the right to be treated on an equal footing. Rather, assembly and advisory bodies would give institutions the opportunity to listen to minorities whenever specific toleration-related issues arise.

1.12 Respect as a complement of toleration

Having underlined the advantages of respect, I would like to emphasize that toleration must not be completely dismissed. My personal view of toleration and respect is based on the necessity of keeping all three approaches – as explained in the previous sections – together but with distinct scopes and goals. First of all, negative toleration (understood as 'gritted teeth tolerance') is appropriate at *horizontal level* in influencing the behavior of our fellow citizens. Whenever they have to face a tradition, practice or way of live they find disgusting or at odds with their own way of life they must refrain from interfering. I consider this kind

of toleration a sort of 'minimum level' to which everyone is compelled to adhere without exception. On the other hand, liberal democratic institutions in charge of promulgating laws and drawing policies should be inspired by more demanding theories in order to build a just society. They should recognize minority life styles and remove those obstacles that prevent them from receiving the benefit of equal treatment and an equal consideration to the majority.

However, I think that even recognition is not a complete approach. Even if I agree that the recognition of the minority is fundamental I also think that this approach does not consider properly the role of minorities' members in the definition of policy and laws that will have consequences for their lives. Laws and policies must therefore be required to recognize minorities' habits as legitimate options, and institutions should also grant minorities' members the right of self-legislation through the use of fair procedures. Participation of the minority community members in the definition of laws and policies thus becomes essential to respectful treatment. Institutions must be committed to giving minorities the largest space possible for participation in political life and to granting them the right to have a say whenever their rights are at issue in the domain of law and policy-making.

Conversely, Balint (2016: 113) expresses skepticism about recognition respect. Indeed, he argues that encouraging respect for differences could actually burden citizens with social pressures; briefly stated: respect is too demanding. In addition, according to Balint, respect fails to engage properly with the sort of differences that characterize a truly diverse society because such an approach does not take people's differences seriously, despite rhetoric claiming the contrary. Encouraging respect for differences in fact seems simply to privilege one specific view of the good and this can act to detriment of people who are not necessarily intolerant but perhaps are simply indifferent, or who even care but are able to practice tolerance.

In my opinion, this set of critiques misrepresents the essence of respect. Indeed, as explained in this chapter, respect means establishing a dialogue with members of society (without distinction) through procedures and channels of participation (details in chapter 3). Respect is a method that results in institutions changing their attitude toward minorities, but on the other hand changes to methods happen slowly. It is true that nowadays with the backlash of intolerance (especially fueled by xenophobic and far-right parties) it seems very difficult to apply respect; however, political theorists should (in my view) be looking-forward and propose strategies to improve societies and not only to acknowledge the state of the art.

With regard to the criticism about privileging some groups (to detriment of some other groups), I would like to underline that the procedures inspired by respect aim at including every member of the society without prejudices. This means giving the opportunity to have a say to the members of marginalized community (whose voice is typically ignored) *and* to people skeptical about multiculturalism or integration. This does not mean endorsing racists and intolerant people but only giving them the opportunity to express their discomfort without labeling them. Labeling indeed means putting them in a category from which is difficult to escape and change their minds. On the contrary, bodies and procedures that are respect-centered could channel some instincts and may take apart stereotypes and prejudices.

However, I would like to add further nuances to this formulation of respect. I argue that respect can also be considered as a sort of *magnifying lens* through which it is possible to grasp the deep and structural reasons for unequal treatment of persons determined at institutional level by unfair procedures. Nevertheless, to this '*destroying capacity*' I would also like to add a '*building capacity*'. In my view, not only does respect allow us to criticize the unfair aspects of the laws and policies but it also underpins fairer laws and policies. Therefore, it offers a *solid normative ground* on which to build laws and policies that deal with

minorities, in particular those minorities whose habits are considered at odds (with their own practices or standards) by the majority.

In order to extrapolate these two components of respect I will use a 'deductive method' and I will focus on a specific case of disrespect, that is Lombard Law n° 2/2015, the so-called 'anti-mosque law'. Through analyzing this law, it is possible to understand how respect is a crucial factor when rights of a marginalized minority are at stake or jeopardized by the majority. Indeed, the law was imposed top-down and Muslims' opinions were not taken into consideration, both because they were not allowed to take part in the formal law-making procedures and because they were not involved in a dialogue with the institutions. In addition, the law is unfair because its effects reverberate throughout the society and influence the judgments citizens might make about Muslims. In addition, it is necessary to stress that laws that disrespect minorities have an influence on society as a whole because they can affect the way majority consider the minority (in the case of the Lombardy law as unable to self-govern) and this could also prevent the integration of Muslims, who, because of their discriminatory treatment by the institutions, might start to feel further marginalized.

CONCLUSIONS

In this chapter contemporary views on toleration and respect were introduced. I argued that toleration is not completely appropriate to face challenges given by contemporary pluralism in liberal democratic societies. Nevertheless, it should not be dismissed but complemented with the idea of recognition respect (equal and opaque) whenever minority-majority issues must be addressed in public life.

In order to do that I first provided the definition of toleration (Forst, 2012; Cohen, 2004). Then, I delineated by Bader (2007, 2013), who argues for a minimalist approach and for a gritted teeth tolerance. After that, I presented Galeotti's conception of toleration as recognition that can also be defined as a difference-sensitive liberal account of democracy

(Ceva, 2015: 4). This kind of toleration is concerned with the necessity of correcting the dynamics of marginalization that affect those community members whose lifestyles and practices are objectionable in the eyes of the majority (Ceva, 2015: 4).

I then presented the concept of respect starting from its etymology and its definition in political theory (Darwell, 2007; Bagnoli 2007). The following section was dedicated to Carter's approach because he offered a further development in respect theory by introducing a particular version of respect, that is 'opacity respect' (2011, 2013).

Ceva and Zuolo (2013), following Carter, argue for a 'democratic egalitarian opaque respect' as the best way to deal with minorities in a democratic context. In their view of respect, individuals are treated as autonomous and responsible authors of their own life plans and as a source of valid arguments. This treatment is egalitarian because it is owed to every member of the society (without their needing to be a citizen, a denizen, a refugee etc.). In addition, democratic procedures are morally justified if they give every member of society an opportunity to have a say in the decision-making process (Ceva, 2015: 7-8).

Among the four views presented in this chapter I endorse the concept of recognition respect (opaque and egalitarian) because it is the more appropriate option for dealing with minority-majority issues. I think that moral minimalism is unfit to grasp those extremely nuanced contemporary minority issues and to address the controversy sometimes typical of contemporary liberal democracies. Toleration as recognition, even if committed to giving symbolic recognition necessary to re-equilibrate the disparity between a minority and the majority, can be criticized because it can be applied only to those minorities that are also aware of the importance of being recognized. More importantly, I find toleration as recognition incomplete because it does not state the involvement of the minority in those actions (campaigns etc.) that will have a consequence over their lives.

According to respect, on the contrary, laws and policies are fair not only if they are committed to accommodation of minority demands or arguments but also if minority members become the protagonists of the definition of those laws and policies that will regulate their life.

In addition, respect has the double function first of all to highlight that discrimination which is not immediately recognizable if we apply toleration (invisibility in the debate and in the law-making process and assessment of inner agential capacities). Second, respect can underpin laws and policies that regulate a minority's life. According to respect, accommodation to minority needs or demands should be granted as much as possible.

In the next chapter I use the ideas first of toleration and then of respect as magnifying glasses through which to analyze the Lombardy law that regulates building places of worship, otherwise known as the anti-mosque laws. Since, unlike toleration, respect can both critically analyze the discriminating aspects of a law and at the same time underpin fair laws, I will use the concept of respect both to analyze the Lombardy law and to make some suggestions regarding the building of Muslim places of worship.

CHAPTER II

The Lombardy Anti-Mosque Law and Its Analysis through the Lens of Toleration.

INTRODUCTION

On January 27th 2015, the Council of the Lombardy region amended the Regional Law that regulates planning for the construction of structures for religious purposes. [48] These amendments made the task of building new places of worship for non-established religious denominations extremely cumbersome (Anello, 2015).[49]

The media immediately named the Lombard Law the 'anti-mosque law'[50] because of its effects on Muslim communities who are currently the most active communities seeking permission to build places of worship. Muslim communities, despite their long-lasting presence in Lombardy, lack proper places of worship, and institutions tend to ignore or reject their proposals.[51]

The amended law, compared to the previous one, placed additional restrictive requirements upon the affected religious communities. First, the community had to demonstrate that they were widespread and well established. Second, the religious groups had to sign a special agreement with the municipality stating that that permission could be repealed unilaterally. Third, the law required the municipality to consult the police and committees of citizens in order to finalize permission. Lastly, the law described in a very detailed manner the

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[48] See the original text at the following link (in Italian). Legge Regionale 3 febbraio 2015 , n. 2 Modifiche alla leggeregionale 11 marzo 2005, n. 12 (Legge per il governo del territorio) - Principi per la pianificazione delle attrezzature per servizi religiosi:
http://normelombardia.consiglio.regione.lombardia.it/NormeLombardia/Accessibile/main.aspx?view=showdoc&iddoc=lr002015020300002
[49] It must be noted that the still-dominant Catholic Church remains exempted from the regulation (Anello, 2015).
[50] See, for example:
 Ansa, Lombardia approva legge anti-moschee: http://www.ansa.it/lombardia/notizie/2015/01/27/lombardia-approva-legge-no-moschee_b15b2ede-9f32-4040-806b-5cedfed69912.html (27/01/2015) [Last Access: 1/02/2017]
Allievi, S.: http://www.stefanoallievi.it/2015/01/la-regione-lombardia-approva-la-legge-anti-moschee/ (28/01/2015) [Last Access: 1/02/2017]
[51] See, for example, the case of Vercelli in Galeotti, A.E. (2012) and Galeotti A.E. (2015).

characteristics of the place of worship: from the architecture to the internal facilities (Anello, 2015).

The aim of this chapter is twofold. First of all, I present the Lombardy Law on places of worship and the judgment of the Constitutional Court that rendered it partially invalid. Second, I will analyze the law from the perspective of toleration theory, as non-interference first and as recognition later, following the framework explained in the first chapter. I argue that the law falls short of toleration standards because if applied it would restrict the possibility of building a proper place of worship and, in addition, could have the effect of discouraging Muslims from proposing projects. I will answer the following question: *if we look at the law from the perspective of toleration, what are the liberal values undermined by the Lombardy Law?*

The law undermines the following values because of its unfair characteristics: First the law unduly interferes with Muslims' customs. Second, Muslims in Lombardy are unable to freely decide the way to pray. Third their right to be autonomous is severely limited (Cohen 2007; Dryden, 2017; Christman, 2004), as is their right to receive a justification (Forst 2010, 2012; Gaus, 2005).

In limiting such rights, the Lombardy Law fails to recognize Muslims on an equal footing with the majority. Nevertheless, recognition is a vital human need (Taylor, 1994) and its denial determines degradation and humiliation that usually undermine self-respect (Rawls, 1971; Leitinen, 2009).

In order to develop my argument I will proceed as follows. First of all, I will provide some information about immigration in Lombardy, with special attention to Muslims. Then I will present the Lombardy Law and after that I will present the judgment issued by Constitutional Court. Lastly, I will analyze it through the lens of toleration in order to

elucidate its problematic aspects from a moral point of view (specifically those aspects that do not emerge from reading the judgment of the constitutional court).

2.1   Muslims in Lombardy

According to the most recent survey conducted by ISMU (Istituto Studi Multietnicità), on 1st January 2016 the number of Muslims in Italy was estimated at around 1.4 million.[52] Lombardy hosts 26 per cent of the Muslim population in Italy (including 370,000 minors)[53]. In Milan, the main city in Lombardy, the Muslim community counts around 100,000 members and comprises a range of different countries, languages and traditions: 50 per cent come from Egypt, 13 per cent from Morocco and 10 per cent from Bangladesh (Blangiardo and Menna, 2016: 49-50).

In recent years, the geography of Muslim migration in Lombardy has changed because the phenomenon has changed from being temporary and concentrated only in Milan to being well-established and widespread also in other towns (such as Bergamo and Brescia) and their surrounding areas. In addition, in the last ten to fifteen years, the Muslim population of Lombardy has been more stable than the non-Muslim, and this aspect is evidenced by the increase in the average age of the Muslim inhabitants[54] (Blangiardo and Menna, 2016: 50-52).

Despite the large and well-established Muslim population shown by this data, there is only one official mosque in Lombardy, located in Segrate (near to Milan), and it is in fact very

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[52] The Islamic community is one of the largest foreign communities but it is not the largest. Indeed, the largest religious community is the Christian Orthodox Church with about 1.6 million worshippers. In second place is the Islamic community and in third place is the Catholic community (around 1 million worshippers). It is instructive to look at the percentage on the overall population (Italian and foreigners): Muslims: 2,3%; Christian Orthodox: 2.6%. Other examples: Buddhists (with foreign origins): about 182,000; Christian Evangelicals: about 121,000; Hindus: about 72,000; Sikhs: about 17,000; Christian Coptic: about 19,000. (Ismu).

[53] Ismu, Immigrati e religioni in Italia: gli ortodossi sono più numerosi dei musulmani [In Italy the Orthodox Christians are more numerous than Muslims] http://www.ismu.org/2016/07/in-italia-ortodossi-piu-numerosi-dei-musulmani/

[54] For further information about the residential patterns of Muslims in Milan: Chiodelli, F. (2015)

small and serves the needs of the local cemetery. As a consequence of this lack of places of worship, Muslims gather in unsafe and provisional places such as basements, garages, and sports halls. Inside these informal mosques, called *musalla*, Muslims gather for prayer but also for social activities and for learning the Koran (Allievi, 2010: 46).

However, informal places of worship are the most common Muslim places of worship everywhere in Europe. In Italy, Allievi (2010, 45) says, there are 764 *musalla*, and 124 of them are in Lombardy (see also Bombardieri, 2010). Typically, informal places of worship and Muslim centers are run by Muslim associations that bring together Muslims belonging to different groups in terms of religious traditions (Sunni, Shia, Sufi) and in terms of countries of emigration. Most importantly, such organizations are usually the proponents for building places of worship. The diversity shown by the constellation of associations also has a side effect, which is that the fragmentation that results actually makes dialogue with institutions more difficult.

Fragmentation, unfortunately, affects the Muslim community's relations with the institutions: relations that, in any case, have never been simple. In 2011 Giuliano Pisapia was elected as the new center-left mayor, and the construction of a mosque was among the goals of his political program. This marked a change from previous administrations, which had ignored the needs of local Muslims. The new Council therefore organized meetings with some Muslim associations[55] in order to learn their opinion about the lack of mosques and to work together to find a possible solution for them. However, this dialogue was not fruitful and, also because of the fragmentation described above, a solution suitable for everyone was not found (Misculin, 2016).

In order to overcome this impasse, the municipality identified three areas in Milan usable for building places of worship: two areas in the north (north east and west) and one in the south. On 29th December 2014 the municipality launched a public announcement in order

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[55] CAIM, COREIS, Casa della cultura musulmana di via Padova, Centro Islamico di viale Jenner.

to give these three areas to those religious (non-Catholic) associations that wanted to build a place of worship. On 3ʳᵈ August 2015 the list with the winners was published: two areas were allocated to the Muslim association of CAIM and another one to an Evangelical Church (Misculin, 2016).

The initiative was questioned both from a practical and from a moral point of view, because a competition did not seem the proper way to allocate space for religious use and at the same time to safeguard freedom of worship (a constitutional right). In any case this solution did not work, because those religious communities that did not succeed appealed before the local Administrative Court against the result of the competition. In addition, and more importantly, in January 2015 the regional law for places of worship was promulgated, preventing any efforts by municipalities in Lombardy (above all Milan) to find a solution to the lack of Muslim places of worship (Misculin, 2016).

Before analyzing the Lombardy Law, I would like to focus on the Italian legal system, and in particular on the Constitution, which enshrines freedom of religion and freedom of worship.

2.2   Italian legal framework

The Italian Constitution[56] recognizes and protects freedom of religion and freedom of worship, without exception and for both individuals and communities. These liberties are enshrined in the following articles: 3, 7, 8, 19 and 20[57] (Chiodelli and Moroni, 2017: 64;

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[56] See the complete text of the Italian Constitution in English at the following link:
https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf [Last Access: 5/03/2017].

[57] Here is the complete text of the relevant articles of the Constitution: Art. 3: All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions.
It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country.
Art. 7: The State and the Catholic Church are independent and sovereign, each within its own sphere.

Fabbri, 2015: 2).

Freedom of religion, among other basic rights, is an inviolable right of the person *qua* person, as stated by Article 19 of the Constitution. Churches, synagogues, mosques and all the other kinds of temples are the designated places in which worship takes place. They are therefore indispensable for making freedom of religion real: without temples freedom of religion does not exist. This right, furthermore, cannot be reduced to individual and private prayer, because in a liberal democracy people must be granted the right to profess their religion in a public and collective way (Casuscelli, 2009: 1).

Freedom of religion, moreover, must go hand in hand with equality of individuals and of religious communities. Freedom for only one community (or for a small group of communities) cannot be considered a right but only a privilege. Institutions, by virtue of their being liberal and democratic, must be committed to avoiding situations where privilege is enjoyed (Casuscelli, 2009: 11-12). On the contrary, this law is an act of intolerance enacted by institutions (as an expression of the majority community) against a marginalized minority.

As Chiodelli and Moroni state (2017: 64), the availability of places of worship is not only an intrinsic Constitutional right but is also at the core of some judgments delivered by the Italian Constitutional Court (see for example judgment 59/1958[58] and 195/1993[59]) and by

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Their relations are regulated by the Lateran pacts. Amendments to such Pacts which are accepted by both parties shall not require the procedure of constitutional amendments.

Art. 8: All religious denominations are equally free before the law. Denominations other than Catholicism have the right to self-organisation according to their own statutes, provided these do not conflict with Italian law. Their relations with the State are regulated by law, based on agreements with their respective representatives.

Art. 19: Anyone is entitled to freely profess their religious belief in any form, individually or with others, and to promote them and celebrate rites in public or in private, provided they are not offensive to public morality.

Art. 20: No special limitation or tax burden may be imposed on the establishment, legal capacity or activities of any organisation on the ground of its religious nature or its religious or confessional aims.

[58] Text of the Judgment 59/1958 (in Italian): http://www.giurcost.org/decisioni/1958/0059s-58.html

[59] Text of the judgment 195/1993 (in Italian):

the European Court of Human Rights (for example: Manoussakis et al. vs Greece[60], September 16th 1996).

Freedom of religion is thus not only an abstract principle but also a pillar of the Italian (and European) legal framework. Nevertheless, there is a deep discrepancy between Constitutional principles and their application at local level. Indeed, a national law that regulates the concrete aspects of the application of constitutionally granted rights is missing. This gap has been exacerbated by the process of devolution of power, which resulted in Constitutional change in 2001 that passed planning legislation to the regional authorities. So the specific spatial dimensions of religious rights (such as building places of worship or appointing cemeteries for diverse traditions) are now under the authority of regional authorities and municipalities (Chiodelli and Moroni, 2017: 64).

Hence, local administrations have the right and duty to regulate through laws the realization of places of worship. It is important to notice that the provision of places of worship can be limited but these limits must never erode freedom of religion or be used to create a consensus for gaining an electoral advantage. Nor is security regarded as a legitimate reason to strictly limit freedom of religion. If the case is made, it must be well documented and justified (Casuscelli, 2009: 1-5)

Italian secularism, Italy's system of separation between church and state, can be defined as

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http://www.cortecostituzionale.it/schedaUltimoDeposito.do?anno=2002&numero=346
[Last access: 8/03/2017].

[60] This case involved four Greek Jehovah's Witnesses who lived in Crete and had rented rooms to serve as a place for worship. Under the Greek Constitution, proselytism and setting up churches without written authorisation from the local authority is forbidden. So the police sealed off their rooms. The Jehovah's Witnesses applied to Strasbourg under a range of Articles of the ECHR. The Court maintained that the applicants had produced extensive case-law which seemed to show a clear tendency on the part of the administrative and ecclesiastical authorities to use the provisions in Greek Law to restrict the activities of faiths outside the Orthodox Church (http://minorityrights.org/law-and-legal-cases/manoussakis-and-others-v-greece-2/)
See the following link: http://hudoc.echr.coe.int/eng#{'fulltext':['\'CASE%20OF%20MANOUSSAKIS%20AND%20OTHERS%20v.%20GREECE\"'],'documentcollectionid2':['GRANDCHAMBER','CHAMBER'],'itemid':['001-58071

'positive'[61] because institutions, both national and local, are required to put into practice all those actions that make the life of religious communities easier. Among these actions, the planning law should be mentioned as being fundamental, because freedom of worship is realized in different ways depending on how the land is assigned for religious use. If land is not assigned for religious purposes, minorities are discriminated against because they cannot fully enjoy a constitutionally granted right (Casuscelli, 2009: 2).

The distribution and governance of land is regulated by the '*National planning law*' ('*legislazione urbanistica nazionale*') which considers places of worship 'secondary infrastructure' ('*opera di urbanizzazione secondaria*'), which also includes, for example, schools, hospitals, parks, markets etc.[62] However, it is important to note that the law states that local institutions (not the national government) are responsible for the needs of the residents in their territory; so, as Chiodelli and Moroni (2016: 6) argue, this decentralization leads to fragmentation and an arbitrary application of Constitutional principles. Additionally, with regard to places of worship, local institutions have to treat them like any other building: that is, without considering them an 'exception' or requiring special permissions or procedures for them to be built (*Legge* 380/2001, *Testo unico delle disposizioni legislative e regolamentari in materia edilizia*).

The law thus makes no distinction between temples for religious communities with or without a formal agreement with the State. This last point is particularly important because the Lombardy Law, which will be examined in the following sections, poses (undue) obstacles to those religious communities that have not signed the so-called *Intesa*. Apart

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[61] The Italian system of church-state relations is positive because it is based on the promotion of freedom of religion. This goal is attained through positive actions such as land being assigned without fees, tax-free construction of places of worship, subsidized loans, etc.

[62] The law distinguishes between 'basic infrastructure' ('*opere di urbanizzazione primaria*'): streets, parking spaces etc. and 'secondary infrastructure' (*opere di urbanizzazione secondaria*): schools, parks, market places, places of worship and other buildings for religious use, sport halls etc.

from the Catholic Church, whose relationship with the State is regulated through an international convention (the Concordat) between the Holy See and the Italian State, potentially every creed can make an 'Intesa' agreement with the State.

Nevertheless, Intesa does not regulate planning for places of worship because, as already stated, this is a constitutional right that cannot be called into question. Intesa, on the other hand, specifies particular arrangements related to access to public funds (the so-called '*8 per mille*'), access to hospitals by priests, teaching of religious doctrines in schools, and the civil registration of religious marriages. So far the faith groups that have already signed the agreement are the following: Judaism, Lutheran, Hinduism, Buddism, the Waldesian, the Apostolic Church and the Orthodox Church. Islam, for many reasons (including notably its fragmentation), has not signed the agreement with the State yet[63] (Chiodelli and Moroni, 2017: 64).[64]

A closer look at the Lombardy Law follows.

2.3   Lombardy Law on Places of worship

In February 2015 Lombardy modified the regional law that regulates urban planning Law n° 12/2005 (*Legge per il governo del territorio*), making it more restrictive. In particular, the regional council modified Articles 70 and 72, which regulate building places of worship. The two articles will be presented here (the old version is in *italics*).[65]

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[63] See also: Bolgiani, 2013; Tozzi, 2010.

[64] For further information: http://presidenza.governo.it/USRI/confessioni/intese_indice.html

[Las Access: 15/02/2017]

According to Article 70, the law must be applied to institutions and religious denominations that have already signed an agreement with the State, and the State has already changed the agreement in a Law ('agli enti delle altre confessioni religiose con le quali lo stato ha già approvato con legge la relativa intesa') stating that in the case of all the other religious denominations, in order to enjoy rights they must be widespread and organized in the regional territory and have a significant presence in the municipality where they want to build a place of worship.

[65] The following paragraphs describe the law through the original text but also the work by Moroni and Chiodelli (2017) and Croce (2016).

According to the **previous Article 70,** *the law is applied to the Catholic Church and also to minority religious groups with a 'widespread, organized and stable presence' in the territory of the municipality where the place of worship is built. They have also to sign an agreement with the municipality. The religious character of their activities must be expressed in their statutes.*

The modified law exempted the Catholic Church and, in addition, it distinguished (illegitimately) between religious communities with an agreement with the State (the so-called Intesa) and those without agreement. Article 70 (subsection 2) clarified that religious communities without Intesa should have certain precise characteristics in order to access the benefits of the law, namely a 'widespread, organized and stable presence within the council's jurisdiction', and the statutes of their organization must express the religious character and respect for principles and values of the Constitution. They were also obliged to sign an agreement (*'convenzione a fini urbanistici'*) with the municipality. This agreement contained a clause that clearly expressed the possibility of dissolution and unilateral repeal (Moroni and Chiodelli, 2017: 65).

On the other hand, municipalities were required to submit the procedures to a 'regional advisory body' appointed by the regional council. The aim of this advisory body was to examine and assess the application form in order to verify if the religious group had met all the requirements demanded by law (Art. 70 2 *quater*). It must be noted that the Regional Council never established the regional advisory body (Croce, 2016).

A closer look at **Article 72**. The original Article 72 states that *the 'plan of the services'* [66] *is the unique document that disciplines and locates the areas where places of worship must be built. In addition, in this document are also identified the new areas where places of worship can be built. The number of new places of worship is determined in accordance with the consistency and social importance of the religious denomination that proposes to build a place of worship.*

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[66] The so-called *'piano dei servizi'* is a document that identifies what buildings or structures of public character the town needs.

Article 72, substantially modified, introduced more obstacles and uncertain procedures for those minority religious groups that without Intesa still resolved to build a place of worship. a) During the procedure, it is necessary to collect opinions not just from the police but also from committees of citizens, with a view to evaluating possible security-related problems. The law also provides for the option of organizing a local referendum about the possibility of building the place of worship. b) Article 72 obliges all local councils to draw up a 'Plan for religious facilities' ('*Piano per le attrezzature religiose*'). Each council must identify specific areas in which to address the needs of the various communities of worship in its territory.

Contrary to the obligation to treat places worship like any other building, the Lombardy regional council obliges the municipality to draw a specific plan, different from the 'Public service and facilities plan' (*piano dei servizi*), which allocates the spaces for all the other public amenities such as schools, hospitals and parks. As shown above, according to the original law, religious facilities were included in the public service and facilities plan. In addition, it is worth noting that without the plan, building places of worship is not possible but, because bureaucracy advances slowly, the process of writing such plans can take many years (Chiodelli and Moroni, 2017: 65).

Subsection 7 of Article 72 specifies which characteristics the place should have in order to get permission to be built. The proposing group is obliged to pay for all the required facilities while the municipality, on the other hand, should pay nothing (even for the basic infrastructure); such facilities include streets, the drainage system, the water system, and the electric system. In addition, a minimum distance between different places of worship is required, together with public parking spaces (with a surface area that measures twice that of the area building); a CCTV system (to control every access point); and proper toilets. Lastly, the architecture and the dimension of the building must be compatible with the landscape of Lombardy.

2.4 The subsequent debate on the law.

The debate following the promulgation of the law was primarily concerned with the construction of mosques, because notable cases involving building places of worship for other communities were not reported. Nevertheless it must be stressed that Brescia is home to the biggest Sikh temple in Europe and Milan hosts the biggest Scientology temple in Europe. They were built without any problems, both from the point of view of procedures and from the point of view of public opinion (details in Chapter IV).

So, the law targets Muslim places of worship in particular and, in order to make building mosques harder, lawmakers distorted some principles and tools that could otherwise have helped to govern the construction of places of worship (specifically for minorities) properly and fairly.

First of all, the *specific requirements* both for the religious communities and for the places of worship are obstacles rather than elements necessary either to fairly govern building places of worships or to improve the conditions of provisional mosques, which, as already shown, are widespread in Lombardy. The same can be said for *bureaucratic procedures*: they are used as a tool to stop any proposals for the building of places of worship (for example, the obligation to sign various agreements). This kind of (mis)-use of the bureaucracy tends to increase the degree of arbitrariness in the procedures and discourage Muslims from building a proper place of worship[67]. Lastly, it is possible to critique the provision for *participation of citizens* (as individuals and as committees). Even if participation is indispensable for democracy (as I will show later) the kind of participation proposed by the Lombard lawmaker is controversial. Indeed, these procedures are designed to facilitate the involvement of those autochthonous citizens hostile to mosques (the committees) but not

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[67] The use of bureaucracy for preventing Muslims from building places of worship is not in fact a peculiarity of the 2015 Lombard Law. The use of rules and procedures combined with an indifferent attitude of institutions toward Muslims (and their needs) seems widespread at local level. An example of this attitude is given by Galeotti (2015: 103-106), who describes the case of Vercelli (northern Italy).

those who are the recipients (or targets) of the law. The fact that the proposals would predominantly benefit anti-Islam pressure groups appears to be a politically motivated choice.

The amended Lombardy Law was immediately considered controversial and generated wide public debate. It was in fact perceived from one perspective as reinforcing the privileged position of Catholic Church and from another as feeding intolerance and Islamophobia. Due to its discriminatory character, which severely limits freedom of religion for minority groups, the national government brought it to the Constitutional Court.

2.5   The judgment of the Constitutional Court

The Italian government decided to bring the case before the Italian Constitutional Court in order to have the law nullified. In its complaint the government argued that the law was unconstitutional: first of all, because it jeopardized the system of rights safeguarding freedom and equality of religions (Art. 3,8,19 Cost.); second, because the Lombardy Region was infringing unduly upon some State jurisdictions on issues such as public order, security and the relationship of the State to religious denominations (Art. 117 Cost.)[68]; and third, because the law violated principles of freedom of religion and worship enshrined in European and international agreements (Anello, 2016; Croce, 2016).

The Constitutional Court delivered its judgment[69], n°63/ 2016, on March 24th 2016. In their introduction, the judges refer to two general principles that underpin the Italian legal system of relations between State and churches, namely 'secularism' (*separazione tra stato e chiesa)* and freedom of religion (*libertà religiosa per tutte le* confessioni). They asserted that a certain principle of 'laïcité' (*principio di laicità*), implicit in the Italian Constitution, does not mean 'indifference toward religious experience' (*'indifferenza di fronte all'esperienza religiosa'*) but

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[68] For further information, see: http://verfassungsblog.de/freedom-of-religion-vs-Islamophobia-lombardys-anti-mosque-law-is-unconstitutional/ [Last Access: 16/02/2017]

[69] See the text with the résumé of the judgment (in Italian) here: www.regioni.it/download/news/450912/

rather 'commitment in protecting freedom of religion in a context of religious and cultural pluralism' ('*impegno a salvaguardare la libertà di religione, in una situazione di pluralismo confessionale e culturale*'). Moreover 'freedom of worship' is 'an essential aspect of freedom of religion' that 'must be recognised toward each person and toward each religious community, regardless the stipulation of an agreement with the State (Intesa) ('*il libero esercizio del culto è un aspetto essenziale della libertà di religione ed è riconosciuto egualmente a tutti, e a tutte le confessioni religiose, a prescindere dalla stipulazione di una intesa con lo Stato; che l'apertura di luoghi di culto, a sua volta, è forma e condizione essenziale del pubblico esercizio del culto*').

As a consequence of these principles, the judges stated that free worship is an essential aspect of freedom of religion and must be recognized with regard to each religious denomination (without discrimination): lawmakers cannot make any arbitrary distinction between denominations with or without Intesa. Secondly, they stated that the 'construction of places of worship' is 'an essential characteristic of public worship' ('*l'apertura di luoghi di culto* […] *è* '*forma e condizione essenziale del pubblico esercizio del culto*') and cannot be determined by any kind of pre-existent agreement. Thirdly, they declared that building places of worship is guaranteed by Art. 19 Cost. Finally, they indicated that the fact that some religious denominations are minority groups does not justify a lower level of protection for their freedom of religion (Croce, 2016).

After the reaffirmation of these general principles, the Court accepted some complaints brought by the government but without invalidating completely the law. In particular the judges considered the differential treatment for the Catholic Church and religious denominations with Intesa on the one hand and religious denominations without Intesa on the other hand to be incompatible with the general principles mentioned above.

The judges declared discriminatory all those provisions that demand specific requirements of only those religious denominations without Intesa in order to see the rules about places of worship applied ('*non compatibili*' *con i principi sopra menzionati e discriminatorie perché la legge*

regionale prevedeva un diverso trattamento per la Chiesa cattolica e le confessioni religiose con intesa, da una parte, e le confessioni religiose senza intesa, dall'altra'). The special requirements placed only on the second group (a widespread, organized and significant presence in the territory and Statutes containing their religious aims and respect for the Constitution) were considered unconstitutional.

The assessment of the requirements by a specific regional advisory body, non-existent after one year from the promulgation of the law, was considered invalid as well. It violated the principles of equal freedom of religion and worship. In addition, the judges stressed the fact that the Region can make laws about planning, and planning for the construction of places of worship in particular, but that the Region cannot make laws that regulate the relationship between the State and religious denominations because that is the prerogative of the State.

The judges of the Constitutional Court considered illegitimate the rules that imposed a CCTV system, directly connected with a police office, on the entrance of each place of worship. The judges stressed also the fact that in a democracy rights can be limited, and this includes freedom of religion. Nevertheless, they said, security and freedom of religion must be balanced with freedom of worship with a view to promoting the peaceful co-existence of different religions[70]. In addition, the judges stressed that the Regional Council has no competency over issues of security, which is the sole responsibility of the State.

Let us briefly examine the complaints that the Constitutional Court considered 'not illegitimate' and therefore still valid. First of all, the rule that introduced the agreement between the religious group (which wants to build a place of worship) and the municipality was considered *legitimate*. This rule, which also allows the municipality to cancel the agreement if activities outside of the scope of worship take place, was considered valid but it must be applied in a *reasonable* and *proportionate* sense. The repeal of the agreement is still

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[70] To quote directly from the judgment of the Constitutional Court: *'[…] la libertà di religione e di culto ha i suoi limiti e […] va tutelata in modo compatibile con le esigenze di sicurezza, ordine pubblico e protezione della pacifica convivenza'* .

possible but *only* if alternative means of safeguarding freedom of worship do not exist.

The other rule deemed 'not illegitimate' concerns the 'architectonical and dimensional adequacy of places of worship' with 'the Lombard landscape'. The judges considered this as 'not unconstitutional' in itself as long as respect for the landscape coincides with respect for the regional planning law. However, the judged highlighted that an arbitrary application of this rule must be avoided.

The ability to call a *referendum* (on construction of places of worship) was not considered illegitimate because the provision does not modify the actual legislation about referendums at local level, and does not have any normative aims but only a consultative character (Oliosi, 2016: 24).

The judges focused on the limits to freedom of religion and on the tension between freedom of religion and issues of security[71]. They recommended applying the remaining rules in a reasonable and proportionate way in order to avoid any arbitrariness.

Generally speaking, the judges put the religious experience in a context of religious and cultural pluralism of which freedom of worship is an essential aspect that must be granted to everyone and to every religious denomination without exception.

Nevertheless the judges preserved three provisions of the law. The rules that govern groups that wish to build places of worship are thus as follows:

1.   The community and the municipality must sign an agreement that the municipality

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[71] As already stated in the previous sections, the security issue reverberates throughout the law. The law in fact requires that, during the procedure, the municipality cooperate with the police to monitor potential security issues. In addition, the place of worship must be equipped with a CCTV directly connected with the closest police station. According to the Constitutional Court, the Lombardy Region, because of these requirements, infringed unduly some State jurisdictions on issues such as public order and security (Art. 117 Cost.). The judges reiterate that freedom of religion also has some limits and must be safeguarded in a way compatible with security needs, public order and protection of civic coexistence. (See specifically sections 2.3 and 3.3).

can repeal unilaterally. However, after the revision of the court, such a repeal is possible only as long as it is interpreted in a reasonable and proportionate way. The repeal can proceed only if alternative and equally valid means to guarantee the public order are not available.

2.   The architecture must be in line with the Lombard landscape, but the judges stated that this provision simply means that the building must follow the rules of the regional planning law.

3.   The possibility of calling a referendum is retained.

These three remaining rules still raise a lot of concerns. First of all the necessity for an agreement seems an exceptional rule that makes the bureaucratic procedures even more complicated. Second the rule regarding the possibility of repealing the agreement, even if mitigated by the judges, does not seem very clear and could be used by local councils as a means to stop any project in an arbitrary way. Third, the rule requiring compatibility with the Lombard landscape (even if mitigated) could produce uncertain outcomes. Lastly, the possibility of organizing a referendum is unfair because the minority will be outnumbered and thus might perceive its right to self-determination as being undermined. The point here is that the participation of citizens must be incentivized but not in a way detrimental to a minority. A referendum could in fact also have the side effect of further marginalizing a minority community and exposing it to xenophobic and Islamophobic groups (and maybe parties).

Following this overview of the law, in the next sections I will add an analysis of it through the lens of toleration. Despite the changes made by the Constitutional Court, I argue that the analysis is still relevant because **the Lombardy Law can be considered an exemplification of laws that are discriminatory against marginalized minorities.** A mere legal analysis would in any case be incomplete. It is therefore necessary to analyze it from a moral point of view in order to elucidate, on the one hand, which values this kind of

law undermines and, on the other hand, which values a fair law regulating building of places of worship should be based upon.

2.6   An analysis of the law through the lens of toleration as non-interference

As underlined by the judges, this law discriminates against Muslims. In addition the law is unfair because it is an example of 'disrespect and domination' (Forst, 2010: 1).

However, in the following sections I analyze the law first through the lens of toleration as non-interference[72] first and then through the lens of toleration as recognition in order to elucidate what the implications of this law are and which values (related to toleration and liberalism) are jeopardized.

The Lombardy Law jeopardizes the *autonomy* of the religious community because Muslims were not left free to decide for themselves how they wanted to pray. The idea of autonomy refers to the capacity of one person (or group of persons) to live life according to their plans, reasons and motives without being manipulated or distorted by external forces (Christman, 2015).[73] Generally, autonomy connotes 'independence and reflects assumptions of individualism in both moral thinking and political designation of political status' (Christman, 2015). In this respect, it is necessary to mention Rawls' political idea of autonomy (1977: 77-79)[74]. Rawls argues that citizens enjoy 'political autonomy' only if deliberation and decision-making satisfy the norms by being supported by reasons of the

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[72] Toleration, as already mentioned in the first chapter, can be negative or positive. A person tolerates negatively when she does not try to forbid through coercion the act she dislikes; the state tolerates in a negative way when it does not prevent or intentionally inhibit by law traditions or practices at odds with the standard. A positive individual toleration entails giving aid or encouragement to other individuals whose practices, in any case, one does not approve. At institutional level, positive toleration implies encouraging or actively implementing policy and support to avoid discouraging some practices (Fitzmaurice, 1993: 1).

[74] To sum up briefly Rawls' idea of autonomy: Rawls asserts that a well-ordered society is committed to treating its citizens as free and equal. Political autonomy, according Rawls, is an important kind of political freedom. In particular Rawls specifies that it is put into practice by citizens in political life and especially 'by participating in society's public affairs and sharing in its collective self-determination over time' (Rawls, 1977: 78-79). (Weithman, 2011: 327).

right kind. In light of these considerations, *autonomy* is conceived here as political autonomy because it refers to autonomy in the deliberation domain.

In addition, institutions did not provide valid justifications for the limitations being imposed on Muslims' rights. The r*ight to justification*, however, is a basic right that illustrates the difference between democratic and authoritarian institutions. These two aspects will now be considered individually.

The capacity to tolerate and hence to not interfere is strictly related to the idea of autonomy[75] and is one of the basic values of liberalism; it can be defined as 'the vision of people controlling - to some degree - their own destiny through their own decisions throughout their lives' (Raz, 1986: 369 and 372, Fitzmaurice, 1993: 12). So, autonomy is not only a value itself but 'is equi-primary with toleration' and 'mutually supporting in a proper comprehensive liberalism' because 'when an agent is tolerated, autonomy is protected' (Cohen, 2013: 484). This is valid in all social, political[76] and legislative contexts[77] (Dryden, 2017). With regard to the legislative context, a law is tolerant when it does not interfere but lets others live according to their choices as long as these choices do not break the law (Cohen, 2013: 493).

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[75] According to Rainer Forst there are five different conceptions of individual autonomy that play an important role in the concept of political liberty, even if none of them should take precedence over the others (Forst 2005: 226-238). First of all one should mention moral autonomy: an agent can be considered autonomous if she 'acts on the basis of reasons that take every other power equally into account' and which are 'justifiable on the basis of reciprocally and generally binding norms' (Forst 2005: 230). According to Forst, this promotes the mutual respect necessary for political liberty. Second, ethical autonomy concerns a person's desires in the quest for the good life, in the context of the person's values, commitments, relationships, and communities. Third, legal autonomy is the right 'not to be forced to live according to a specific conception of ethical autonomy' (Forst, 2005: 234). Fourth, political autonomy is about the right to participate in collective self-rule with other fellow citizens. Finally, social autonomy concerns the means to be a member of the community on an equal footing: 'it lies in the responsibility of all citizens of all citizens to grant and guarantee each other rights to a life without legal, political, social exclusion' and 'the standards by which one could measure social autonomy would be social standards of a non-stigmatized, fully participating life." (Forst, 2005: 237)

[76] Kant described the protection of autonomy at the political level as encapsulated in the principle of right: that each person had the right to any action that can coexist with the freedom of every other person in accordance with universal law (Kant 1996: 387).

[77] Forst marks the political concept of autonomy by stating that citizens are politically free if they are 'morally, legally, politically and socially autonomous members of the political community' (Forst 2005: 238).

On the other hand, autonomy implies responsibility: consequently autonomous people are left free to act accordingly and are at the same time able to 'reasonably explain and justify their actions' (Forst, 2005: 230). Such a conception of 'accountable autonomy', however, implies expression of sensitivity to the variety of differences among members of the society involving 'patterns of thought, modes of identity, religious and other value commitment' (Christman, 146: 2004).

Autonomy also has a relational dimension because it does not imply an atomistic conception of the individual but, rather, a self-governing individual living in a net of social relations. So, institutions have a duty to let people live autonomously and to establish the conditions for implementing their autonomous lives, and these conditions are related to education, social structures and opportunities, and access to basic resources (Christiman, 2004: 156).

From this perspective, it is possible to elucidate further discriminatory aspects of the Lombardy Law that jeopardize the autonomy of Muslim communities because they are not placed in conditions where they can choose where and how to pray. In addition the institutions have unduly interfered with a religious practice that is legitimate and lawful.

Justifying not only means safeguarding people's dignity but also excluding any paternalistic interference[78] (Forst, 2011: 969). Indeed, paternalism occurs when rules, actions, laws are imposed with the only justification being that the person affected will be better off (or protected) as a consequence of these actions. If we look at the issue from a Kantian perspective, to deny citizens the right to make their own decisions, even if mistaken, means to treat them simply as means, rather than as ends in themselves, and hence implies failing to respect their rational agency (Dryden, 2017).

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[78] Interference without justification is considered morally legitimate only if it is limited to cases where the agent is not considered to be autonomous with respect to a decision (see for example Dworkin, 1972)

This leads us to introduce the second aspect visible through the lens of toleration as non-interference, namely the right to justification. The Lombardy Law raises concerns from a moral point of view as well, because it lacks proper justifications for its (strict) limitations of a constitutional right. In a liberal democratic context, the right to justification is a universal and basic right that cannot be rejected by individuals or states (Forst, 2005: 231). Forst also asserts that 'every moral person has a basic right to justification, a right to count equally in reflections regarding whether reasons for actions are justifiable' (Forst, 2012b: 210).[79]

Justification is therefore central in democratic theory because institutions have a duty to justify laws and policies that limit the set of choices of the members of the society. Limiting without justifying means behaving in an authoritarian way: 'the fundamental liberal principle' is 'that all interferences with action stand in need of justification' (Gaus 2005: 272).

Justifying means not ignoring people but rather recognizing the dignity of persons as intrinsically equipped with a right to the justification of those actions or rules that affect them in a morally relevant sense. Institutions refusing to give justifications can be seen as carrying out an act of domination, and domination can lead to various forms of 'social exclusion' (Forst, 2011: 966-967). Unjustified rules are immoral and hamper the building of a fair society for all its members regardless of their religions and background (Forst, 2012: 22). In light of these considerations, it is possible to argue that the *Lombardy Law is not only unfair because it bans mosques but also because the rules, as conceived by the Lombard council, are so stringent as to deny autonomy to Muslims, treating them in a paternalist way and denying them proper justification.*

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[79] According to the principle of reciprocal justification moral persons have a fundamental right to justification but consequently a duty to justify morally relevant actions: individuals are 'ends in themselves' and this means that 'one recognizes their right to justification and the duty to be able to give them appropriate reasons' (Forst, 2012b: 21). Observing this fundamental right is necessary as a basic form of moral respect.

Justifications for the law were grounded in the need for security and prevention of terrorism. This was seen both in the securitarian approach recognizable in the law[80] and in the statements of politicians (especially the president of the Region[81]) who insisted on the need to prevent terrorism being fomented in the mosques. However, as the judges also pointed out, security must be improved but not to detriment of other basic rights such as freedom of religion.

Moreover, it is necessary to highlight that justifications of the ban that are related to security do not seem exhaustive from the point of view of the counter-terrorist strategy because currently radical ideology seems to be spread more commonly through web sites and social networks than through Imams preaching in mosques.[82] In addition, even if the risk of propaganda is real, the goal of preventing terrorism can be achieved through bringing informal mosques to light instead of encouraging the need to organise worship informally and using securitization as a guiding principle of legislation. Not only can securitization be ineffective but it is also unfair because it criminalizes every Muslim community in Lombardy. Moreover the criminalization of every member could prompt

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[80] See for example the requirement of CCTV directly connected with the police.

[81] Il Giorno (16 July 2016). Maroni sfida viale Jenner: vorrei una legge antimoschee più severa [Maroni challenges the muslim center in Viale Jenner: I would like a stricter anti-mosques law] http://www.ilgiorno.it/milano/politica/maroni-shaari-moschea-1.2352180 [Last Access: 25/11/2017]

[82] For further information about Lombard Council and supposed involvement of some mosque attenders into terrorist groups see the following links (in Italian):

Repubblica (24 February 2016), Legge antimoschee, Maroni e Salvini dopo la bocciatura della Consulta: "Giudici islamici". [Anti mosques law: maroni and Salvini after the rejection of the Constitutional Court: judges are muslims". Available on line at: http://milano.repubblica.it/cronaca/2016/02/24/news/lombardia_consulta_boccia_legge_sulle_moschee_maroni_su_twitter_sinistra_esulta_allah_akbar_-134120796/

Preti, I. M. (24 Novemebr 2015), Terrorismo islamico in Lombardia al consiglio regionale [the issue of islamic terrorism discussed in the Regional Council], La stampa. Available on line at: http://www.cronacaossona.com/2015/11/24/terrorismo-Islamico-lombardia-al-consiglio-regionale/

L'Eco di Bergamo (26 July 2016). Allarme anti terrorismo, il Pirellone: mappatura dei luoghi di culto Lombardi. Available on line at:
 http://www.ecodibergamo.it/stories/Cronaca/dopo-i-fatti-francesi-la-paura-in-italiamaroni-rivedere-la-legge-sui-luoghi-di_1194253_11/ [Last Access: 25/11/2017]

autochthonous citizens to believe that every Muslim is potentially sensitive to a radical message (Brown, 2010: 173).[83]

2.7 The Lombardy Law as an act of misrecognition

The Lombardy Law is not only an act of interference that undermines the autonomy of the Muslim community without giving proper justifications but it also misrecognizes them: institutions treat Muslims in an unfair way and they are thus further marginalized.

However, the recognition of minorities is invoked by multiculturalism as a tool for minorities to obtain equality (Laegaard, 2012: 201). In particular, recognition is interpreted by Galeotti (2002: 14-15) as a means to promote a peculiar and positive value of the difference without assessing or evaluating it. From this point of view, political authority should not only be secular and impartial but it should also make an effort to widen the limits of toleration to include on an equal footing as many different actors and groups as possible who can be distinguished from the majority. Currently, in Western societies, and in Europe in particular, religious issues are more visible than ever; not only in public debate but also at legislative level deep questions about the scope and limits of religious toleration are being raised (Forst 2010: 1).

The idea of toleration is a sinuous and complex concept that, as Galeotti explains, should give everyone 'a free choice concerning religious, moral, personal choice', and when the State forms its policies on it, toleration should exercise a 'public blindness' (Galeotti 2002: 5).

If we look at the law through the lens of toleration as recognition, a vital human need as described by Taylor (1994: 26)[84] we can see that, contrary to the essence of toleration as

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[83] Some multiculturalists such as Taylor (1994) assert that culture itself deserves to be protected and recognized (Laegaard, 2012, 199).

[84] 'Due recognition is not just a courtesy we owe people. It is a vital human need.' (Taylor, 1994: 26).

recognition, the law has the effect of making the status of the minority even lower. Muslims are not forced to give up their faith but to exercise their worship in the shadows and they have to become invisible in the public space. However, misrecognition means indifference, degradation, humiliation that often undermines self-respect and self-confidence[85] (Laitinen, 2009: 16).

John Rawls' *A Theory of Justice* (1971) is a reference point for the study of self-respect because he devoted particular interest to this concept. According to the definition given by Rawls, self-respect means first of all 'a person's sense of his own value, his secure conviction that his conception of the good, his plan of life, is worth carrying out'. Self-respect is 'the most important primary good' because it is vital for the experience and quality of individual lives and thus the ability to carry out or achieve whatever projects or aims an individual might have. It gives value and meaning to individuals' plans and without it their goals fade away to the point that it is difficult to reach them. Second it means 'a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions'. Each person tends to be more confident in her value if her capacities are fully recognized and this happens if she is appointed with duties that are characterized by a suitable complexity and refinement (Rawls 1971 (1999) 386).

Self-respect is not only a characteristic of the rational being but also an obligation of social institutions. In particular, Rawls argues that justice requires social institutions and policies to be designed to support self-respect and not undermine it. According to Rawls, self-respect is not a private issue but it rather has a public dimension because the access of an individual to self-respect is strictly determined on how the basic institutional structures define and distribute the social bases of self-respect. These include the distribution of fundamental political rights and civil liberties, the access to the resources that individuals need to pursue their life plans, the availability of diverse associations and communities within which

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[85] Misrecognition was also addressed by Franz Fanon who argued that misrecognition hinders or destroys individuals' successful relationship with themselves (Fanon, 1952).

individuals can seek affirmation of their worth and their life plans from others, and the norms governing public interaction among citizens (Rawls, 1971: 386 and Dillon, 2014).

In Rawls' view, the ability of individuals to respect themselves is rooted in social and political circumstances: 'in public life citizens respect one another's ends and adjudicate their political claims in ways that also support their self-esteem'. This concept has been recapitulated by a number of political theorists and in this respect it is possible to mention here Margalit (1996) who argues that a 'decent society' is characterized by institutions that do not humiliate people and consequently give people good reasons not to consider their self-respect jeopardized. In distinguishing between a civilized society where individuals do not humiliate each other and a decent society where at least the institutions do not do so, Margalit (1996, 1–2) explicitly affirms that misrecognition undermines justice. [86]

In light of toleration as recognition, it is therefore also possible to say that *the Lombardy Law is an act of misrecognition of the legitimate demands or needs of the Muslim community*. This ban thus obliterates Muslims' efforts towards building proper places of worship and in this way, Lombard institutions try to 'discipline' a minority group that is very unpopular among autochthonous citizens.

Yet recognition is a fundamental step for including minorities inside the society, so through misrecognition Lombard institutions are shaping a society that does not reach the minimum level of justice.

CONCLUSIONS

This chapter has been devoted to unpacking the Lombardy Law that bans mosques and to analysing it through the lens of toleration. The first part of the chapter was dedicated to the

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[86] Also Young (1990) underlines the importance of recognition as an element of justice. Indeed, justice is not primarily concerned with how many goods a person should have but rather with kind of standing *vis à vis* other persons she deserves.

analysis of the law and of the judgment of the Constitutional Court. Despite a widespread and well-established Muslim community living in Lombardy, the regional council promulgated a law aimed at making it more difficult for Muslims to build a proper place of worship.

Despite the importance of an analysis from a legal point of view, the second part of the chapter was devoted to the analysis of the law from a moral point of view. To do this the law was analysed through the lens of toleration as non-interference (negative) and then from the point of view of toleration as recognition (positive).

Majority and minority relations are generally considered as toleration-related issues. If we apply these two concepts separately we can see first that the law actually interferes in Muslims' life by denying them the opportunity to choose how and where to pray. This undermines their autonomy and also involves a breach of the right of justification. Because of its lack of autonomy and lack of justification, the Lombardy Law is not a means for forming a community of moral persons aiming at respecting each other. In addition, it also feeds possible conflicts and misunderstandings between autochthonous citizens and Muslims. Worse still, the law becomes a sort of invisible wall that not only fails to prevent terrorism but also pushes Muslims further into the shadows.

Second, this sort of invisible wall determines also the lack of recognition of Muslim minority as worthy of the same consideration on an equal footing with the majority. However, as stated earlier, denying recognition means denying a human vital need (Taylor, 1992), and misrecognition undermines self-respect (Rawls, 1999).

Toleration as non-interference was also challenged by the judges because it was considered insufficient to underpin laws and policies for minorities. Even toleration as recognition is questioned because it does not address the structural disparity between autochthonous

majority and marginalized minority. Moral minimalism is likewise too vague and does not provide all the answers related to different legal status of the minority.

So, if toleration does not solve the problems determined by the unequal and asymmetrical status of minority members in political life, is there a value that can explain further the moral problems of the law and potentially underpin a fairer law for building places of worship? I argue that the value of respect (recognition respect) can on the one hand help us to pinpoint further unfair aspects of the law and on the other hand help us to identify those values that can underpin fair law that regulate the building of places of worship.

In the next chapter, I will look at the Lombardy Law through the value of respect, which as shown in the first chapter must also mean giving people the largest possible space to decide about their own lives. My aim is, then, not to dismiss toleration entirely but rather to complement it. Toleration, I would like to underline, is still important and must be the basis for people's attitudes at horizontal level, that is among fellow citizens. Nevertheless, institutions are called upon to make an extra effort, and not simply to avoid non-interference but instead to treat the minority on an equal footing with the majority.

The Lombardy law is in fact unfair toward Muslims not only because it interferes with their lives without recognizing them on an equal footing with the majority but also because Muslims are excluded from the law-making procedures. Migrants, from a respect perspective, should therefore be part of the law-making process because only in this way are they treated with respect.

CHAPTER III

Respect Through Participation: Enfranchisement at national and local level

INTRODUCTION

In the previous chapter, both the Lombardy Law that regulates building of places of worship and the judgment of the Constitutional Court were analyzed through the lens of toleration because it can explain, from a *moral perspective*, further problematic aspects not visible through a mere legal analysis. Briefly, the law is intolerant not only because it discriminates against Muslims but also because it unduly interferes with their methods of prayer, it denies recognition of the Muslim community as worthy of building places of worship and it also undermines the self-respect of its members (see second chapter).

Does toleration, then, provide an exhaustive explanation for the unfair aspects of the Lombardy Law? My answer to this question is negative: I think that toleration provides a limited explanation of the unfair aspects of the law. For a more exhaustive analysis of the law it is necessary to rely on the concept of *respect* (equal and opaque, as presented in the first chapter). Here respect will be considered a sort of *magnifying glass* that allows us to see *further unfair aspects* not visible from the perspective of toleration. In addition to this capacity to critical analyze unfair aspects of the law, respect has also the capacity to underpin fairer laws that regulate minority's life, because its focus on self-legislation and participation in the decision-making process.

Should toleration be dismissed? My answer is again negative. Respect ought to *complement toleration* not replace it. Following the framework explained in the first chapter (see specifically section 1.9) 'toleration as non- interference' is still relevant, but as an appropriate value to inform relationships at horizontal level: that is, between fellow citizens. On the other hand, it seems problematic at vertical level because liberal-democratic institutions must not be committed only to neutrality (as explained in the judgment of the

Lombardy Law issued by the Constitutional Court) but also to considering all the members of the society on an equal footing and to actively removing the barriers that prevent some groups (typically, minority groups) from enjoying the same set of rights as the majority (see chapter I).

In light of these considerations, I contend first that the Lombardy Law is disrespectful because it jeopardizes *the right to self-legislation*: Muslims *qua* migrants are disenfranchised by the restrictive Italian law on citizenship. Second, regional institutions did not try to overcome this lack of representation at institutional level and they did not even start a dialogue with the community: Muslims' claims were simply ignored.

Even if the Lombardy Law is a local case of mistreatment of a minority, it can be considered a sort of negative paradigmatic case whose analysis can provide general lessons about discrimination against minorities. Studying the unfair aspects of the Lombardy Law may therefore be useful for institutions (in Italy and in other liberal democratic countries) where legislating on building places of worship is necessary.

The ideal of respect – rather than toleration – could underpin a fairer law to regulate some specific aspects of minority life, such as a law about building places of worship. Respect, in fact, means granting self-legislation through political participation, and this would require giving a role to minorities' members in the law-making process, instead of simply being spectators. To do this, it is necessary to expand the *demos* in order to include as many immigrants as possible (Miller, 2009: 201 and Abizadeh, 2008: 37-65); but expanding the *demos* is, though necessary, not sufficient, because in order to give more space to minorities to decide about their lives it is crucial to focus on procedures for the participation of the minority at *local level*.[87]

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[87] I distinguish between national level and local level as separate but equally important arena of participation. Specifically when I mention participation at national level I refer to participation in the elections for the Parliament. With participation at local level I consider participation in electing municipal councils.

In the next few paragraphs I propose, following Bauböck (2015: 821), 'a multilevel architecture of enfranchisement'. Even if a framework of rights and participation at national level is fundamental, I argue that participation should be granted through giving *differentiated membership rights*. This means that *enfranchisement* should be *determined in a different way at national and local level* (Bauböck, 2015: 826) because different types of democratic polities correspond to different but equally important systems of membership. Accordingly, the general normative principles for inclusion both in the citizenry and in the *demos* must be specified for each type of polity and membership regime (Bauböck, 2015: 826).

First, it is necessary to focus on the national level, at which state membership is regulated though laws on citizenship. As pointed out by some scholars, these should be as inclusive as possible, for example by mitigating *ius sanguinis* provisions, especially for those countries that attract immigrants. Including as many non-citizens as possible is crucial because it will give them the opportunity to bring their demands to national level (that is, to the Parliament). In addition, inclusion of disenfranchised residents also requires us 'to confer them social standing and dignity', hence promoting their larger integration into society (Song, 2009: 607).

Second, after the national level it is important to focus on the local level. Non-citizen residents should be granted the right to vote at local level because that is where their basic interests are affected most (Abizadeh, 2008). At local level, in addition, residents have an opportunity through cooperation to shape the community and the municipal government that, usually, is concerned mainly with providing basic and universal services (Eisenberg, 2015: 140-141).

However, this argument still seems insufficient to ensure self-legislation for minority groups that, even at municipal level, can again be easily outnumbered. This is particularly true at local level (in towns and neighborhoods) where conflicts between majority and minority

take place physically and where institutions seem not to have enough tools to address them.[88]

To adjust unbalanced systems of power, then, it is necessary to give minorities greater weight at local level whenever their rights are at stake. Law-making procedures at local level should therefore be based on what the scholars Brighouse and Fleurbay (2010) call the '*proportionality principle'*. They argue that instead using a pure democratic principle it is necessary to distribute power in proportion to people's stakes in the decision under consideration. This principle would mitigate the tensions between democracy (majority rule) and social justice (the protection of minority interests) (Brighouse and Fleurbaey, 2010: 137).

In the particular case analyzed in this thesis, Muslims' opinions should carry more weight on those specific issues that affect their lives, such as building mosques. To meet this goal, I argue, it is necessary to elect to local councils one or more representatives for each of the minorities whose vote needs to carry greater weight on specific issues; and who could even exercise a veto power. Obviously, this power could be exercised *only* on issues *specific* for the minority: places of worship, dietary requirements in the canteen, and so on. In addition, if respect has a dialogical dimension too (Bagnoli, 2007), this could be given substance through the establishment of special bodies where believers (not necessarily experts or professionals) would be able to express their claims, propose solutions and give advice to the local council.

In order to develop my argument, I will proceed as follows. First of all, I will analyze the Lombardy Law through the lens of respect in order to abstract the values that are

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[88] As seen in the previous chapter, the Italian Constitution invokes the removal of any obstacles toward the path of the full legitimation of minorities. In particular, with regard to freedom of religion, under the Constitution freedom of religion is granted to any confession without limitation and security cannot be a good reason to limit worship or to impede the construction of temples. However, at local level the situation is more complicated, because laws regulating the use of the land are fragmented and local institutions (such as municipalities) do not have enough incentives to protect minorities, especially those minorities that are socially and politically marginalized because of possible electoral disadvantages (see chapter II).

jeopardized. Second, I will introduce the problem of the *demos* through answering the following question: who should get into the *demos*? After that I will consider the issue of differentiated membership rights. Next, I will introduce a counter-democratic argument based on the proportionality principle at local level. In order to let minorities make decisions over their lives it is necessary to give them space to decide without the pressure of the majority.

3.1 The analysis of the Lombardy Law through the lens of respect.

The Lombardy Law, dubbed the 'anti-mosque law', is an act of undue interference with Muslim customs, promulgated without providing proper justifications other than those related to security issues (specifically on this point section 2.6). However, as was likewise stressed by the Constitutional Court, the 'right to security' also needs to be balanced with the freedom of religion, which can on no account be dismissed.[89]

Moreover, regional institutions have never provided scientific evidence for an ostensible relationship between mosque-building and terrorism, nor has a public debate about this issue been opened. The interference of the Lombardy Region has caused the Muslim community's autonomy to be undermined and has also led to a failure to recognize the community as being on an equal footing with the majority community, which in fact is not generally subject to exceptional regulations on church-building.

What values does the law – from the perspective of *respect* – undermine? Through the lens of respect, defined as a moral attitude (Bagnoli, 2007: 113) that implies giving every person enough space to live according to self-imposed rules and making them responsible for their choices (Carter, 2013: 197), it is possible to see first of all that the Lombardy Law undermines the right of self-legislation.

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[89] Follow this link for a résumé of the Constitutional Court Judgment:
www.regioni.it/download/news/450912/ [Last Access: 26/07/2017]

According to the principle of self-legislation, an agent should not be compelled to adhere to a norm that she considers morally wrong or that undermines her moral integrity, but she should rather be put in conditions where she can act in accordance with her conscience (Ceva, 2011: 16). Self-legislation thus means that an individual legislates her own moral laws. Every person, *qua* person, has the capacity to freely act in accordance with moral laws: each person is at the same time the author and addressee of the rule that governs her activities (Ceva and Zuolo, 2013: 87).

The concept of self-legislation is crucial in democracy because democratic regimes should be committed to give members of society (not only citizens *tout court*) the largest space possible to express their conscience and to act accordingly. This should be particularly true in multicultural societies, where minorities (whether autochthonous or of migrant origins) seek accommodation for their traditions, their religious and cultural customs, etc. There are of course some limits[90] that cannot be overcome but, within limits, any constraints on a self-legislator's conduct determined by her conscience must be properly justified (Ceva, 2011: 16).

If treating people with respect means granting people the capacity to self-legislate, then the Lombardy Law is unfair because it infringes Muslims' *freedom of conscience* and excludes them from the *law-making procedure.*

In addition, even if it is still possible for Muslims to gather in informal places, the law is in any case unfair because by being denied the chance to build proper places of worship,[91] Muslims are prevented from adhering to the precepts of their religion. Minarets and domes are in fact traditionally part of mosques: they are not mere architectonic additions but in

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[90] Following Kymlicka (1995, 152-172) I would like to emphasize that toleration has some limits and not every tradition or practice can be accommodated. In particular, a group whose practices undermine dignity and freedom of members must be asked to revise them because they are inconsistent with any liberal system of minority rights.

[91] With 'proper places of worship' I mean places dedicated exclusively to worship and characterized by the presence of a dome and a minaret.

fact fulfill specific religious functions. Granting moral integrity to Muslims also means letting them follow the principles and traditions of their religion. The importance of a mosque is relevant here because as Göle (2011: 384) explains, Muslims do not consider mosques with minarets as just a simple place of worship but as a 'cultural artifact that is part of a familiar landscape'.

Institutions should be committed to safeguarding the way people express their beliefs because, unlike personal preferences, tastes and desires, they shape conscience and values. In particular, they are fundamental in allowing people to find their way in a plural moral space and they also contribute to believers' well-being (Maclure and Taylor, 2011: 76-77). Generally the inability of someone to achieve their desires may result in disappointment, but it does not have an impact on those personal values and beliefs that define personality nor does it inflict 'moral harm.' By contrast, if a person acts in a way that does not correspond to what she considers to be her obligations and core values, her sense of moral integrity is violated. More importantly, core beliefs and commitments allow people to structure their moral identity and to exercise their faculty of judgment in a world where potential values and life plans are multiple and often compete with one another (Maclure and Taylor, 2011: 76-77).

If we look at the Lombardy Law from this perspective, it is possible to assert that Muslims were prevented from following one of the main aspects of their religion, namely praying in a proper place (with dome and minaret) freely chosen. They were also not allowed to be authors of the law but were only addressees.

I will now look more closely (but briefly) at the conditions for political participation of immigrants in Italy.[92]

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[92] For further information see: Migration and citizenship: legal status, rights and political participation, Bauböck, Rainer (Ed.), Available online at: http://www.ssoar.info/ssoar/bitstream/handle/document/27219/ssoar-2006-Bauböck-migration_and_citizenship.pdf?sequence=1 [Last Access: 6/6/2017]

Muslims in Italy are for the most part immigrants, and because of this condition they have not had equal access to democratic procedures for participation. In Italy voting is not allowed for immigrants from outside the EU either at national or local level. A provision granting local voting rights to permanently resident non-nationals was included in the 1998 Immigration Act (*Testo Unico dell'Immigrazione*[93]) but in order to become effective it required an amendment to the Constitution. Such an amendment was never adopted and is not on the agenda of the political parties. The only change made to the Italian Constitution where voting rights for foreigners are concerned has been in relation to the voting rights for EU nationals. Like Germany, France and Spain, Italy granted voting rights only to EU nationals rather than to all residents regardless of nationality (Groenedijk, 2008: 4-11).

The only chance for immigrants to vote is through acquiring Italian citizenship. Yet Italian citizenship law[94] is based on the *ius sanguinis* principle and for this reason it requires the applicant to spend ten years (uninterrupted) in Italy.[95] Even if the Lombardy region does not have the power to resolve this particular issue, institutions have not made any effort to find supplementary forms of participation.[96] For example, institutions could have organized

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[93] The full text of the Immigration Act is available here (in Italian: http://www.esteri.it/mae/normative/normativa_consolare/visti/d_lgs_25_luglio_1998_n_286.pdf [Last Access: 6/6/2017]. DECRETO LEGISLATIVO 25 luglio 1998, n. 286 Testo unico delle disposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero.

[94] The text of the Italian Citizenship Law (n° 91/1992) is available here: http://www.esteri.it/mae/en/italiani_nel_mondo/serviziconsolari/cittadinanza.html [Last Access: 6/6/2017]. The 1992 law was based on the *ius sanguinis* principle: one is entitled to the Italian citizenship only if she or he was born to Italian parents. The law allows also certain exceptions to this rule in accordance with the *ius soli* principle: someone is an Italian citizen from birth if his or her parents are unknown, stateless, or cannot pass on their own citizenship to their child in accordance with the law of their state.

A detailed study of the law and of the history of citizenship laws in Italy is available here: http://cadmus.eui.eu/bitstream/handle/1814/19619/Italy.pdf?sequence=1 [Last Access: 6/6/2017]

[95] In addition, the bureaucratic procedure is affected by arbitrariness, resulting in additional waiting time (four to five years on average) before obtaining citizenship. The disenfranchisement of immigrants is thus determined by national legislation and is frequently subject to bureaucratic delays. The result is that the majority of immigrants from third countries are without citizenship and hence do not have the right to vote.

[96] In the sources used for the case study, special bodies at institutional level for dialogue with religious minorities or special representatives for Muslim communities have never been found. However, it is interesting to note that the Lombardy Region established some advisory bodies (*consulta*) on specific issues such as Volunteer and Civil Protection (the law may be found here:

meetings with the representatives of Muslim associations. Such associations could be chosen to be interlocutors with the institutions because they are usually very well established in the territory and also very active in the promotion of inter-confessional dialogue. In addition, they are committed to raising awareness about Muslim traditions and to spreading Italian culture in their community. For sure, nothing can replace voting rights, but involving associations in an open dialogue could be a sort of starting point for letting Muslims take part in the definition of a law that regulates their lives.

From this brief analysis of the law a tension emerges between, on the one hand, a question of justice (the right of a minority to self-legislate) and, on the other hand, democracy (majority rule). Indeed, democracy is generally associated with political equality and/or majority rule (Saunders, 2010: 148) and is determined by the combination of three elements: the ability to vote freely, universal suffrage and majority rule (Van Parijs, 1996: 2)[97].

Majority rule may be unobjectionable in many contexts, *but* there are some cases — such as when it permanently excludes a certain minority — where it may be not only unjust but paradoxically undemocratic, because members of a minority are effectively excluded from influence altogether (Saunders, 2010: 150-151).

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http://normelombardia.consiglio.regione.lombardia.it/normelombardia/Accessibile/main.aspx?view=showpart&idparte=lr002010020500007ar0015a); Consulta of professional associations (http://www.regione.lombardia.it/wps/portal/istituzionale/HP/DettaglioRedazionale/servizi-e-informazioni/cittadini/Lavoro-e formazione-professionale/consulta-regionale-ordini-collegi-associazioni/consulta-regionale-ordini-collegi-associazioni); Consulta for fishing: http://www.regione.lombardia.it/wps/portal/istituzionale/HP/DettaglioAvviso/servizi-e-informazioni/cittadini/agricoltura/pesca/acquisizione-candidature-esperto-perConsulta-regionale/acquisizione-candidature-esperto-per-consulta-regionale. There is also a register (Albo) of associations committed in promoting equal opportunities: http://www.registriassociazioni.servizirl.it/ricerca/associazioni.

[97] Justice, on the other hand, can be defined as the maximization of material conditions that might satisfy certain constraints such as respect for fundamental liberties. The ultimate goal of a society based on justice is the improvement, through institutions, of the material conditions of the least advantaged (Van Parijs, 1996: 2)

Exclusion of minorities happens every time minorities are prevented from enjoying full political rights: that is, they are excluded from the *demos* (definition below). 'Who should get into the *demos*?'[98] is therefore the question upon which the next paragraph is centered.

3.2   The issue of the *demos*. Who should get in?

The issue of the *demos* is part of a broader issue, which is the legal and political status of immigrants: disenfranchisement of migrants results in unjust and disrespectful laws.

As also stressed by some political and legal scholars – such as Song (2009: 608), Walzer (1983) and Raskin (1993) – the presence of a large portion of residents in a territory without rights of participation creates a problem of democratic legitimacy[99]. In order to avoid fairness and legitimacy being called into question, the *demos* for making laws and policies – especially those related to immigration – should be expanded to include immigrants (Miller, 2009: 201 and Abizadeh, 2008: 37-65).

Before discussing the right to enter the *demos*, it is necessary to focus on its definition. Bauböck (2015: 821) defines the *demos* as that group of citizens who 'enjoy full political rights'. Children are generally excluded from the *demos* and this is understandable because it is a publicly defensible way of evaluating competences[100] (Brighouse and Fleurbaey, 2010: 149). On the other hand, the exclusion of adults of immigrant origin from the complete set of full political rights is not automatically justifiable because individuals who are under the

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[98] Here I am paraphrasing Carens' title: Who Should Get In? The Ethics of Immigration Admissions (2003).

[99] As Abizadeh (2008: 41) argues that democratic theory requires '*actual participation*' in order to establish the *legitimacy* of political institutions and laws. Let me briefly clarify the meaning of political legitimacy. It can be defined as a *virtue* both of political institutions and of the decisions concerning candidates standing for office, policies and laws. Legitimacy can be interpreted both descriptively and normatively. According to Weber, a political regime is legitimate when its participants have certain beliefs or faith in it ("*Legitimitätsglaube*"). By contrast, the normative concept of political legitimacy refers to the acceptability of the justification for political power/authority. John Rawls *in Political Liberalism* (1993), specifically, argues that legitimacy refers to the justification of coercive political power (Fabienne, 2017).

[100] This is certainly an imperfect criterion but generally children acquire competences at a similar age, and the risk that a child might acquire a set of rights before becoming competent is greater than the risk of having to wait some time before being allowed to exercise political rights (Brighouse and Fleurbaey, 2010: 149)

authority of the State must be given 'an ultimate and equal say in what the authority does' (Walzer, 1983: 60), hence they must be put in a condition where they can authorize laws through voting (Bauböck, 2015: 821).

In light of this consideration, I argue that the borders of the *demos* should be porous in order to let long-term immigrants enter. Consequently, it is necessary to improve the opportunities that exist for resident non-citizens to acquire citizenship, which is intrinsically linked to rights and responsibilities (Song, 2009: 611). In particular, citizenship gives access to full political rights; indeed, the main core of citizenship is the right to vote (Song, 2009: 607).

The franchise marks the difference between those who are part of the *demos* and those who are excluded. This distinction is fundamental to forming a specific political community (Abizadeh, 2008: 43), and indeed a certain degree of closure is necessary because democratic representation requires accountability to a specific people (Benhabib, 2004: 219).

However, even if a distinction is necessary, what must be discussed and challenged is 'where' to position the outer limits of the *demos* and what kind of justification is provided for its placement.[101] Certainly, as Abizadeh points out, the act of drawing borders is always an exercise of power over both insiders and outsiders; nevertheless, 'a democratic theory of popular sovereignty requires that the coercive exercise of political power be democratically

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[101] The fact that the *demos* must be enlarged does not mean that everyone should be allowed to become part of it. For example, I do not see any justifications for allowing temporary residents to be awarded full political rights. But, in contrast, long-term resident noncitizens should be enfranchised (Song, 2012, 40) because long-term residents have built their lives in the country where they currently live (and not in their countries of origin). In particular, they work and pay taxes, they attend local schools and hospitals. Moreover, it is inevitable that residing in a place will cause people to develop feelings of belonging towards the place where they live (something that generally does not happen for temporary residents).

justified to all those over whom it is exercised, that is, justification is owed to all those subject to state coercion' (2008: 45), meaning both members and non-members.

As also pointed out by Song (2009), the *demos* should be as widely inclusive as possible because excluding a large part of immigrant community – as Italy does due to its restrictive citizenship law – results in a lack of political legitimacy.

However, I wish to stress that 'expanding the circle of citizenship' (Song, 2009: 611) also has a broader effect than merely granting voting rights and enhancing political participation. In particular, such an enlargement may have a positive effect on marginalized communities because, as Shklar (1991) (as in Song, 2009) argues, only the fact of having the right to vote confers social standing and dignity on people, and this is particularly true if it happens in a context where citizenship rights have been denied to a broad portion of the population. In addition, granting citizenship to newcomers can help to spread the idea among autochthonous citizens, especially those reluctant to accept immigrants on an equal basis, that newcomers are part of the community: expanding citizenship rights can hence contribute to the collapse of barriers among ethnic groups and, ultimately, help to foster solidarity among them.

Against this, Miller (2009) is skeptical about the possibility of expanding citizenship because he claims that it could result in the fall of a society by undermining its basis. That is, it could undermine the bonds of solidarity as a consequence of the cultural diversity of the newcomers, who are difficult to integrate (Miller, 2009: 207).

Even if it is true that solidarity is nourished through common culture and history – as Miller asserts – I think that it can also be underpinned by a common sense of loyalty towards fellow citizens and a sense of sharing a common set of values and principles (Song, 2011) or a shared commitment to understanding the history of the community (Taylor 1993: 1999 and Song, 2012: 47). It is certainly true that religions or cultures shape the ways in which

people conceive (and build) solidarity, but solidarity can also be strengthened by specific policies for that purpose, which could be put into practice by institutions.

If the inclusion of newcomers can foster solidarity (because granting citizenship to aliens means expanding the feeling of belonging to the community), exclusion – on the other hand – can feed feelings of resentment and alienation and hence prevent the creation of solidarity bonds.

Citizenship and solidarity are of paramount importance because they integrate minorities into the national polity but unfortunately they are not enough to ensure minorities' rights in general and the right to self-legislation in particular. Indeed, minorities can easily be outnumbered, and consequently it is necessary to think about devices tailored to minority needs that could help to safeguard specific minorities' rights.

In the case of the Lombard anti-mosque law, for example, the expansion of the *demos* is fundamental because giving voting rights at national level 'would confer social standing and dignity' (Song, 2009: 607) to the marginalized minority of Muslims. It would also raise the issue of the lack of places of worship at national level. Nevertheless, it would be of little help in providing a concrete solution to the issue where it is deep-rooted: namely at local level. In the next section I will propose to complement national citizenship rights with local participation rights.

3.3   Voting rights at local level. Shaping the community through participation

As shown by the Lombard case, a framework of rights (enshrined in the Constitution) and national laws is not enough to protect stigmatized minority at local level: the issue of mosques is paradigmatic because municipalities tend not to accommodate Muslims' needs but to ignore them.

The full protection of minorities' rights is hence indispensable at local level where conflicts about accommodation of minorities' habits physically take place (as in the case of mosques). Municipalities not only constitute an arena where conflicts happen, but also have a certain degree of administrative and political autonomy. Municipalities are the second level (after the national one) of what can be called the 'architecture of enfranchisement'.

As just shown, the expansion of the *demos* at national level is important, but it should be completed with the expansion of participation at local level, which means granting the right to vote for the local council (and to be elected to it) to newcomers. It is thus necessary to establish a formal status of local citizenship based on residence and separate from nationality (Bauböck, 2003: 139).

Municipalities are fractions of the national territory but their existence is not only due to technical reasons, but also to the fact that self-government rights must be granted to residents. Through elections inhabitants select their representatives for local councils, which enjoy 'autonomous decision making power' in relation to local issues (Bauböck, 2015: 826).

Self-governing is not only a matter of organization but is also justified at a normative level: the imposition on *all* local issues of decisions taken at national level by national majorities would amount to domination of local citizens because in any case national majorities would not have enough stake in the local polity.[102]

In contrast, the Lombardy Region did not promulgate a law that helped municipalities to manage the coexistence of different faiths (with different municipal prerogatives over the use of land) but instead the law exacerbated the already difficult situation between local

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[102] This point exposes another unfair aspect of the Lombardy Law. Seen from this perspective the law is an expression of the domination of regional authorities over municipalities, because even if the regulation of space allocation is a prerogative of the Region, municipalities should have been granted the right to decide about accommodation to the religious needs of citizens in their respective territories. In addition, Regions should help municipalities to solve potential conflicts and not to exacerbate them.

councils and the Muslim minority[103] and even prevented some attempts by municipalities[104] to solve the problem of the lack of mosques.

However, municipalities are a type of 'democratic polities' (Bauböck, 2015: 826) that can be distinguished from the superior level of polity thanks to a specific property: the centrality of local issues that directly concern people's lives. Because of this prerogative, the 'all residents and residents only' concept (Bauböck, 2015: 828) should be the basis of the rules that decide whom to include in the *demos*: those who are affected by the decisions taken by the council must be part of the *demos*. Local institutions are in fact more committed than national ones to solving practical problems and to improving people's lives and are concerned with providing essential and universal services. Through local elections voters 'determine the character of municipal government' (Eisenberg, 2015: 140). This statement is also enshrined in the Treaty of Maastricht[105], which actually declares that the local level is the 'locus of decision' for the provisions of services (Eisenberg, 2015: 141).

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[103] Below are some articles that testify to the difficult relationships between the main municipalities in Lombardy and Muslim communities. Milano: Legge "anti-moschee" in Lombardia, lo scontento delle associazioni religiose: http://www.lastampa.it/2016/07/13/italia/politica/legge-antimoschee-in-lombardia-lo-scontento-delle-associazioni-religiose-tskIfxVdOG3iQxmcLg5npL/pagina.html Sesto San Giovanni: http://milano.repubblica.it/cronaca/2017/07/18/news/sesto_san_giovanni_stop_moschea_piu_grande_d_italia_sindaco_roberto_di_stefano-171091972/ Crema: http://www.crema-news.it/articoli/il-centro-islamico-cremasco-ha-presentato-i-documenti-solo-l Lodi: The conflict was caused in reality by resistance towards, and fear of, Islam's becoming visible and its request for equal recognition within Italy's public arena. It has three main dimensions. Firstly, local politics (the confrontation between the centre-left mayor and the *Lega*), in which Muslims have become scapegoats. Secondly, the worldwide media's construction of an 'Islamic peril'. Thirdly, symbolic violence (Bourdieu 1980) linked to a set of identity problems constructed by the *Lega Nord* around the territory of 'Padania' the Po Plain region" (Saint Blancat and Schmidt di Friedberg, 2005, 1089). Pavia: http://laprovinciapavese.gelocal.it/pavia/cronaca/2014/12/24/news/la-moschea-non-nascera-con-depaoli-1.10560054

Brescia: http://brescia.corriere.it/notizie/cronaca/17_marzo_13/grande-moschea-brescia-arrivano-aperture-anche-destra-189f7a98-07c2-11e7-b69d-139aae957b51.shtml [Last Access: 28/07/2017]

[104] Varese (Sesto Calende, Gallarate): In Sesto Calende and Gallarate it was possible to build a Mosque but because of the anti-mosque law that changed the rules, at the moment any projects are on hold. http://www.laprovinciadivarese.it/stories/varese-citta/si-alle-moschee-benedetto-il-pgt_1168764_11/ [Last Access: 28/07/2017]

[105] In 1992, the current Article 19(1) was added to the Maastricht Treaty. This article grants EU citizens resident in another Member State the right to vote and stand for elections under the same conditions as the nationals of the country of residence (Groenendijk, 2008, 9).

Nevertheless, in all EU countries the local *demos* includes autochthonous citizens and EU residents (citizens of other member states), and in only 12 countries[106] does it also include resident third-country nationals (Bauböck, 2015: 827). However, restricting the local franchise to national citizens or EU citizens (or to citizens of those countries that grant a reciprocal franchise) is unjustifiable because it introduces conditions that have nothing to do with (that is, they are external to) the powers and functions of local self-government (Bauböck, 2015: 828), which concern practical issues. Consequently, restrictions – especially those that are very harsh as in the case of Italy where migrants are excluded from the franchise even at local level – raise issues of legitimacy and fairness concerning the treatment of the disenfranchised group and the quality of democracy.

Democratic and liberal institutions should aim at emancipating cities as much as possible, because these are political communities and they can accomplish this goal through giving full local citizenship to the residents of the jurisdiction without exceptions (Bauböck, 2003: 150).

Let us now examine in greater depth the reasons that underpin the argument for granting full political rights at local level.

Restricting the local *demos* on a national basis could be a form of domination because it *excludes immigrants* who, in any case, are affected by the outcomes of decisions taken by the municipalities. It also means excluding them from the opportunity to express their opinion about the services provided by municipalities. According to Bauböck (2003: 150) this restriction is unjustifiable because cities should differentiate themselves from the rules that regulate membership at national level: cities are political communities but different from

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[106] The following EU states have instituted electoral rights for third country nationals with stable residence (i.e. satisfying a qualifying residence period): Belgium, Ireland, Luxembourg, Netherlands, Denmark, Sweden, Finland, Estonia, Lithuania, Hungary, Slovakia and Slovenia (Shaw, 2010),

states and they should grant 'full local citizenship to all residents within their jurisdiction' (Bauböck, 2003: 150).

Even if at national level some restraints to voting rights may make sense (as already underlined in the previous paragraph) grounding the franchise at local level on the status of individuals is unfair because in towns migrant status is not different from that of national or EU expatriates. In other words, the exclusion cannot be justified from the perspective of local democracy (Bauböck, 2015: 828) and consequently the franchise must be extended to non-citizens, who are in any case affected by local councils' decisions (Eisenberg, 2015: 141).

Enfranchisement of immigrants would make them accountable towards institutions that, in this way, can become potentially more sensitive to immigrants' needs. The Lombardy Law is, again, an example in this case. If Muslims (*qua* migrants) were to be granted the right to vote, municipalities would most probably be unable to ignore their needs. Instead, voting rights for non-citizens would contribute towards making local democracy fair and just because it would also grant further protection to immigrants against mistreatment (Eisenberg, 2015: 134). The ability to vote would thus reinforce the idea that immigrants are fully part of the community. Furthermore it would instill a sense of identity and belonging in the community (Eisenberg, 2015: 141).

The importance of voting for newcomers is also stressed by Eisenberg (2015: 141), who asserts that non-citizens must have the right to vote in local elections not only because they see some of their interests affected by local council decisions but also because 'they are more likely to be social citizens of their neighborhoods and within the local communities where they live and works'.

Even if, as Lenard (2012 as in Eisenberg, 2015: 141) argues, the franchise at national level would be more effective because only (national) parliaments are allowed to create and

amend immigrations laws and policies, it is only at local level that people have a direct opportunity to participate and shape the community (Eisenberg, 2015: 148). In addition, enfranchisement would make them more aware that, *qua* full members of the community, they are expected to use their rights of participation. On the other hand, autochthonous citizens would become aware that they share a common membership at local level with the immigrant part of the population (Bauböck, 2003: 150). Enfranchisement, hence, plays another determinant role: that is, it contributes to making all members of society equal. Even if 'civic' participation (that is, participation in associations, organizations etc.) is important, only the right to vote makes people equal at political level.

However, often a consistent part of the local population is disenfranchised. While at national level democratic states that receive immigrants ought to shape the citizenship law around the concept of *ius soli*, at local level another kind of criteria for determining the local citizenry is necessary (Bauböck, 2003: 150). The local citizenry, in fact, should be determined through what might be called *ius domicilii*. Put in another way, voting rights should be determined through *residence*, because this would allow the discrepancy between citizenry and *demos* to be overcome. This is particularly true in those areas, especially towns, where there is a large concentration of disenfranchised immigrants and so the democratic legitimacy of local government is jeopardized (Bauböck, 2015: 828). Since decisions taken by local councils affect all the members of the community without distinction, and especially without distinction between aliens and autochthonous, all the residents should therefore take part in local elections.

Enfranchisement at local level would give immigrants the chance to take part in the decision-making process and make it possible for them to avoid those laws and policies that discriminate against them. In any case, through participation, immigrants would become not only recipients but also authors of laws that regulate their lives. If these principles were applied in the context of Lombardy, first of all a regional law that imposes stringent rules on cities would be rejected. Second immigrants in Lombard towns would be able to

participate at political level on an equal footing with the majority and hence express their views, especially on those issues that affect their lives, such as issues related to building places of worship or general accommodation of their needs.

In this paragraph a layer of the architecture of enfranchisement was presented. However, this is not an end in itself but rather it is a fundamental step in a larger strategy of inclusion of immigrants through granting them voting rights. This layer, however, is not self-sustainable but instead complements the enlargement of the *demos* at national level. In addition, I argue that, even enlarging the *demos* at local level is not sufficient to ensure the principle of self-legislation for migrants that, as already said, form a minority. Even if minority members can vote they can easily be outnumbered, by the very fact of being a minority. The democratic principle of majority rule thus clashes with the principle of justice (which implies inclusion of minorities in the law-making process).

The next paragraph will be devoted to addressing this tension and to presenting the third and last level of the architecture of enfranchisement. Indeed, in my view the democratic principle of majority rule must be counterbalanced at local level with a 'proportionality principle' (Brighouse and Fleurbay, 2010). Relying on a proportionality principle in the decision-making process means that at local level (and only at local level) issues that strictly concern minority life must be governed exclusively by minorities

3.4   A counter-democratic argument: proportionality principle at local level

The architecture of enfranchisement, described in this chapter and comprising voting rights for immigrants through the expansion of the *demos* at national level and through voting rights for migrants at local level, must be completed by a third layer of rights based on the proportionality principle. That is, at local level minorities should have a stronger voice whenever their rights are at stake. This is important because democracy *tout court* (which in

any case it is not my goal to dismiss) cannot provide all the tools that minorities require for the accommodation of their needs.

In political theory democracy is commonly understood in terms of equality of power among the relevant population (Saunders, 2010: 148). Nevertheless, this conception of democracy is subject to certain difficulties. One of the problematic aspects of democracy – relevant to the issue of the enfranchisement of immigrants – concerns the fact that majorities may oppress minorities and crush their liberal rights (Brighouse and Fleurbaey, 2010: 137) through the application of majority rule. Majority rule, indeed, is unobjectionable in many contexts but in some cases it has some negative side effects and can lead to unjust outcomes, as in the event of a permanent exclusion of certain minorities (Saunders, 2010: 151).

The problem, in particular, is that the mere use of democracy does not solve the unequal distribution of power. This is particularly true if a society is characterized by the presence of one or more minorities. Generally minorities suffer from marginalization and, in some cases – such as immigrants in Italy – they suffer from discrimination and stigmatization. This can result in a marginalization of the minority in the decision-making process and they can easily be outnumbered, especially when laws that regulate their lives are at stake.

Nevertheless, decisions that do not contemplate minorities' opinion are affected by unfairness and inconsistency (Brighouse and Fleurbaey, 2010: 137) because decision-making processes based exclusively on majority rule can produce a situation in which the majority of individuals with little or no stake in a particular issue 'impose a great loss on a minority' (Brighouse and Fleurbaey, 2010: 140). In the case of the Lombardy Law, the unequal distribution of power is reflected in the decision-making process. Only the majority promulgated the anti-mosque law but it operated to the detriment *only* of the Muslim minority. So, the legitimacy of majority rule in such cases is questionable because the stakes

are unequal, in contrast to the equal weight given to each of the voters (Brighouse and Fleurbaey, 2010: 143).

In order to limit the 'brutal force' of the majority it would be useful to give more attention to the minorities' interests in the arena of the decision-making process. (Brighouse and Fleurbaey, 2010: 137). In order to do this, it is possible to apply a counter-democratic principle, the 'proportionality principle'. According to the proportionality principle, as explained by Brighouse and Fleurbaey (2010), power should be distributed in proportion to people's stakes in the decision under consideration. Stakes, here, measure how people's interests are affected by the options available in the decision, and are understood in terms of the ability of humans to flourish rather than in narrow financial terms (Brighouse and Fleurbaey, 2010: 137).

One might contest this device, considering it a sort of privilege given to the minority and one which could act to the detriment of the majority. In fact, though, this objection lacks any solid basis, because giving more power to the minority is necessary to improve the minority's status. Therefore, the application of this principle is also justified in light of Rawls' 'second priority rule' (Rawls, 1971: 266), according to which differentiated treatment always 'must enhance the opportunity of those with lesser opportunity'.

According to Brighouse and Fleurbaey (2010: 150) 'all individuals should have their interests effectively represented in proportion to their stakes' and 'respect and autonomy requirement'. It is important to point out that the proportionality principle should not be considered as a universal key that can solve any problem but only as one which in a specific context can underpin laws and policies that aim at finding a greater compatibility between justice and democracy.

In addition, and most importantly, the proportionality principle is relevant in this case because it substantiates equal respect in the decision-making process by 'giving space to

decide' to minorities. Equal respect is thus a right but also an obligation of institutions that, in order to be democratic, should give equal consideration to minorities' interests (Brighouse and Fleurbaey, 2010: 141-152). At this point, it is therefore necessary to investigate to which extent the proportionality principle can be put in practice.

I propose a system in which the representatives of the minority (-ies) (democratically elected inside the communities) have a seat in the local councils. Since they still remain a minority, they must be granted 'direct access to certain decisions' (Brighouse and Fleurbaey, 2010: 147) in case they contribute to a sufficiently large group to counterbalance the power of the majority. However, if the representative cannot in any case influence the majority's decisions, then the minority representative should be granted a right of veto. The minority veto right can effectively protect their autonomy by blocking any attempts to eliminate or reduce it (Lijphart, 2007: 49).

Even if scholars such as Brighouse and Fleurbaey (2010) assert that the parliament should likewise be based on this principle, I contend that the application of this principle at parliament level would be difficult but that it should be easier to apply at local level. Local councils, which have more direct dialogue with the people, can give greater attention to the dialogue between conflicting groups or interests. Hence, giving attention to minorities is not only necessary but is more feasible than at a national level.

As well as representatives that can exercise veto rights, I propose to establish advisory bodies for local councils. In these bodies, members of minority communities would be able to gather and discuss their needs and would work alongside the council especially on those questions that affect the minority in particular. This device would help give substance to respect as a dialogue between different groups: it is in small groups that individual representatives are much more efficient. Through these devices it would be easier for minority members to exchange information and to suggest different choices that are better attuned to meeting the needs of the various groups and sectors of the community

(Brighouse and Fleurbaey, 2010: 153). Moreover, people skeptical or hostile to integration and multicultural policies can also have a say because it is important that everyone can express his or her ideas freely without being *a priori* labeled.

These bodies, in addition, can cooperate with the local councils in order to give them suggestions and non-binding advice. It is necessary to point out in any case that the activity of these advisory bodies would be limited to issues relating to the accommodation of the specific needs of the minority. Among them: the shape of the minority's places of worship, special dietary requirements in school canteens, the wearing of religious symbols, etc.

So far, a system that improves the participation of immigrants and at the same time increases the legitimacy of decisions about the lives of minorities has been presented. Obviously, the system is completely different to the way Lombardy addressed the issue of Muslim places of worships. If we examine the Lombard context, it is possible to argue first of all that the *demos* should be expanded both at regional level and at municipal level. This means granting immigrants the right to vote in regional and municipal elections. However, as already stated, this would not have a direct impact on the particular issues related to the accommodation of minority needs. So, municipalities should give as much space as possible to the minority in order to let them self-govern. In this case, therefore, local councils should give the minority the ability to elect a representative to the local council who would be able to exercise a veto right on (only) those issues that concern exclusively the Muslim community.

In addition, in order to substantiate 'respect as dialogue', local councils should establish special bodies that work parallel to the local council and are composed only by the minority affected by the issue at stake. Moreover, it is possible to see a further aspect of illegitimacy. The Lombardy Law in fact, as already mentioned in chapter II, contains a provision (validated by the Constitutional Court) that allows municipality to call for a referendum to decide on the validity of a plan to build a mosque. Such a referendum about the possibility

of building a mosque (which is a specific aspect of a particular minority's way of life) is illegitimate because it is a simple act of domination of a majority over a minority. Most probably the majority of the population, who are concerned about Islam, would vote against the building of such a mosque and hence a constitutionally granted right would be undermined. Further, the likely result of such a referendum is obvious because the minority *qua* minority will easily be outnumbered.

What is also worth noticing is that highlighting those minority habits that are generally disliked by the majority may lead to a further marginalization of the minority and an exacerbation of the prejudices against it. By contrast, a fair law on the allocation of public space for minorities must not contain the possibility of a referendum, which instead of being a tool of direct democracy would become a tool for the oppression of the minority. A fair law for the regulation of minority habits should aim at giving real substance to the principle of equal respect and this can be done through improving the political participation of the marginalized minority and also through dialogue between different components of society though *ad hoc* institutions.

CONCLUSIONS

The object of this chapter has been the substantiation of respect in the arena of the decision-making process when minorities' interests are at stake. Indeed, as Brighouse and Fleurbaey (2010: 155) points out liberal egalitarian theories of justice usually do not consider carefully enough the quality of social relations, especially in the context of the collective decision-making process, where there is an unequal allocation of power between the groups that make up a society (generally majority and minorities). In this chapter the aim has not been to dismiss majority rule or question democratic theory but simply to stress the importance of this principle that allows us to protect minorities against the brutal force of the majority.

In order to do that I argued that institutions must treat minorities with respect: that is, granting them as much space as possible in which to autonomously decide about their lives without undue interference by the majority.

Respect for minorities, I argued, can be granted though a system of enfranchisement designed to improve the participation rights of outsiders, specifically migrants, who in many countries are disenfranchised or marginalized at political level. So, political rights determine the first layer of this system for migrants at national level. At national level the enlargement of the *demos* is necessary. In many cases, as in Italy, this requires modifying restrictive citizenship laws that are based on the *ius soli* principle.

Even if some restrictions are justifiable (Miller, 2009) because the *demos* cannot include everyone and a political community must be limited, it is nevertheless also necessary to avoid excessively strict citizenship laws that arbitrarily exclude a large part of the immigrant population from citizenship rights. Such an exclusion results in a lack of legitimacy for the decision-making process.

Along with more inclusive citizenship laws, it is also important to focus on the *demos* at local level: the second layer of this system of enfranchisement. The local level is the arena where conflicts between majority and minority (-ies) take place, as in the case of building mosques. At this level the only criterion that therefore makes sense for including people in the *demos* is residency. Residents are affected by the decisions of the local councils in the same way because councils are generally committed to providing basic and universal services. So, the *demos* at local level should be enlarged in line with the principle of *ius domicilii*.

However, as explained in the third section, the second layer of the system of enfranchisement is still not enough to grant self-legislation to a minority. Indeed, even if it is included in the *demos*, by the very fact that it is minority it can easily be outnumbered. in this case, democratic principles of majority decision-making still put at risk the rights of

minorities to self-legislate. On top of the enfranchisement system there must therefore be a third layer of participation rights, based on a proportionality principle instead of democratic principles (namely majority rule). Participation rights must thus be completed (only at local level) with specific participation rights for minorities, that is the ability to elect a representative who can exercise a veto right on those issues that affect the minority exclusively. In addition, in order to give substance to the dialogical aspect of respect, it is necessary to establish advisory bodies that cooperate with the local council by giving advice on issues related to relationship between majority and minority. These devices are merely consultative but they could provide an opportunity to give voices to members of the minority and to improve dialogue between different groups.

CHAPTER IV

Impact of the Law on Society: anti-Muslim sentiments and marginalization

Introduction

In the previous chapters the Lombardy Law was first presented in its social context (Muslim immigration in Lombardy) and in its legal context (Italy's planning laws and church-state system). After that, it was analyzed from a moral point of view, since a legal analysis alone, even if fundamental, is not sufficient to explain exhaustively all the problematic aspects and implications from a moral point of view. For this reason, toleration and respect were called into question as main values commonly used when troublesome relations between majority and minority are at stake.

In particular, the analysis through the lens of respect provided a more complete picture and allowed us to see additional unfair aspects; hence, it is possible to assert that the law is unfair also because Muslims did not participate in the law-making procedure. With a view to countering this discrimination, it is necessary to expand the *demos* to include those minorities (such as migrants in Italy) who are not entitled to vote, in order to safeguard their right to self-legislation. At local level especially, they should also have the ability to count for more (for example, through dedicated participatory channels that would be established) in order to exercise real autonomy over their lives, without the intrusion of the majority. In addition, to substantiate 'respect as dialogue', municipalities should create *ad hoc* opportunities for discussion between autochthonous citizens, immigrants and institutions in order to give a say in the debate to every member of the community, even those most reluctant to accept outsiders.

However, while the goal of the previous chapters was to critically analyze the unfair aspects of the law through the lens of toleration and then through the lens of respect, in this

chapter I will slightly change the perspective in order to give a complete picture of the law and its potential outcomes.

Hence, this chapter aims to answer the following question: *does the Lombardy law have any broader extra effects in addition to the limited scope of the law itself?*

I argue that the Lombardy law for places of worship, even if partially invalidated by the constitutional Court[107] and hence different from the original text, is still reverberating throughout society. The law was certainly the result of a general context of hostility against Muslims. As already mentioned in the introduction indeed everywhere in Europe Muslims suffer from discrimination and are the target of a generalized suspicion. Italy and Lombardy are no exceptions in this respect.

In addition, the main promoter of the law was the Northern League party, a xenophobic and anti-immigrant party.[108] Nevertheless, I would like to propose here another interpretation of the reasons underpinning the promulgation of the law.

Not only is the law the result of the general intolerance against Muslims (and immigrants in general) but it has also contributed to reinforcing the current environment characterized by hostility for Muslims. In particular, its implied suspicion towards Muslims and the consequent harsh public debate have reinforced the stereotypical perspective of the majority community towards the Muslim minority. None of these effects are stipulated by the text of the law, so they can therefore be considered as *unintentional effects*.

Hence, not only has the Lombardy law been used to politically exploit the widespread dissatisfaction with immigrants in general and Muslims in particular, but it has also reinforced it. This *vicious circle* (of exploitation and feeding the fear of Muslims) may potentially produce a long-lasting perception that the minority is unable to self-regulate and

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[107] See chapter 2 section 2.5 for a discussion of the Judgment.
[108] For further information about Northern League policies in Italian towns see the following papers: Caneva (2014) and Cento Bull (2010).

hence in need of a higher authority that will promulgate extra rules with a view to deciding about their lives for them. Most probably, I argue, autochthonous citizens will find it easier to further marginalize the Muslim population because of this perception of Muslims as unable to control and take care of their own community. The law thus indirectly promotes the social and political exclusion of Muslims.

Nowadays Muslims are generally depicted in a stereotypical way and as a threat to security *tout court*, with mosques regarded as sheltering terrorists and Muslims considered to require being governed through (if necessary) exceptional, specific or more complicated rules.[109] The ultimate effect that may therefore arise from the law is the further marginalization of Muslims in Lombardy because other members of the society could start to see them as suspicious and not trustworthy.

On the other hand, laws promulgated by liberal democratic institutions must aim at preserving social cohesion. The Lombardy Law produces the opposite outcome and hence prevents Muslims' full integration into society. From the Lombardy Law it is therefore possible to learn a further general lesson about those laws that discriminate against minorities, especially those minorities that are already particularly marginalized: each law that targets a minority, with the aim of discriminating against it, is not only unfair because of the immediate outcomes that produces, and not only because of the procedures through which it is put into practice but, in the end, also because of its enduring negative impact on society, which may last longer than the law itself as the harmful messages contained in the accompanying public debate and spread through the media tend to shape the opinions that autochthonous citizens formulate about minority community members.

To develop the argument, the chapter is structured as follows. To begin with, I elaborate the anti-Muslims sentiments reinforced by the Law. Second, I focus on the exceptionalism

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[109] See introduction for details about the treatment of Muslims in Europe. See specifically the reports published by the European Union Fundamental Rights Agency.

around Islam and Muslims in general, especially in relation to building mosques. Third, I explain how marginalization leads to lack of integration. Fourth, I elaborate on the lack of integration as a social justice issue. The effect of a law, after all, should be to promote long-lasting inclusion of minorities as part of a more general duty to treat them on an equal footing and hence without discrimination.

4.1 The Lombardy law and anti-Muslim sentiments

The content of the Lombardy law expresses anti-Muslim feelings and an attitude of suspicion toward them. Nevertheless, this is not a unique case because in the last decade many European states have issued laws based on the assumption that Muslims and their customs are something that need to be regulated (or limited) and not regarded as a legitimate choice, as in the case of laws on the headscarf, the burqa and the burquini.[110]

In this section I would like to highlight not only that the Lombardy law contains some discriminatory aspects but also that it reinforces those narratives – actually very widespread in society – that consider Muslims as collectively responsible for the reactionary cultural practices and customs upheld by a minority (Fekete, 2004: 18). This is in line with Campbell

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[110]For further information about legislative decisions in Europe concerning the Muslim headscarf, see the following link: https://www.theguardian.com/world/2017/mar/14/headscarves-and-muslim-veil-ban-debate-timeline [Last Access: 1/11/2017].

An example is the case of the French ban on face coverings in 2010. See for example the following article: http://www.bbc.com/news/world-europe-11305033 [Last Access: 1/11/2017].

Here is the text of the law: *LOI n° 2010-1192 du 11 octobre 2010 interdisant la dissimulation du visage dans l'espace public* https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022911670 (in French) [Last Access: 1/11/2017].

It is appropriate also to mention the Burquini ban controversy (2016). See

http://www.independent.co.uk/news/world/europe/burkini-ban-why-is-france-arresting-muslim-women-for-wearing-full-body-swimwear-and-why-are-people-a7207971.html[

Last Access: 1/11/2017] and https://www.theguardian.com/world/2017/mar/14/headscarves-and-muslim-veil-ban-debate-timeline [Last Access: 1/11/2017].

(1992: 95), who has described the impact of those 'discourses of danger' that envision others as a threat.

The Lombardy law under scrutiny here can therefore be considered as part and parcel of the 'discourses of danger' because it reinforces, notably through the consequent public debate, those stereotypes that depict the Muslim minority as incompatible with western/Italian society and hence have an impact on the dynamics of inclusion /exclusion as explained in the section 4.4.

Stereotyping, determined by the asymmetry of power between the majority and a minority, *categorizes* people who are considered *in toto* as part of a group. Once this *labeling process* has started it is difficult to stop and people who are the object can scarcely keep their distance from the stigma. This process, far from having no consequences, is in fact highly damaging across the board, because people who suffer from stereotyping see their personal freedom and behavior constrained (Fiske, 1993: 621).

Generally in fact Islam is considered a sort of monolith absolutely incapable of innovation. Moreover Muslims are depicted as conforming exclusively to their past and incapable of addressing the current challenges of political development and liberal religious thinking (Cesari, 2009: 1).[111]

The simple necessity of drawing a distinction implies that there is a subtle assumption that Islam is a potential threat to society (Cesari, 2009: 5). In addition, discussion of culture has become prevalent in modern international relations discourses, because it invokes stereotypes that are close to the historical consciousness of Western intellectuals and politicians (Cesari, 2009: 1).

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[111] The dichotomies of 'radical/bad Islam' and 'law-abiding/good Islam' have also become a common political framing that the 9/11 attacks have contributed towards reinforcing, which is seen as justifying the interpretation of Islam as an inherent risk for security (Cesari, 2007: 53).

Nevertheless, this view is not new: these statements echo the 'Clash of Civilizations theory' proposed by Huntington (1996). In fact, the American scholar considers Islam as intrinsically incompatible with Western values because it is crystallized in a sort of never-ending Middle Age (Huntington, 1996: 42). Huntington remarks that the 'Islamic world' is still characterized by tribal, religious, ethnic, political and cultural divisions that stimulate violence both within Muslim countries and between Muslim countries and the West. In the "clash of civilizations" he considers Islam entirety incompatible by nature with liberal democracy.

Unfortunately, the debate over mosques, following the general debate about Islam, was typically characterized by prejudices about Muslim customs and by the contraposition of 'us' and 'them' and by words that humiliate and stigmatize. Muslims, furthermore, are not generally given the ability to express their opinion on the issue (Fekete, 2004: 19). This is the result of the combination of the already existing anti-Muslim bias in Western societies with what one might call the 'anti-Muslim propaganda' disseminated by some media, which has contributed to creating a culture of suspicion towards Muslims (Fekete, 2004: 14).

In particular, this suspicion is exemplified by the perceived threat of Muslims as being *in toto* (potential) terrorists and by (supposed) radical preaching in mosques overseen by conservative and radical imams considered representative of the Islamic community as a whole (Fekete, 2004: 18). The spread of intolerance and prejudice towards Muslims strengthens the perception of securitization against Muslims as necessary and acceptable (Bigo, 2002: 66). However, this phenomenon is realized within a more general trend of security discourses that have shifted from 'protecting the state' to 'protecting society' against the 'evil' that is no longer an external threat but is now an internal one (the 'enemy within'), namely the immigrants of Muslim origin. The securitization of migration has thus become a relevant issue since 9/11 when it started to pervade many aspects of every society (Kaya, 2009: 8).

The measures contained in the Law are a manifestation of the phenomenon called *securitization* (Huysmans, 2006; Humphrey, 2009; De, Graaf 2011), which takes the form of a greater emphasis on control and containment in the modes of governance.[112] According to Cesari (2009: 41), securitization is not only a type of political rhetoric used to create a political consensus, nor is it only part of a strategy determined by the police, justice and intelligence services with a view to countering terrorist threats and enhancing public security. Rather, securitization has shaped immigrant legislation and integration policies over the past decade (Sunier, 2014: 1139).

Immigration and especially Muslim integration has been dominated by securitization, which has clearly influenced the political agenda. Securitization is in fact a governance strategy based on the logic of spatial exclusion/inclusion focused on disciplining bodies (Humphrey, 2009: 137).

Against this backdrop, Lombardy's institutions, through the anti-mosque law, followed this pattern of 'securitization of Islam'. In particular, as already explained in the second chapter, the Lombard law contained some elements of securitization, in particular the provision that envisaged a pervasive, demanding surveillance of mosques (and their guests) through CCTV at each entry point directly connected with the local police station, with the costs of the CCTV to be paid by the applicant community (Art. 72 point 7, E)[113].

Fear of Muslims and the consequent securitization have led to an exacerbation of stereotyping, which is an attitude already very common in society. Targeting a specific group (Muslims in this case) is detrimental in itself, and securitization amplifies the negative

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[112] The emphasis on control is part of the Lombardy Law because of the requirement of consulting the police in order to get permission to establish the place of worship and the requirement for CCTV directly connected to the closest local police station. These requirements were actually considered illegitimate by the constitutional court, which rejected them on the basis that an equilibrium is necessary between security and religious freedom.

[113] Art. 72/7 e) *la realizzazione di un impianto di videosorveglianza esterno all'edificio, con onere a carico dei richiedenti, che ne monitori ogni punto di ingresso, collegato con gli uffici della polizia locale o forze dell'ordine*. (External CCTV is required, paid for by the applicants, which monitors each entry point and which is directly connected with the offices of the local police.)

targeting effects because it means putting the group into a given social category characterized by ethnic/racial hierarchy and national space contrasted with a transnational 'western' space, and hence representing the diverse Muslims community as a threat (Humphrey, 2009: 137).

Nevertheless, the increasing construction of Islam in Western societies as a threat could potentially make institutions feel entitled (at least morally) to have recourse to 'exceptional' measures. Securitization of the Muslim minority, with its consequences and exacerbation of fear and ghettoization in given categories, may also imply the use of exceptional measures to supplement normal political and bureaucratic decisions (Mavelli, 2013: 160-162).

4.2 Securitization, Marginalization and lack of integration

Over the last few years, as we have seen above, security has started to be considered (especially) by policy makers as a fundamental issue determining the decision-making process, particularly with respect to Islam. The process of securitization has led to, notably, the rise of a set of 'domestication policies': in other words, policies concerning the way in which nation-states deal with the presence of Islam in all its perceived aspects. Sunier (2009: 4) defines domestication as a process of 'governance, containment and pacification based on national identity politics'.

Domestication involves monitoring and controlling religion and, further, it also implies an intervention in the very content of Islamic practices and convictions (Sunier, 2009: 4). If we apply this scheme to the Lombard case, it is possible to assert that Lombard institutions tried through this law to express a specific vision of Islam and Muslims: as a culturally determined body whose culture needs adjustment for integration.

Institutions in Europe at any level (that is, at both local and national levels) have tended to converge on a common solution to their Muslim-integration-related concerns: construction of an acceptable Islam (Haddad and Golson, 2007: 447). Seen from this perspective it

seems that the issue of Muslims' integration in hosting societies ('how to help Muslims feel at home') has changed into the production of 'the right kind of Muslim': that is, Muslims who are loyal citizens and adhere to European values without questioning them (Haddad and Golson, 2007: 448).

Nevertheless, this trend of domestication of Islam is not immune from consequences and in fact it could potentially amplify the previously discussed prejudices[114] and discriminatory behavior against Muslims (Simpson and Yinger, 1985: 22). This discriminatory attitude at institutional level could feed stronger anti-Muslim feelings into society. At horizontal level, on the other hand, the prevailing sentiment in European societies favors the rejection of cultural differences (Cesari, 2009: 5), and these sentiments of rejection may in the long term undermine the integration of Muslims.

Integration is conventionally conceived as the adjustment of minorities to dominant societies (Cesari, 2009: 5). In fact, as asserted in the European Commission 'Common Basic Principles on Immigrants' Integration' (CBPs), the first principle defines integration as a '*dynamic, two-way process of mutual accommodation by all immigrants and residents of Member States*'. This concept represents a fundamental trait of the EU's policy approach to integration and is considered as one of its undeniable defining elements (Carrera and Atger, 2011: 4).

If integration is a fundamental aspect of the European Union and is a commitment of liberal democracies in general, domestication is unfair not only because it silences Muslims but also because it creates an environment hostile to them. Not only are Muslims not treated with 'equal concern' but their concrete opportunities to integrate into society become weaker too. This may be especially true at local level, that is in towns or neighborhoods, where politicians would be very prudent to enact laws and policies that from one perspective facilitate the integration of Muslims but, from another perspective, could potentially dissatisfy part of the population who are concerned about Muslims' way

of life. Especially for local politicians losing the support of the population is therefore a political and electoral risk.

Negative images of Islam, words of hostility and stigma can shape the way that ordinary citizens consider Muslims by inculcating an erroneous perception that Muslims need to be domesticated. More dangerous, in my view, are the long-lasting effects produced by such a public debate, which may remain deeply entrenched even if the law is re-written or, as in the specific case of Lombardy, substantially modified by the Constitutional Court.[115]

In the specific case of Lombardy, the law could potentially contribute to depicting Muslims as unable to self-govern and to decide about their own lives; so, the additional controversial aspects of this law are related to its broader effect on society as a whole. As far as I am concerned, autochthonous citizens (not only those already close to positions of xenophobic and anti-Muslim parties) could therefore start to consider Muslims as a group that needs to be guided by an authority. This can be deduced especially from the public debate and from the public statements of the president of the region, regional councilors and members of the Northern League party. Notably, the president of the Region, Roberto Maroni, publicly declared that he would like to promulgate an even stricter 'anti-mosque law'. Furthermore, he appointed a new regional minister (*assessore regionale*) to counter Muslim radicalization.[116]

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[115] It is worth noticing that the judgment of the Constitutional Court or subsequent modifications did not benefit from the same media coverage.

116 Sorbia, M. (16/07/2016) Lombardia, nasce l'assessore anti-islam. Maroni: «Stop a chi vuole ammazzarci» [Lombardy: there is a new 'anti-Islam' regional ministry. Viviana Beccalossi will be in charge of it.]

La mossa *di Maroni in Lombardia per contrastare la radicalizzazione islamica. L'incarico sarà affidato a Viviana Beccalossi* [Maroni took this step to counter Muslim radicalization. Viviana Beccalossi will take on this task.]

Il Giorno, 16/07/2017. *Maroni sfida viale Jenner: vorrei una legge anti moschee più severa*

http://www.ilgiorno.it/milano/politica/maroni-shaari-moschea-1.2352180 [Maroni challenges the Muslim center in *viale Jenner*: "I would like a stricter law"].

Statement published on Twitter and quoted in the journal article: "*Che ne dite se modifico in senso restrittivo la legge regionale antimoschee e rendo la vita ancora più dura per chi vuole ammazzarci come bestie?*". ["Why not

4.3 Lack of transparency and lack of opacity: two sides of the same coin

Another aspect worth highlighting is that on the official web site of the Lombardy Region it is possible to read[117] only the text of the 2015 law *without* any change and without providing any tools to help religious minority members to disentangle the legislative situation regulating places of worships. In my view, this means a lack of *transparency*[118] toward Muslims and towards everyone else interested in building a place of worship and in need of proper information about the legislation.

This lack of transparency prevents access to complete information, thus it is a sort of extra obstacle (in addition to those already provided for by the law) on the path that Muslims have to follow in order to build places of worship.

However, the fact that the institutions have not shed light on the law is not trivial: it concerns on the one hand the right of citizens to be properly informed and on the other hand the duty of institutions to provide all the necessary information in a clear way.

Transparency concerns not only the way that the texts of laws (or policies or any other institutional statements) are written but also the way that laws are communicated to a larger

making the Lombard Region law that bans mosques more strict, making life harder for those people who want to kill us like animals."]

Sasso, M. (09/05/2016). *La crociata anti-moschee dei governatori di centrodestra.* http://espresso.repubblica.it/attualita/2016/05/09/news/i-governatori-del-centrodestra-contro-le-moschee-1.264567 [the crusade of the rightwing anti-mosque regional presidents]. Roberto Maroni, Luca Zaia e Giovanni Toti cavalcano la battaglia anti-islam con leggi regionali che impongono vincoli stringenti e violano la libertà di culto. Dopo lo stop della Consulta a quella lombarda una nuova bocciatura potrebbe arrivare per il Veneto. [Roberto Maroni (Lombardy), Luca Zaia (Veneto) and Giovanni Toti (Liguria) take advantage of the anti-Islam fight with a regional law that imposes strict regulations and violates freedom of worship. After the Constitutional Court invalidated the Lombard law, the Veneto law may now also be invalidated too). Voglio confermare l'impegno della Regione Lombardia a sostenere la lotta contro ogni fondamentalismo, quello islamico in particolare, e a difesa dei nostri valori, delle nostre radici cristiane», ["I confirm the commitment of the Lombardy region to sustain the fight against any fundamentalism, the Islamic kind in particular, and to the defense of our values, of our Christian roots"].

[117] The web site was seen for the last time in November 2017.

[118] Transparency is a multifaceted concept. Here it is considered in its minimal sense, that is as a virtue of institutions. Institutions, through public administration, are transparent whenever information is provided in an open way; for further information see: Ball, 2009.

public and specifically to the recipients of the law (that is, those affected) and even how representatives of institutions talk (Plaisance, 2007:187). From a philosophical point of view, the notion of transparency is well-established in Kant's works. Transparency is in fact tightly bound up with the Kantian duty of acting in ways that 'respect humanity', in other words, the capacity to think rationally and the free will to exercise that capacity. Every time a person temporizes or does not express her intent or purpose directly, she is disrespecting the interlocutor (Plaisance, 2007: 203).

In this context, truth is important not because deception is something deplorable in itself but because it is precisely by expressing the truth that individuals show respect for the person they are speaking to. Only in this way can the rational agency and free will of everyone be respected (Plaisance, 2007: 189).

As moral agents, people have a duty to respect the reasoning capacity of others not because it is the appropriate way of behaving or because it is the polite thing to do but, rather, they have a duty to 'respect the reasoning capacity of others because they have a duty to honor the value of humanity's capacity for reason' (Plaisance, 2007: 202). In contrast, lying and using deception can be considered concrete assaults to dignity. Being transparent is therefore not a superficial issue but in fact defines much of what it means to live an ethical life.

On the other hand, transparency should likewise form the basis for the way institutions deal with citizens. Institutions should thus follow this principle at each stage of the law-making procedure: from the preliminary discussion to its implementation by the bureaucracy. The focus here is on transparency as it relates to the way the text of the law is made public and accessible to everyone. As already mentioned, the specific case of the Lombardy law is a case of a lack of transparency, notably in the way the law has been published on the official web site, that is without the variations made by the Constitutional Court. Lack of transparency (whether in procedures or in the way outcomes are made public) is a way to

primarily protect selfish interests, those in a prominent position in society or those holding political power (Plaisance, 2007: 189).

The Lombardy law, in the end, does not provide respect for minority community members at any level, even in the way the outcomes of the law are made public. If we focus on the specific question of the lack of transparency, it is possible to say that Muslims are disrespected because they are not recognized as equals and as worthy of equal consideration as their majority counterparts. The fact, then, that the law is made public in an ambiguous way is not a respectful treatment for Muslims because the process does not grant transparency.

Nevertheless, as already pointed out, a respectful treatment must be based on the assumption that every person is autonomous in formulating decisions about her life.

To the lack of transparency of the Lombardy Law must be added its lack of 'opacity', which is a particular characteristic of recognition respect explored by Carter (2011, 2013) (See first chapter for details.) Opacity respect is defined as an attitude that requires us to *abstain* from *evaluation of the capacities of the moral agent up to a minimum level of agential capacities* (Carter, 2011: 551-552).

Let us now look at this idea in greater depth. To adopt the attitude of opacity respect toward a person is not only to acknowledge that a person has 'certain basic agential capacities' (Carter, 2013: 200). It also (more importantly) implies *ignoring* (or better: *almost* ignoring) their possession, or lack of, certain capacities and adopting an external perspective when we have to deal with deliberation (Carter, 2013: 200). Being blind toward the agential capacity of others is the core concept of the idea of opacity respect.

If we consider the idea of 'opacity respect' in the specific case of the Lombardy ban, it means that institutions disrespected Muslims because they did not look at them from behind a 'veil of opacity'.

By contrast, institutions assessed Muslims as not able to decide about their lives and as being in need of an authority that decide for them. Actually these are suppositional, questionable characteristics that are not relevant for any laws in a democratic country. At the same time institutions did not show what was really relevant for the proper application of the law: that is, the revised text and explanation.

In sum, in my view, institutions acted in a contradictory way. They highlighted some aspects that were not relevant, but they also kept secret what actually should be shown.

What is important to notice is that grounding a law on a negative judgment raises concerns. Indeed, a lawmaker (or a policymaker) must make only those judgments that are relevant for the law and not be influenced by opinions about the conditions, habits and creed of the people subject to the law. On the other hand, if during the formulation of the law opacity is required when making the final outcome public, as in the publication of the law on the institutional web site for example, as explained above, transparency is the principle that must drive the actions of the institutions.

It seems to me that the institutions' actions were based also on the aforementioned security-related prejudices against Muslims. Consequently, this judgment derives from the general securitarian approach and the domestication goal expressed particularly in those legal provisions that entail the surveillance of places of worship through CCTV and the related controls placed upon the applicant community through a convention (See second chapter for details).

There is an additional counterproductive aspect of a negative judgment underpinning a law. Indeed, a law based on a negative judgment may potentially reinforce this judgment formulated into the society. This can activate a vicious circle.

4.4 Exceptionality of mosques

Negative judgments over Islam and Muslims and lack of transparency - which characterized both the lawmaking process and the public display of the laws - are actually profoundly influencing the narrative (at local and international level) that portrays Islam as religiously, culturally and politically different. These portrayals spread a whole series of images and stereotypes that reinforce the perception that Islam is an 'other' that actually needs exceptional measures in order to be governed.

The mix of securitization, disrespect and targeting of Muslims as a foreign body in society paved the way for (and also justified) the treatment of Muslims as an exception. If something is considered a temporary foreign body and probably also potentially dangerous, it seems to follow that (almost) any exceptional rules are justified to bend it to the needs of the society.

Let us have now a closer look at 'exceptionalism' as a means to deal with Muslims. In the last decade, the imperative of security prompted authorities to undertake exceptional measures because of the emergency situation determined by the eruption of terrorism. Nevertheless, many people have started to question this approach because counter-terrorism provisions seemed not to be immune from moral problems, as their cynicism and realism often worked to detriment of democracy (Bigo, 2002: 73).

In the last several years, the 'exceptional treatment' of Muslims has inspired legislative decisions in many Western countries as a consequence partly of the antiterrorist law ratified in the United States on 26th October 2001. In fact the American law was followed by comparable initiatives in almost every European country, for example in Great Britain, Germany and France[119] (Cesari, 2007: 61).

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[119] In Great Britain, for example, a law on antiterrorism, crime and security issues, promulgated in 2001, provoked an intense debate over the limits of public freedom. The law increased the powers of the police in matters such as collecting information

As Cesari (2007: 61) highlights, the already mentioned legislative settings were the consequence of dramatic events (mainly 9/11) when the security debate was subverted by terrorism and by efforts to develop counter-terrorist measures. Although it is still too early to evaluate the consequences of these laws for the religious behavior of Muslims in Europe, it is very likely that they will result in an increase in the reactive and defensive use of Islam.

However, *why are exceptional measures about Muslims controversial?*

Regarding laws with an exceptional character, it is first of all necessary to assert that exceptional rules – targeting a specific group of people – limit people's freedom to live their lives and their freedom of action without providing any justification for the exceptionality.[120] Second such rules raise concerns about their arbitrariness and the double standards that they invoke.

The Lombardy law is an example of exceptional measures targeted at Muslims. Even if it was not conceived in the framework of the so-called 'war on terror', securitization and exceptionalism can be considered as two aspects of the law. Since the essence of the securitization approach has already been unpacked in the previous sections, I would like now to focus on the *arbitrariness of the treatment* experienced by minority religious groups and its implications.

The law is actually the last step of a broader process that has become critical for Muslims because, as explained in the second chapter, Muslims in Lombardy have tried to build places of worship for many years but always without success, and so, even though Lombardy is the Italian region that attracts the highest percentage of immigrants in general and Muslims in particular, purpose-built mosques are not present in the territory, nor in

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on and monitoring citizens. The same happened in Germany where in 2001 two similar laws were introduced and, among other things, aimed to place armed security agents on German planes and to review the privileged public corporation status of religious organizations. In France, meanwhile, a law addressing security issues in daily life was introduced, but it also included a whole series of clauses that mixed national security with crime and terrorism; such actions combining approaches to terrorism and local crime have increasingly led to the ostracization of Muslim youths living in the poor suburbs (Cesari, 2007: 61).

[120] For details about the right to justification see the second chapter.

Milan, despite its cosmopolitan character and the presence of a large and well-established Muslim community.[121] This lack of purpose-built mosques in the region has never been properly addressed by the regional institutions and yet, in contrast, temples of minority confessions have been established without problems and without stirring up debates or concerns among the public. These include, for example, places of worship for Buddhists[122] and Sikhs.

The case of Sikh temples seems relevant in highlighting the disparity of treatment with Muslims. As in the case of Muslims, Sikhs are for the most part immigrants from India and, as in the case of Muslims; they have not signed any agreement[123] with the Italian state yet. Despite these similarities between the statuses of the two confessions, Sikhs have in fact managed to build at least *some* temples in Lombardy. Of particular note, they have built in Lombardy a *Gurdwara* temple that is the biggest in Italy and one of the biggest in Europe[124].

From this brief recapitulation, it is possible to see that the Lombard institutions are following a double standard. The Region has expressed hostility toward Muslims in the last several years, especially with respect to the issue of building mosques but, in contrast, it has been more indulgent with other religious minorities. Indeed, for example, in 2015

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[121] With the exception of a small mosque in Segrate (see chapter II).

[122] For further information about Buddhist groups in Lombardy see this link: http://www.buddhismo.it/i-centri/per-regione/lombardia/ [Last Access: 6/11/2017]

[123] For a complete list of the agreements signed between the Italian state and religious confessions see the following link: http://presidenza.governo.it/USRI/confessioni/intese_indice.html [Last Access: 6/11/2017]

[124] Sasso, C. (27/02/2017). *Nel cuore della Padania nasce il tempio dei Sikh.* http://milano.repubblica.it/cronaca/2011/08/18/news/nel_cuore_della_padania_nasce_il_tempio_dei_sikh-20567170/

 [In the heart of Po Valley a Sikh temple is established]. See also: *In Lombardia il tempio Sikh più grande d'Europa* [In Lombardy: the biggest Sikh temple in Europe] http://www.varesenews.it/2011/08/in-lombardia-il-tempio-sikh-piu-grande-d-europa/110759/

http://milano.repubblica.it/cronaca/2011/08/18/news/nel_cuore_della_padania_nasce_il_tempio_dei_sikh-20567170/

Scientology established in Milan one of the biggest temples in Europe. It is useful to consider specifically the case of Scientology in Italy.

Unlike Islam, Scientology worship is considered controversial in itself. Indeed, in many countries, Scientology has been under the scrutiny of authorities and has been involved in many court cases. In this respect, the Italian branch of the Hubbard's organizations has been no exception, as between the '80s and early 2000s it has been accused of various crimes.

To summarize the situation, Italian judges charged a number of members of the organization with allegations of fraudulent behavior (in particular towards disabled persons), criminal conspiracy and misleading advertising. Furthermore, Scientology has come under the scrutiny of the Italian Parliament. Indeed, in 2009 a Member of Parliament formally interrogated the Minister of the Interior[125] to ask what concrete steps had been undertaken to counter the spread of a Sect seen as dangerous, especially to vulnerable people.

With regard to the temple in Milan, from a review of the main newspapers, it seems that not only was the organization able to establish the temple but its refurbishment did not provoke any protests even if the religious organization, as shown above, was the object of an investigation that saw some of its representatives brought before the courts.

From a summary of the newspapers[126] it is possible to understand that the news about the opening of the temple appeared only after it had already been built. The following brief excerpt from a newspaper article illustrates this point:[127]

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[125] A summary in English of the report is available online at the following link: http://www.cesnur.org/testi/Report.htm (Much Ado About Nothing? The "Italian Report on Cults")

[126] Repubblica, 31/10/2015, *Scientology, in 2mila per il nuovo mega tempio: transenne e buffet, aspettando Tom Cruise* http://milano.repubblica.it/cronaca/2015/10/31/news/scientology-126327591/ [Scientology, 2000 visitors for the new maxi temple: barriers and buffet, waiting for Tom Cruise].

Al civico 327 di viale Fulvio Testi […] da tempo i residenti vedevano un via vai di operai. Ma quasi nessuno sapeva, fino a ieri, che i cantieri dell'enorme stabile ex Philips - sede della software company Sun Mycrosystems rimasto poi vuoto per qualche anno […]- fossero il nuovo tempio degli *scientologist*. (A. Coppola; G. Valtonia, 2015).

At 327 Fulvio Testi Boulevard […] for a long time residents have seen construction workers coming and going. Yet almost no one was aware, until yesterday, that the huge building that formerly belonged to Philips – the headquarters of Sun Mycrosystems remained empty for some years - […] was the new temple for the Scientologists.

In my view, this episode bears witness to the fact that Scientology temple was built without problems either from a bureaucratic point of view or from those living nearby (generally very active against mosques), who in fact did not react in this specific case.

At the same time, no specific measures were undertaken to regulate or oversee the building of the temple of a controversial sect. Note also, for example, this extract from the newspaper:

La nuova chiesa all'ingresso della città aveva chiesto e ottenuto i permessi agli uffici urbanistici del Comune per la riqualificazione e il cambio di destinazione d'uso prima dell'entrata in vigore della legge regionale sui luoghi di culto (che invece oggi avrebbe sortito l'effetto di bloccare questo progetto, assieme alle moschee). Dunque Scientology ha potuto regolarmente convertire questo enorme edificio di uffici in luogo di culto. (A. Coppola; G. Valtolina, 2015).

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[127] Coppola, A; Valtolina, G. (2015). Il tempio di Scientology: svelate le insegne, sabato l'apertura. (Scientology temple: the signs are unveiled; it opens on Saturday] http://milano.corriere.it/notizie/cronaca/15_ottobre_29/tempio-scientology-38a11d94-7e0f-11e5-b052-6950f62a050c.shtml [Last Access: 6/11/2017]

The new Church asked and obtained all the permits from the Municipality in order to reclassify and change the use of the building before the 2015 law on places of worship was promulgated (which today would have stopped the project, as in the case of mosques). Scientology therefore managed to change this enormous building into a place of worship.[128]

It appears that Scientology did not encounter any obstacles to the refurbishment and establishment of the place of worship. This double standard toward religious minorities is symptomatic of a broader, structural problem in Lombardy when it comes to dealing with minority religious groups and especially with the expression of their presence on the ground. Lombard institutions, it seems to me, did not attempt to obstruct Scientology, simply because Scientology is not generally perceived by citizens as a controversial problem or as a potential threat, as Muslims are. Tolerating Scientology, unlike Islam, is not politically risky. More precisely: it is not a risk from an electoral point of view.

4.5 Ideal characteristics of laws aiming at integration of minorities

The previous sections have focused on the impact of the Lombardy law on Muslims, the way they are perceived in society and the way in which Muslim integration is undermined as a consequence. It has also been argued that this law could potentially encourage the popular perception that Muslims (*qua* resistant to Western cultural and legal norms) need a higher authority to impose constraints upon their lives through strict regulations. The Lombardy law, in this respect, is only the latest incarnation of the broader attitude of Lombard institutions towards Muslims and towards mosque-building. This attitude has particularly disadvantaged Muslims but has favored other minorities such as the Scientologists, who have actually managed to build a huge temple without any problems.

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[128] Coppola, A; Valtolina, G. (2015). Il tempio di Scientology: svelate le insegne, sabato l'apertura. (Scientology temple: removed the veils from the signs]. Available at:

http://milano.corriere.it/notizie/cronaca/15_ottobre_29/tempio-scientology-38a11d94-7e0f-11e5-b052-6950f62a050c.shtml [Last Access: 11/11/2017]

I would like now to focus on the ideal function of the laws. Indeed, in liberal-democratic societies, institutions should be committed to promulgating laws that avoid the arbitrary treatment of, or discrimination against, minorities, as in the case of the Lombardy law on places of worship. Institutions ought to treat all members of society on a basis of equality under the law, because every individual is entitled to the protection of the law. Moreover, laws dealing with minorities should aim at promoting the social inclusion of minority members of the community. In fact, it is important to recall that such social inclusion must be 'an aim or principle of justice' (Collins, 2003: 22).

I would therefore like to highlight, too, the effects of the law on the social and political inclusion of Muslims. The Lombardy law produced some direct effects (preventing the building of mosques, with the consequences already analyzed) but it has also produced (and is still producing) some indirect effects: the law feeds and strengthens prejudice and also shapes the way citizens consider Muslims and mosques.

However, laws in democratic systems should fulfill completely different aims and produce very different effects than those produced by the Lombardy Law. In general, laws have social functions as well. Raz (1979) divides these functions into two groups, namely 'direct' and 'indirect' functions. Direct functions are those whose fulfillment is secured by the law being obeyed and applied, whereas the intended indirect functions of laws concern the results that are clearly entailed by the law. Indirect functions refer to 'attitudes, feeling, opinions, and modes of behavior which are not obedience to laws or the application of laws, but which result from the knowledge of the existence of the laws or from compliance with and application of laws' (Raz, 1979: 168). The indirect functions are most commonly fulfilled not only as results of the law's existence and application but also as a result of their interaction with other factors such as people's attitudes to the law and the existence in the society concerned of other social norms and institutions (Raz, 1979: 168).

The social effects of the laws very often depend on 'non-legal factors', among which it is worthwhile to mention the general spirit of the law and its interaction with social norms and institutions. Some of these functions are performed by particular legal institutions, others by the existence of the legal system itself. It is impossible to list all the possible social effects of a law, partly because they vary largely in terms of nature, extent and importance (Raz, 1979: 176).

The Lombardy law's indirect effect is therefore the further marginalization of Muslims, because the law itself is combined with extra-legal effects such as the fear of citizens toward Muslims and the exploitation of this fear at a political level. The ultimate outcome of the Lombardy law is a discriminatory treatment of the Muslims population that is not treated on an equal footing with the majority. Muslims are hence discriminated against and left alone to face the anti-mosque protests organized by anti-Muslim organizations and parties.

In contrast, democratic institutions must be committed to promulgating laws that, whatever their specific goals, are part and parcel of a legislative environment that minimizes (at least) counterproductive effects upon minorities in order to grant those minorities the same set of rights as the majority.

However, which values should laws promote? Laws in general (and laws that regulate minority-majority relations in particular) should first of all advance a conception of the equality of treatment of the minority (Collins, 2003: 16). The specific idea of equality, which no law must jeopardize (Collins, 2003: 909), most often involves taking the minority into consideration whenever possible to explain how or why the goals and shape of the legislation are necessary. It seems that the idea of equality of opportunity is the most appropriate idea of equality whenever the rights of minorities are at stake. Equality of opportunity supports equal treatment as a general rule and underpins rules about indirect discrimination and positive action to remedy its defects in the pursuit of that goal (Collins, 2003: 909).

With respect to laws that regulate minorities' lives or majority-minority relations, not only is equality the primary goal but laws should also aim to improve the integration of each minority.[129] As mentioned, the Lombardy law has the secondary effect of the further stigmatization of an already disadvantaged group. Stigmatization, it is important to observe, can also lead to a *social and political marginalization*. Marginalizing a minority does not only mean treating the minority unequally but also undermining its inclusion into society. Specifically, from a political point of view, political marginalization means silencing the minority and not giving the minority community members the ability to take part in the decision-making process. More specifically it means not only avoiding granting the right to vote and run for public office but also ignoring the minority's views in the course of public debate, especially when a clash arises between opposed minority and majority demands or needs.

It can be argued that minority-related issues could be solved through assimilation policies towards the minority and through a complete privatization of their demands. Nevertheless, since assimilation cannot be an option for liberal democratic institutions, assimilation of minorities cannot be accepted in a liberal state, which should always be committed to promoting equality (not only at individual level but also at group level). Every state must therefore issue laws that both avoid assimilating minorities and at the same time also avoid marginalizing them.

The very idea of assimilation no longer makes sense in contemporary democracies and in fact it has been replaced with the idea of social inclusion, which, in contrast, is a crucial idea whenever we have to deal with minorities, especially those that are the most marginalized. It is possible to define social inclusion as the 'the removal of barriers to participation in the benefits of citizenship, so that all groups actually achieve those benefits' (Collins, 2003: 913). Social inclusion is fundamental because it is an aim of justice (Collins, 2003:16).

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[129] Integration can be seen from a political, social and economic point of view. Here I will consider integration only as political and social integration.

Any group that does not enjoy the same set of benefits as the majority can be considered to be socially marginalized. These benefits can include both material goods (access to food and shelter for example) and non-material benefits such as receiving a certain level of education and participating in politics and in social life (Collins, 2003: 913).

With respect to institutions, both at national and local level, whenever they are committed to promulgating laws or regulations they must be sure that these laws do not have as their primary or even as their secondary effect the jeopardizing of social inclusion.

Institutions must thus remedy the position of those minority groups that have been excluded from the basic elements of well-being. Social inclusion is considered as the essential element of well-being and therefore it should not be achieved merely in order to satisfy a calculation or a formula, for example for maximizing preferences or subjective welfare. On the contrary, social inclusion should be achieved because its achievement *per se* improves both 'equality of opportunity' and 'equality of results'.

Conclusion

The aim of this chapter has been to address the impact of the law on society through its unintentional effects. If in the previous chapter I focused on those effects of the law that actually are evident in the text - namely preventing the construction of mosques - the law has produced also further unintentional effects.

I argued that the law is still reverberating through the society, even though the Constitutional Court partially invalidated it. The law therefore shaped the way autochthonous citizen consider Muslims: that is, as a foreign object in the European citizenry. Consequently, the law reinforced those stereotypes of Muslims related to terrorism, radicalism and refusal of integration. Generally Islam is considered as a monolith and Muslims seen as attached to tradition and hence incapable to address the current challenges of political development and liberal religious thinking (Cesari, 2009: 1). These

stereotypes have become not only very spread among population but also common as a basis for laws and policies about security especially since the rise of terrorist attacks. In this respect the landmark was 9/11.

Stereotypes and prejudices feeds 'discourses of danger' that portray Muslims as a threat for the entire population and actually further marginalize Muslims and distance communities from getting incorporated into the society from a political, social and economic point of view (Kaya, 2009: 9; Bialasiewcz, Campbell et al. 2011: 411).

As regards the Lombardy law, the securitization approach was expressed through a strict control of places of worship and Muslim community. At a more global level securitization and domestication have deeply impacted the very architecture of integration policies and have shaped immigrant legislation and integration policies in the past decade (Cesari 2009: 41and Sunier, 2014: 1139).

If the content of the law was based on a securitization approach, the display of the law itself was characterized by lack of transparency. Indeed, the text of the law was publicized on the Region Lombardy website but it was still possible to read only the original law without the changes that had occurred after the judgment of the Constitutional court. This seems a depiction with the goal of creating another obstacle to building mosques. However, liberal democratic institutions have the duty to provide in clear way all the necessary information, hence, for this reason too, the law disrespects Muslims. On the other hand, while the publicization of the law has been characterized by lack of transparency, the law itself is an expression of disrespect because of a 'lack of opacity' (Carter, 2011, 2013): in other words, institutions based the law on a judgment about agential capacities of Muslims that actually was not relevant for the formulation of the law itself.

This negative judgment of Islam based on stereotypes and prejudices was used to justify an exceptional treatment of Islam. If at global level this exceptionality is justified by terrorism,

in Lombardy, hostility towards Muslims was expressed in hostility for building places of worship. Indeed, places of worship belonging to minority confessions have been established without particular problems. It is possible to mention the Sikh temple and especially the Scientology temple that, despite its controversial character, did not meet any particular problem in establishing in Milan the biggest place of worship of Europe.

The last section was dedicated to enunciating the characteristics of a fair law and the consequences that it should produce in society. Laws promulgated in liberal democratic contexts, especially those that regulate minorities' lives or relations between minority-majority, should aim at an equal treatment of majority/minority, at avoiding discrimination and at promoting social inclusion of the minority

In the following chapter, however, I will show that if the Lombardy law can be considered a negative example, the Catalan Law for places of worships can by contrast be considered a fairer example. Indeed, Catalan institutions did not merely tolerate religious minorities but rather promulgated a law that, from my point of view, includes some 'respect' values, because for example they guarantee a certain degree of self-legislation through political participation.

CHAPTER V

From Ideal to Real: the Catalan law regulating places of worship

INTRODUCTION

This chapter presents and discusses the Catalan law for places of worship n°16/2009 (*Llei 16/2009, del 22 de juliol, dels centres de culte [130]*). I argue that the Catalan law should be an example for other regions that need to regulate the building of places of worship. In particular, the *Lley* could be an example for Lombard institutions, which need to replace Lombardy's current law due to the legal and moral concerns explained in the previous chapters.

What makes the Catalan law worthy of consideration is the fact that, in my view, Catalan institutions did not merely tolerate minority religious groups but also treated them with respect, specifically by giving them the space to participate in the law-making process (see Chapter I). Indeed, the law was not an imposition of the Region on the Muslim community but rather Muslims were considered as actors in the process and not only as recipients of the regulation. The law prescribes Muslims' active participation both in in the consultative process for legislation and in the management of places of worship.

Also, the mayors, according the law, must be supported in their work of facilitating the putting into practice of freedom of worship and they are likewise responsible for the conditions in which worship takes place, with regard to hygiene, dignity and security: '*condicions adequades –i proporcionades a l'activitat– pel que fa a la seguretat, la higiene i la dignitat dels locals de culte*' (art. 8). In addition, the law was promoted and supported by two specifically designated institutions, namely the *Generalitat* (DGAR) and the Office for Religious Affairs (OAR).

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[130] The full text (in Spanish) is available here:

http://governacio.gencat.cat/web/.content/afers_religiosos/recursos/legislacio/llei_centres_culte_bopc.pdf

Catalan lawmakers, in any case, were not only interested in regulating a phenomenon but also demonstrated in the preamble a broader ultimate goal of strengthening the values that are needed to underpin society: peaceful coexistence, respect for plurality, and equality of democratic rights ('*la convivència, el respecte a la pluralitat, la igualtat*').[131]

The chapter is structured as follows. First of all, I will briefly introduce the way church-state relations are shaped in Spain, which is partly a consequence of the transition to democracy after Franco's regime. Then I will focus on Islam in Spain and in Catalonia in particular. After that I will consider specifically Law n°16/2009. Finally, I will compare it with the Lombard Law and I will say which aspects are more innovative and should be considered by Lombard institutions in order to improve the Lombard Law.

5.1 Church-State relations in Spain

To describe the relationship between State and church requires us first of all to recapitulate the recent history of Spain. Indeed, with the end of the dictatorship, the role of the Catholic Church has changed considerably and this change has gone hand in hand with a different consideration for religious minorities.

Unlike the Second Republic (1931-1936), the Church during the entire period of Franco's dictatorship (1939-1975) had a preeminent role and enjoyed privileges in terms of subsides, tax exemptions, control over education and recreational activities for youth (Astor, 2015: 247). When Spain became a non-confessional democratic state, religious freedom was recognized and supported.

With the new Constitution (1978) minorities were recognized and at the same time the autonomy of the Catholic Church was limited (Motilla, 2004: 578). These aspects were also

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[131] In addition, the lawmakers restated also the responsibility held by the entire body of citizens, without any kind of discrimination, in the national construction of Catalonia ('*drets democràtics i la responsabilitat de tota la ciutadania, sense discriminacions de cap mena, en la construcció nacional de Catalunya*')

included in the *Law on Religious Liberty,* promulgated in 1967 when the religious rights of non-Catholics were granted but still remained limited.

In order to mark the transition to a democratic regime, the State also aimed at building a more plural and tolerant society through the symbolically and historically significant recognition of oppressed minorities (Astor, 2015: 247 and 251). However, the most important step was the inclusion in the new Constitution of the liberal-democratic set of liberties, including freedom of religion. Contextually a new framework for church-state relations was developed. This framework, it is important to underline, was characterized first of all by a neutral, non-confessional approach with respect to religion and by the desire to maintain cooperative relations both with the Catholic Church and with other religious confessions (Astor, 2015, 250).

In 1980 the *Organic Law on Religious Liberty* (LOLR) was promulgated. The Act was a crucial step in advancing religious pluralism in Spain: it granted legal recognition for entities with religious aims and also created the possibility of signing agreements between the state and minority religious groups, in particular, those 'deep rooted' in Spanish society such Protestantism, Judaism and Islam. So, generally speaking, the constitutional system, which provides the protection of rights of worship, established a framework that allows greater religious pluralism and tolerance (Motilla, 2004, 575-584 and Astor, 2015: 251).[132]

Spain thus became one of the few European countries to extend official recognition to Islam, and the 1992 agreement between the State and the CIE (*Islamic Commission of Spain*[133]) entitled Muslims to an extensive set of rights and privileges without parallel in Europe. At local level, several municipal governments actively encouraged the establishment of '*cathedral mosques'* in an effort to galvanize the cosmopolitan reputation of their cities (Astor, 2015:

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[132] There is a problem of arbitrariness and discretion in the concession or denial of this status; for example, it has been denied to the Buddist Association and to the Jehovah's Witnesses, but the Church of Jesus Christ of Latter-day Saints was considered well-known and well-established in Spain (Motilla, 2004, 584).

[133] Islamic Commission Spain: http://www.hispanoMuslim.es/panya/cie.htm [Last Access: 1/09/2017]

261; Arigita, 2010).

5.2 Muslims in Spain

According to *Observatory Andalusí* Muslims in Spain are estimated at around 1.9 million. They represent 4% of the total population, 515,482 of them living in Catalonia and the majority (69%) are of foreign origin even if Spanish converts number is 804,017, so their presence is in any case notable (Observatorio Andalusí, 2017).

Immigration in Spain increased contextually with the transition to democracy[134]. These two aspects together challenged the whole society, not only from a political and institutional point of view but also from a sociological and cultural one. During this period, Islam actually acquired a prominent position: the policies to govern Islam were initially considered part of a broader political strategy aimed at shaping a more modern and plural society free from the former oppressive traditions (Astor, 2015: 248).

In this context, Muslim leaders did not remain at the margins of the process but obtained a leading role. In particular, one specific Muslim association, the *Muslim Association of Spain* (AME) negotiated for the Muslim section of the population an extension of official recognition of Islam. This happened because the State had a strong interest in dealing with a single interlocutor in order to sign the agreement. Because of this goal, the State pressured the federations to form an umbrella commission, the *Islamic Commission of Spain* (CIE), created in 1992 (Astor, 2015: 252).

The most important achievement of the 1992 Agreement between the State and CIE was the establishment of a series of rights and privileges for Muslim minorities. Among them are not only the 'protection and recognition of mosques as inviolable spaces' but also the

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[134] Even if in the Middle Ages Spain was ruled by Muslims[134] (Al-Andalus), it is only in the last few decades that Islam has emerged as a substantial religious minority in Spain, due primarily to immigration from Muslim-majority countries in Africa and South Asia.

right to establish religious accommodation in public institutions (for example military and state prisons)[135] (Astor, 2015: 252-253).

However, the 1990s were characterized by a change in the public perception of Islam because of significant socio-demographic and political changes. Islam, previously considered a symbol of Spanish heritage, came to be seen as a social problem. Mosques started to be considered as a symbol of the (perceived) colonization of neighborhoods by Muslim migrants and in this period anti-mosque campaigns took place (Astor, 2015: 253-255).

The 2004 Madrid bombings exacerbated the fear of Muslims and their perception as being foreign bodies in Spanish society. Nevertheless, the Socialist government incentivized the creation of the '*Foundation for pluralism and coexistence*', an agency dedicated to supporting the organization and integration of Muslims, Jews, Protestants. The main goal of this agency was enhancing national security by fighting social exclusion and promoting the civic integration of Muslim minorities: for the first time non-Catholic religious groups could have direct access to national funding (Astor, 2015: 256-257).

In brief, the strategy had some positive effects. First of all, it encouraged Muslims to register associations with the ministry of justice. Second, Spanish courses for imams were provided. Third, local governments were helped any time accommodation of Muslims and spiritual needs were at issue. This strategy brought Islam 'out of the shadow' and developed an improved understanding of the ideas and organizations influencing Muslim minorities in the country (Astor, 2015: 257).[136]

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[135] It is possible also to mention: the right to Islamic religious education in public and semi-public schools, the legal recognition of marriages performed in accordance with Islamic law, tax exemption for Islamic associations, the right to take time off from work, and the right for Muslims associations to participate in the conservation of Islamic historical sites and artifacts (Astor, 2015: 253).

[136] The foundation had repercussions, furthermore, not only for the governance of Islam but also for religious diversity more generally: it allowed other religious minorities (Jews and Protestants) to access national funding. (Astor, 2015: 257- 262)

Although the 1992 agreement and other directives were quite inclusive, Muslim communities have had great difficulty establishing mosques, obtaining land for Muslim burial grounds, arranging Islamic religious education in schools, and attaining other measures of accommodation. Reasons for this difficulty include the general lack of interest among public officials and institutions in acting concretely to accommodate the ordinary needs of Muslim communities, especially when doing so would be politically risky (Astor, 2015: 262).

Despite Muslim communities' efforts, then, mosque-building (or even plans for mosque-building) attracted protests from neighborhood organizations and anti-Muslim organizations. In order to tackle protests and the NIMBY phenomenon, Catalonia decided to promulgate a law concerning the building of places of worship.

As we shall see in the next section, the new form of state decided upon after Franco's death gave a high level of autonomy to certain regions. For this reason, Catalonia enjoys a certain degree of autonomy in many sectors, as for example in the allocation of land. In what follows, I focus on the law issued by the Catalan parliament, the specificity of Catalonia and the procedures that led to the promulgation of the law.

5.3 Decentralization and institutionalization of Islam in Catalonia.

Catalonia, thanks to its autonomy, has established specific institutions for dealing with religious pluralism. I will analyse briefly two of them, namely the DGAR and the OAR, because they had an active role in the promotion of the law on places of worship.

The Office of Religious Affairs [137] (OAR) is the first sub-national agency specifically dedicated to religious governance in Catalonia (Astor, 2015). The OAR is defined as a

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[137] The Office for Religious Affairs: http://ajuntament.barcelona.cat/oficina-afers-religiosos/en/about-us [Last Access: 1/08/2017]

service 'which works to guarantee the exercise of the right to religious freedom in Barcelona and to ensure all choices of conscience, religious or otherwise, are recognised and respected and can participate as a normal aspect of citizen life' (OAR, 2017).

The OAR now works hand in hand with the associations, by supporting 'the religious organisations in all the processes that affect their members' daily lives (places of worship, activities, grants and subsidies etc.)' (OAR, 2017). The Office also has a dedicated database through which it processes information about religious organizations, places of worship and events.[138]

The Office is also a member of the *Barcelona Municipal Immigration Council*,[139] the City Council's consultative and participatory body composed of the OAR, volunteers and immigrant associations, social agents, municipal political groups and observers. All of them intervene in the social environment to help to achieve the full exercise of citizenship for immigrants. It was created in 1997 by the City of Barcelona with the objective of

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[138] Barcelona Municipal Immigration Council web site:

http://www.bcn.cat/novaciutadania/arees/en/consell_municipal/on_adrecarse.html [Last Access: 2/08/2017]

In addition, it organizes and gives support to those initiatives that 'promote information on religious diversity, as well as the right to religious freedom and the inclusion of this diversity in citizen dynamics'. (OAR).

[139] It is composed of a Presiding Council and Vice Presidency, a General Council and a Permanent Commission, the emergency opinion committee and the secretariat. The Presiding Council is the collective body with the highest representation within the Municipal Immigration Council and holds a minimum of two plenary sessions each year. Chaired by the Mayor or a Councillor, it includes all the members of the Municipal Immigration Council.

The Permanent Commission is the standing body of the Municipal Immigration Council and holds ordinary sessions every two months. This body is responsible for articulating the mechanisms that help to achieve the functions assigned to the Council. It comprises the president, the first and second vice presidents, the member who has served as vice president in the previous period, representatives of the two organizations with the largest numbers of affiliated in the city, seven members representing member entities and the Secretary. The Emergency Opinion Committee is convened to issue a statement in situations or exceptional events where the rights or interests of immigrants or applicants for international protection are affected. It may be convened upon the proposal of the President, by resolution of Full Council or the Standing Committee, or at request of a minimum of eight member-organizations of the Council. Moreover, there exist working groups that are created at the suggestion of the Standing Committee or the President. These groups are created to work on a specific topic. The Council also has a Secretary's technical office under the responsibility of a municipal technical advisor who provides support, promotes and organises the different Council groups.

encouraging compliance with Article 9.2[140] of the Spanish Constitution and Article 43.1 of the Statute of Autonomy of Catalonia.[141] The City Council thus created this body to change Barcelona into a diverse and inclusive city for immigrants, ethnic minorities and, in general, for all cultures.

The DGAR[142] – the authority in charge of regulating religious pluralism – is the other one of the institutions that promoted the *llei*. In particular, the DGAR facilitates the integration and accommodation of Muslims and other religious minorities by providing public funds and promoting public participation in the policymaking process.

With regard to the issue of mosques, the agency has supported the efforts of Muslim communities to establish mosques and other religious structures[143] (Seglers, 2010: 229-230). Places of worship come under the responsibility of the *Generalitat* and belong to the big family of facilities considered indispensable for the satisfaction of common interests in urban space with a view to fulfilling the necessities of everyday life. Municipalities, meanwhile, are responsible for planning, which includes planning for religious aims: building of places of worship or cemeteries (Seglers, 2010: 231-233).

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[140] Article 9.2: "It is the duty of public powers to produce the necessary conditions to ensure that the freedoms and equality of the people and groups in which they integrate become real and effective; to remove obstacles which may impede or hinder its compliance, and to facilitate citizen integration in the political, economic, cultural and social aspects of public life."

[141] Article 43.1: "The public authorities shall promote social participation in drafting, providing and evaluating public policies, and also the participation of individuals and associations in civic, social, cultural, economic and political matters, with full respect for the principles of pluralism, free enterprise and autonomy."

[142] Direcció General D'Afers Religiosos, offical website:
http://sac.gencat.cat/sacgencat/AppJava/organisme_fitxa.jsp?codi=11010 [Last Access: 3/08/2017]

[143] The list of duties of the DGAR is available at the following website: http://sac.gencat.cat/sacgencat/AppJava/organisme_fitxa.jsp?codi=11010
1. Maintaining relationships with different religious associations established in Catalonia; 2. The application of agreements between the government, the representative bodies of the different religious confessions in Catalonia and ensuring compliance; 3. Preparing studies and reports and promoting dissemination of activities in matters of religious affairs; 4. Establishing and maintaining relations with the institutional leaders for religious issues; 5. Participating in the management of the Register of religious entities in collaboration with the General State Administration (Seglers, 2010: 229 and DGAR).

DGAR is proactive because of the administrative autonomy[144] that Catalonia benefits from thanks to the Statute of Autonomy (2006), a basic organic law that determines the degree of self-government and provides the legal framework within which the regional government operates (Griera, 2016: 19).

Despite the 1992 agreement, Muslim communities have had great difficulty establishing mosques, obtaining land for Muslim burial grounds, arranging for Islamic religious instruction in schools, and attaining other measures of accommodation. This situation has been due to many reasons, for example a general lack of interest among public officials in accommodating Muslims' everyday needs in life, especially because doing so could be risky from an electoral point of view (Astor, 2015: 262). To counter public opposition to mosques, Catalonia promulgated a law to regulate their building.

This law will be under scrutiny in the following paragraphs and it will be compared with the Lombard law.

5.4 Catalonia law on places of worship: Llei 16/2009

The law n°16/2009 (*Llei* 16/2009, *del 22 de juliol, dels centres de culte*) was promulgated by the Catalan parliament in 2009. It is the first in Spain to regulate the construction of places of worship. Importantly, institutions wanted to manage the high level of conflicts over mosques in the region. Both the institutions promoting the law, the DGAR and the OAR, also aimed to promote the integration of Muslims through this law (Astor, 2015: 262; Seglers, 2010: 227).

Catalan authorities were conscious that the establishment of Muslim places of worship was generally accompanied by great apprehension and protests by local citizens due to fear of Islam. Furthermore, these protests were exacerbated in many cases by parties with an anti-

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[144] The Constitution contains the principle of Local Autonomy: Article n°137 asserts that the State must be organized in Municipalities, Provinces and Communities. In addition, Article n° 140 guarantees autonomy to the municipalities and establishes their juridical personality.

Islam agenda, such as the Platform for Catalonia (Spektorowski, 2014: 116). For this reason, the aim was to 'minimize misunderstandings and disputes regarding the establishment of centers of worship through harmonizing and clarifying municipal licensing requirements' (Astor, Burchardt, Griera: 2017, 136).

The specific regulation required municipalities to take into consideration religious needs (when implementing the planning law) for the allocation of space to places of worship (Spektorowski, 2014: 116). Catalan authorities wanted to achieve three main goals. First they wanted to ensure freedom of worship. Second they wanted to support local councils whenever the free exercise of this right was at issue and third they aimed to give councils a leading role in the management of religious diversity.

The law, for example, made it mandatory for municipal councils to set aside urban land for uses of a religious nature, and also to issue licenses for opening and operating centers of religious worship.[145] This led many towns and city councils to draft policies for managing religious diversity for the first time. Third, the law aimed to guarantee proper conditions of security and hygiene in places of worship (Garcés-Mascareñas, 2014: 24-25).

After this brief overview, let us now look more closely at the preamble (*Preàmbul*) to the legislation, which contains all the elements present in the law.

The Catalan parliament was determined to promulgate this law in order to confront the challenges of contemporary society and in particular because of the 'increasing population and religious diversity' caused partly by immigration. The law is thus an answer to the demographic and sociological changes.

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[145] To quote directly from the text of the law: 'The law is based on the recognition of the fundamental right of religious freedom and is intended to facilitate the exercise of the right of freedom of worship, to support the mayors in facilitating the exercise of this Right, subject to appropriate conditions - and depending on the activity - with regard to the hygiene and dignity of the places of worship. It is also an objective of this law to avoid possible inconveniences to third parties. At the same time, the Law avoids causing problems in those centers of worship that already provide their services without difficulties'.

Notably, the parliament recognized 'the existing legal vacuum in the legislation about building places of worship' (*El buit legal existent fins ara sobre els centres de culte ha provocat disparitat de criteris entre els ajuntaments a l'hora de concedir llicències*). The previous regulation had been applied in an arbitrary way that led to disparity and also caused confusion among those responsible for centers of worship, some of whom called for the unification of criteria. In contrast, the new law aimed to improve the situation and to recognize the fundamental rights of freedom of religion and freedom of worship ('*Questa llei parteix del reconeixement del dret fonamental de llibertat religiosa i té com a finalitat facilitar l'exercici del dret de llibertat de culte*').

Freedom of worship is granted by Article 16 of the Constitution and is regulated by Organic Law 7/1980.[146] Neither the urban laws nor the administrative laws, then, can limit *per se* the fundamental right of religious freedom. Local authorities, moreover, cannot impose limitations beyond those necessary (and regulated by law) for the preservation of fundamental rights.

From the point of view of administrative competences, the *Generalitat* has, as laid down by *Estatut d'autonomia de Catalunya*, exclusive responsibility over matters regarding '*entitats religioses*' that carry on their activities in Catalonia. The *Generalitat* also has executive competence for the promotion, development and execution of the agreements signed with the churches, confessions and religious communities registered in the 'State Registry of religious entities'.

Complementing the support of the *Generalitat,* the law also supports mayors in facilitating the exercise of freedom of worship because mayors are in charge of regulating the conditions in which worship takes place. Conditions of places of worship must, in particular, be appropriate with respect to hygiene, dignity and security: '*condicions adequades –i*

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[146] The only limit to freedom of religion is related to the infringement of others' basic rights. Freedom of religion is enshrined in the European Union Fundamental Rights Chart (art. 10, 21, 22) as well.

proporcionades a l'activitat– pel que fa a la seguretat, la higiene i la dignitat dels locals de culte'.

It is essential to provide the municipalities with an indisputable '*juridical framework'*, because only municipalities are entitled to deal with building places of worship and related permissions. A clear law may help to avoid arbitrarexample actions such as closing down mosques discretionally or denying building permits (Seglers, 2010: 228).

According to the law, municipalities must give permission (*llicència*) to Muslim groups to practice worship in a proper place, that is a place whose premises meet the technical conditions appropriate to the type of activity carried on. Permission, then, is not related to the worship itself (which is not called into question) but is related only to the place, whose conditions must not cause problems for third parties. Administration, however, plays an important role in granting freedom of religion. In particular, the law protects freedom of worship by determining that under local planning law, portions of land must be used exclusively for religious purposes.

At the end of the text, it emphasizes that the law is underpinned by the principle of secularism (*laïcitat*), understood as respect for different religions, opinions, and values. It also works as a device that allows peaceful coexistence. This law has the double aim of facilitating the exercise of worship (as a fundamental right) and of preserving the safety and health of citizens and premises.

In this way, the lawmakers expressed their ultimate, broader goal of strengthening the values that already characterize the common space of society: coexistence, respect for plurality, equality in democratic rights ('*la convivència, el respecte a la pluralitat, la igualtat*') and the responsibility of the whole citizenship, without any kind of discrimination, in the national construction of Catalonia ('*drets democràtics i la responsabilitat de tota la ciutadania, sense discriminacions de cap mena, en la construcció nacional de Catalunya*').

From this overview of the Preamble it is possible to understand that the goal of Catalan

lawmakers was to harmonize the rules and avoid arbitrariness in the application of the law though rules that serve a broader idea of respect and integration. In contrast to the Lombard law, under which certain rules (especially those related to hygiene and safety) have been used to stop any building plans, in the Spanish case the law aims to integrate religious minorities to avoid discrimination through setting reasonable standards. Again, unlike the Lombard Law whose text notes several times the danger of terrorism, the Catalan law refers to general democratic values such as coexistence, pluralism and the equality of all members of society.

Although the Catalan law presents many remarkable advantages, there are in any case also some problematic aspects that must be mentioned. As Astor (2015: 263) asserts, the stipulated participation of Muslims has been limited, partly because Muslim organizations have not been very effective and have also been lacking in representativeness. In addition, the lack of proper legal documentation makes them reluctant to interact with institutions.

In what follows I would like to propose a comparison between the Catalan and Lombard laws in order to underline the interesting aspects of the Catalan law that make it good practice.

5.5   The Catalan and Lombard laws

The Catalan and Lombard regions share some aspects in common. I would like especially to underline that both attract more immigrants than other regions in their respective countries. With regard to Muslims in particular, they host the majority of the Muslims in their respective countries (see chapter II for further details about Lombardy).

Despite differences at institutional level, both likewise enjoy a high level of autonomy in the use of land and its allocation. So, in both cases the regional institutions are free to make laws on places of worship and to tailor them to the needs of the territory and of their

respective populations. Nevertheless, the two laws are completely different in their approach to the issue.

Article 1 (*Article 1 Objecte*) of the Catalan law asserts that the purpose of the law is to guarantee the effective application of the right of churches, confessions and religious communities to establish centers of worship, and aims to reserve land where religious use is permitted or assigned, in accordance with the needs and availability of municipalities (*La finalitat d'aquesta llei és garantir l'aplicació real i efectiva del dret de les esglésies, les confessions i les comunitats religioses a establir centres de culte*). It also aims to regulate the minimum technical and material conditions that are needed to guarantee the safety of people and the appropriate health conditions of the centers.

According to Article 2 this law applies to *all* the centers of worship '*de concurrència pública*', regulated by the Llei orgànica 7/1980, and also to those places sporadically used as places of worship or areas of public interest not commonly used for these purposes (Art. 2.2). However, those places of worship located in hospitals, educational centers and cemeteries, mortuaries as well as those located in public or private spaces designated primarily for other activities remain outside the scope of the application of this law.[147]

Because the law makes clear its application to religious groups in general, and does not distinguish between religious confessions, the focus is on the places of worship and not on whom they belong to. In contrast, the Lombardy Law discriminates against those it addresses or applies to. First of all, the Catholic Church is exempted from the regulations. Second, the law distinguished (illegitimately, according to the Constitutional Court) between religious communities with an agreement with the State (Intesa) and those without such an

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[147] Article 2: *Àmbit d'aplicació*. 1. *Aquesta llei s'aplica als centres de culte de concurrència pública inclosos en l'àmbit d'aplicació de la Llei orgànica 7/1980, del 5 de juliol, de llibertat religiosa, i també a l'ús esporàdic amb finalitats religioses d'equipaments o d'espais de titu- laritat pública no destinats habitualment a aquestes finalitats.*

2. *Resten fora de l'àmbit d'aplicació d'aquesta llei els llocs de culte situats en centres hospitalaris, assistencials i educatius, cementiris, tanatoris i centres penitenciaris i els situats en espais de titularitat pública o privada destinats a altres activitats principals.*

agreement (Art. 70.2). Only religious communities without Intesa were required to have certain precise characteristics in order to access the benefits of the law.

Specifically, they had to prove they had a 'widespread, organized and stable presence within the council's jurisdiction', and the statutes of their organization had to express respect for principles and values of the Constitution. They were also obliged to sign an agreement (*'convenzione a fini urbanistici'*) with the municipality. This agreement, and *ad hoc* procedures, would contain a clause that clearly expressed the possibility of dissolution and unilateral repeal (Moroni and Chiodelli, 2017: 65).

Article 5 of the Catalan law (*Assignació d'ús religiós i participació de les confessions)* concerns the assignment of places of worship. When land has to be assigned, the already current urban planning legislation must be applied exclusively. The fact that only the existing law is applied is particularly significant because lawmakers did not oblige believers to follow different procedures from those applicable to other buildings.

This aspect is not secondary: rather, with this article the lawmakers express their desire to treat believers on the same footing in contrast to the general practice of treating Muslims with exceptional measures. Lombardy's legislators, on the other hand, added certain extra procedures beyond the normal existing legislation, procedures annulled later by the Constitutional Court. For instance, according to the Italian region's original law, municipalities must submit the procedures to a specially designated 'regional advisory body' of the regional council, a body that was never established by the Region (Croce, 2016).

Contrary to the obligation to treat places of worship like any other buildings, the Lombardy regional council obliges each municipality to draw up a specific plan, different from the 'Public service and facilities plan' (*piano dei servizi*), which allocates space for all the other public amenities such as schools, hospitals and parks. In addition, without the plan, building places of worship is impossible, and yet, because bureaucracy advances slowly, the process

of drawing up the plan can take many years (Chiodelli and Moroni, 2017: 65).

However, it seems that the reason why these provisions were added must be sought in the evident desire of the Region to make building a mosque harder. By way of contrast, the Catalan legislation does not envisage exceptional legislations. Moreover, even though Italy's Supreme Court annulled these procedures, the behavior of Lombard institutions bears witness to their intention to treat Muslims as different from the general citizenry: in other words, as a sort of 'emergency' that needs extra regulation in order to confront it. This 'exceptional' treatment, in any case, prevents equal treatment of minority religious groups.

With respect to the equality of religious groups, Article 6 of Catalan law reaffirms that equal treatment is due to each religious group. Public administrations must guarantee to churches, confessions and religious communities equal and non-discriminatory treatment (*tracte igualitari i no discriminatori*) in the assignment of authorization for the use of facilities and public spaces, for the private use of public space, for the temporary occupation of public roads or for the use of financial assets to carry out sporadic activities of a religious nature. The Lombardy law, on the other hand, never affirms the right to equal treatment. In addition, as also considered by the Constitutional Court, it discriminates between confessions with the agreement and those without.

A form of unequal treatment is seen also in the excessive regulations of the technical conditions of the places of worship. The Catalan law (Art. 8) prescribes, first of all, that the centers must have the necessary technical conditions to guarantee the safety of the users and the hygiene of the facilities and to avoid inconvenience to third parties (*garantir la seguretat dels usuaris i la higiene de les instal·lacions, i evitar molèsties a terceres persones*), and that these conditions must be adequate and *proportionate*, in order not to prevent or hinder the activity carried out in these centers; and secondly, that the Government must establish by regulation the minimum technical and material conditions of security, health, accessibility, acoustic protection, capacity, and evacuation to avoid inconvenience to third parties, with

which places of worship attended by the public must comply.

Like the Lombardy law, part of the Catalan law is similarly dedicated to the regulation of the technical conditions of the places of worship. I would like to underline that whereas the Catalan law highlights the need to have proportionate conditions, the Lombardy law prescribes a long list of requirements that do not have the aim of regulating the conditions but rather of putting obstacles in the path of the building of places of worship. The religious group is liable for all the costs, notably for streets, drainage, the water system, and the electric system. In addition, a minimum distance between different places of worship is required, together with public parking places (with a surface area that measures 200% of the surface area of the building); a CCTV system (for surveillance of every access point); and proper toilets. Lastly, a very controversial requirement: the architecture and the dimensions of the building must be consistent with the landscape of Lombardy (Subsection 7 art. 72).

The last article under scrutiny is Article 10, which prescribes protection against noise pollution (*contaminació acústica*). According to this article, worship centers must comply with the provisions of legislation for the protection against noise pollution. The acoustic limitations of the centers of worship are regulated by specific guidelines. Lombardy law, in contrast, omitted to regulate an important aspect of worship that can create tensions and conflicts between believers and those living in the local neighborhood. Minarets have not only a physical but potentially an acoustic presence. This is important because sound also occupies and defines public space, and the possibility of the *adhan* in Arabic being broadcast from minarets taps into the fears of increasing numbers of Europeans that Muslims are taking over this space and imposing a foreign religion and set of values (not to mention a foreign language!) on them. Fear of the *adhan* is an important catalyst behind the resistance to minarets (Green, 2010: 632).

5.6 Two different law-making processes

What I would like to highlight in this section is the importance of the law-making procedure. Although the content of the law is crucial, as explained in the previous chapters, the procedures that lead to the promulgation of a law are equally central, because treating people with respect entails involving the addressees of the law in the definition of the regulations that will bind their behavior, in order to guarantee self-legislation to the minority group.

From this point of view, the Catalan law represents an improvement if compared with the Lombard law. Indeed, Catalan institutions gave Muslims the opportunity to participate in the definition of the law and in the political life of Barcelona in particular. In this way Catalonia undertook measures to institutionalize the accommodation of Islam, and religious diversity more generally, through the promotion of public agencies, religious advisory councils, and interfaith networks that facilitate a more sustained engagement between religious minorities, public institutions, and civil society (Astor, 2015; Arigita, 2010).

In this respect, I would like to focus now on the key article n° 5.2 that reads as follows: 'churches, faiths and religious communities **are entitled to participate** in the planning process (*tenen dret a participar en el procés de formulació del planejament urbanístic*) through the channels established by public participation programs (*participació ciutadana dels plans d'ordenació urbanística municipal*) for municipal town planning and participation in the public consultation that establish legislation for processing town planning (Section 5.2 of Law 16/2009).

This article is particularly important because it states that the participation of believers is a right. Further, it states that participation must be put into practice through proper channels. As seen previously, the *Generalitat* is equipped with institutions such as the DGAR and the OAR, a specific office that is a member of *Barcelona Municipal Immigration Council*. The OAR

is a city council consultative and participatory body whose members include religious associations.

The OAR has gradually started to include the practical accommodation of religious identity and practice, the enhancement of public awareness of religious diversity, and the creation of opportunities for religious minorities to participate in the civic and political life of the city. In particular, it has supported Muslim communities in their efforts to establish mosques and other religious structures (i.e., cemeteries) combating Islamophobia, facilitating programs for Muslim youth to receive Islamic religious instruction, and promoting the use of intercultural mediators to resolve conflicts related to Islamic identity and practice. The DGAR similarly tried to facilitate the integration and accommodation of Muslims and other religious minorities and it has also sought to open channels for Muslims and other religious minorities to participate in the policymaking process (Astor, 2015: 259).

Through establishing institutions for regulating religious diversity, those involved in the process of religious governance in Catalonia have pursued the dual objective of augmenting the region's level of self-determination and developing an approach to religious governance that is more attuned to the specificities of the region. Given that Catalonia is home to Spain's largest Muslim population, a central priority of these institutions has been to facilitate the accommodation and integration of Muslims in the region (García-Romeral and Griera, 2011).

Lombardy, in contrast, has not yet established proper institutions for managing religious pluralism or immigration more generally. As shown (ch. II), Muslims have formed many associations that are now deeply embedded in the social tissue of Milan and the region. Despite their being well-established, the Region has not considered them as proper interlocutors or as worthy of consideration on integration and accommodation issues. In particular, it is not evident from the institutional web sites of the Region that certain

specific offices or agencies for religious pluralism have ever been established, so proper and institutional channels of dialogue are absent.

With regard to advisory bodies related to immigration or integration it is necessary to point out that the Lombardy region promulgated the law 38/1988[148] for the establishment of a regional advisory body on the problems of immigrants (from third countries) in Lombardy, aimed at improving immigrants' participation in society (*È istituita la consulta regionale per i problemi degli immigrati extracomunitari in Lombardia, quale organo di consultazione e di partecipazione*). However, from an analysis of the institutional web sites, is clear that this body has never been established. In addition, the region does not actively support those municipalities that involve foreign citizens in their political life. The establishment of advisory participatory bodies is left to the good will of the individual local councils that in any case are neither incentivized nor supported.[149]

In contrast, the Catalan law aimed expressly at providing a legislative framework and at supporting mayors in the process of the integration of immigrants and of increasing their participation. This aspect is entirely missing from the Lombard law on places of worship and also for this reason the Lombard law is disrespectful of religious minorities in general and of Muslims in particular.

As seen in the second chapter, religious communities are not involved in the political procedures at any level: for example, advisory bodies are totally missing, and yet an indisputable 'juridical framework' is fundamental because only municipalities are entitled to

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[148] The full text of the Lombardy law on advisory bodies for immigrants is available (in Italian) at the following link: http://normelombardia.consiglio.regione.lombardia.it/NormeLombardia/Accessibile/main.aspx?iddoc=lr001988070400038&view=showdoc

[149] Here some example of advisory bodies for immigrants in some Lombard towns: Cremona https://consultaimmigraticr.wordpress.com; Gallarate https://www.facebook.com/Consulta-Stranieri-Gallarate-va-996355387058465/; Pioltello http://www.comune.pioltello.mi.it/PortaleNet/portale/CadmoDriver_s_118752; Pero http://www.comune.pero.mi.it/Organi-comunali/Consulta-Stranieri

deal with building places of worship and related permissions. A clear law would help to avoid arbitrariness, examples of which could include closing down mosques discretionally or denying building permits (Seglers, 2010: 228).

Another aspect that must be highlighted concerns the lack of transparency and difficulty in obtaining information from the Region Lombardy web site. The only database available is of registered associations in Lombardy that in any case have no religious goals. Catalan institutions, on the other hand, offer clear websites that are easy to consult and have all the documents available, in some cases also with translations in English.

In light of these considerations I would like to propose a series of suggestions that the Lombardy region could take into consideration in order to re-write the law for building places of worship so that it is underpinned by respect.

First, the region should establish specific bodies that deal with religious pluralism both at regional and municipal levels, including (i) an agency that collects statistics and provides data about the presence of religious minorities in the territory; and (ii) a sort of 'counseling service' (in Italian: 'sportello') where Muslims (and minorities' members in general) can report discriminatory experience and can also collect advice specifically on regulations and institutions of the territory where they live.

Second, the region should start a process of institutionalization of religious groups. This can be done through the issue of a formal registry of those religious associations that reside in the Lombard territory. The region should thus open a dialogue with the associations about all the issues around the accommodation of religious practices. In particular, in the case of mosque-related issues, institutions should listen to Muslim associations through, for example, public and private meetings. Furthermore, a dialogue with voluntary associations and organizations should be opened. On the Muslim side the community should seek to avoid fragmentation by appointing representatives that can speak with the institutions.

Third, the Lombard region should put into practice Law 38/1988 and incentivize the establishment of advisory bodies for immigrants in order to improve immigrant political participation. Even though it is true that only Parliament can amend the citizenship law to make it more inclusive by extending voting rights to immigrants, local councils have a duty to try to increase the participation of those members of their communities who cannot vote but who live (and pay taxes) there.

Fourth, specifically on the legislative process, the regional institutions should *involve* the members of minority religious groups in the process. Specifically, if the main issue concerns the building of a mosque, it is necessary to involve Muslims *qua* Muslims, not necessarily as experts, in order to give space to a larger number of persons to put their views and to be heard.

Fifth, the law itself should regulate all aspects of the issue in a clear way and in line with existing legislation in order to avoid exceptionality. The aim of a law should be not only to regulate the particular issue but also to ensure the equal treatment of all those involved. It follows that security, which is in any case crucial, cannot be the sole criterion for regulating the building of places of worship. Instead, I suggest that institutions incentivize restoration and reuse of preexisting and possibly abandoned buildings in order to give them a new life. This could also have positive effects on entire neighborhoods and potentially give new life to a marginal area of a town. [150]

Sixth, all the procedures should be transparent. Information about religious communities and about the process for building the place of worship should be available on web site. This can bring autochthonous citizens closer to the process and represent it as a normal part of a society that is now plural and diverse.

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[150] Within the present legislative framework, individuals or groups wishing to establish a place of worship are faced with two alternatives: first, they can adopt a building whose immediately prior use was as a place of worship, such as a redundant church or chapel, thus dispensing with the need to apply for further planning permission; second, they can convert another building not contained within the same use-class, or they can purpose-build a place of worship, which, in both cases, necessitates an application for planning permission (Nye, 1998: 421).

Seventh, institutions should promote campaigns with a view to recognizing religious minorities and avoiding discrimination. It is important that knowledge of religious minorities groups in general and Muslims in particular should be spread in schools in order to create awareness about diversity and avoid acts of discrimination.

Conclusion

The aim of this chapter has been twofold, on the one hand to discuss the Catalan law on places of worship n°16/2009 (*Llei 16/2009, del 22 de juliol, dels centres de culte)* and on the other to show that a law that treats minority community members with respect is possible and that the *lley* can be an example for Lombardy and for other institutions in need of a fair law for regulating the building of places of worship.

I have demonstrated that Catalonia's law can be an example for other laws on places of worship because it does not simply tolerate members of minorities but rather respects them thanks to their involvement in the law-making procedures, which makes them both 'authors and addressees' of the law, as the self-legislation principle prescribes.

With respect to the law itself I have underlined that prescribing precise regulation for places of worship without discriminating between majoritarian and minority confessions helps to avoid exceptionalism and arbitrariness.

In order to develop my argument I first placed the Catalan law in a broader context, that is the transition from Franco's age to the democratization of Spain, which had a wide-ranging influence on the consideration for religious minorities. After giving a brief overview of the system of relations between the Spanish state and religious confessions, I briefly considered Islam in Spain. Then I considered institutional Spanish aspects, such as the church-state relations system and the autonomy given by the 1978 constitution.

After socio-demographic changes and the 2004 terrorist attack, the perception of Islam

changed and building mosques became more difficult. As a consequence of the high number of conflicts surrounding the building of mosques, in 2009 Catalonia decided to promulgate the law for building places of worship.

The *lley* can be an example for Lombard institutions, which ought to rewrite their own law due to moral and legal concerns. The Catalan law is relevant to the issue of the accommodation of religious claims in general and Muslim claims in particular because it is clearly stated that institutions wanted to fill 'legal vacuum in the legislation of building places of worship' (and also the arbitrary application that determined 'disparity').

In view of the problematic aspects of the Lombardy law – as also highlighted by the constitutional court – I proposed some improvements that would lead to a fairer law on places of worship. In my view, then, the Region should work for the establishment of proper, specific institutions in charge of religious pluralism, based on the example of the DGAR and the OAR. They also should incentivize the institutionalization of Islam though the establishment of a register for recognized religious associations.

As to the specific issue of the law for places of worship, Muslims should be involved as much as possible in the drafting of the law in order to ensure their needs and expectations are heard. This can be done through (for example) private meetings, round tables, and specific events. The law itself must avoid any exceptionalism and any securitarian approach and must instead ensure that all procedures are managed in a transparent way. More generally, institutions both at national and regional level should recognize Muslims as part of society on an equal footing with the majority and provide specific institutions for participation.

FINAL REMARKS

The overriding purpose of this thesis has been to determine which values and principles ought to inspire liberal democratic institutions whenever they have to deal with questions of minority rights and of minority-majority relations. In particular the focus has been on European societies that are characterized by pluralism thanks to a constellation of autochthonous minorities and to communities of immigrant origins that arrived after the end of the Second War World and contributed to making the macro region even more diversified from a cultural and religious point of view. Although this increased plurality certainly has a positive value, it is not free from consequences either at social or at political level. Indeed, minority-majority relations can present some difficulties as well, because some minorities' habits can from time to time raise concerns, especially if they are considered at odds with the majority's way of life.

Toleration, since the Reformation, has been generally considered the main principle on which to build plural societies, especially in those cases characterized by religious plurality and the coexistence of minorities. However, against this backdrop, the aim of this thesis has been to challenge this standard idea and verify whether, on the contrary, some other values may help to build minority-majority relations in contemporary European societies.

I argued that actually toleration (as non-interference) can no longer be considered as the sole value on which to build legislation or policies aimed at regulating a specific aspect of minorities' life or relations between majority and minority. On the contrary, I argued that toleration nowadays must be complemented with the idea of recognition respect (equal, democratic and opaque) whenever institutions (liberal and democratic) need to deal with minorities' issues. Institutions indeed would not be able to simply ignore the minority but would rather be obliged to actively promote their inclusion into society and avoid any kind of segregation: political, cultural and spatial. The focus in particular was on institutions at local level for two reasons: local institutions (municipalities for example) are in charge with

basic needs of the population and, at the same time, it is precisely at local level where clashes between majority and minority take places. This is particular true if the minority is one of the most disliked, such as the Muslim minority. For this reason, I specifically analyzed the Lombard law on places of worship as an example of an intolerant law that is unfair because it prevents Muslims from building places of worship and because it is top-down imposed. On the other hand, a law based on respect could be fairer not only toward the minority that we aim to regulate but toward society as a whole, because such laws may form part and parcel of a larger strategy of inclusion and social cohesion. An example of a law that reflects the idea of respect both in its effects and in its procedures is the Catalan law on places of worship.

In order to unpack the issue of toleration and respect I considered in the first chapter some recent theories of toleration and respect as formulated in two European research projects (Accept and Respect). I presented first of all two different ideas of toleration: a negative idea of toleration (toleration as non-interference) as developed by Bader (2007) ('gritted teeth toleration') and a positive idea of toleration, that is 'toleration as recognition' as proposed by Galeotti (2002, 2015). After that, I presented the idea of respect, in particular in the versions developed by Carter (2011, 2013) and by Ceva and Zuolo (2013).

This brief overview was not only an aim in itself but rather forms the basis for my personal view of toleration and respect. Through this thesis, I in fact aimed at contributing to the development of the idea of respect. In particular, I argued that these various accounts of toleration and respect are actually not self-sustaining but instead they underpin each other. I thus proposed a 'scheme' in which toleration and respect coexist but complement each other and are circumscribed to specific spheres of society. In particular, I argued that 'negative toleration' (toleration as non-interference') must be invoked to regulate actions between fellow citizens. Non-interference hence marks a sort of 'minimum standard' to which each member of the society has the duty to adhere. Nevertheless, this attitude is not appropriate for institutions because institutions, *qua* liberal and democratic, are not simply

required to ignore minorities' ways of life nor simple to avoid interfering with their habits; rather, they are required to fill the gap produced by the asymmetry of power between majority and minority. To do this, then, it is necessary to recognize the minority's members as full members of the society and thus their habits and traditions as 'valid options' and in fact just as valid as the life options chosen by the majority. Recognition, however, must be substantiated by policies (for example education policies, awareness campaigns, etc.) that aim to promote among the population the intrinsic value of the minority and which stands in contrast to any forms of discriminatory attitudes on the part of the majority toward the minority. It is important to analyze situations of intolerance through recognition (instead of through neutrality exclusively), because recognition allows us to focus on the bearers of those differences and in this way those who bear differences considered at odds with the (majority) social norms will be recognized as full and equal members of the polity (Galeotti, 2015: 101).

However, toleration as recognition does not focus specifically on the role that minorities should have in the definition of those laws that will limit their life, nor even on the policies that aim at integrating them into society. For this reason, I argue that institutions must therefore treat minorities with equal respect, which means giving appropriate space to the minority to decide about their life. From this perspective, the process thus acquired particular importance: not only is the outcome of a law (or policy) important but also the way this outcome is reached. In addition, a respectful treatment of a minority implies granting it self-legislation and building a dialogue between the minority and the authority. In particular, institutions respect minorities if they look at the minority 'behind the veil of opacity': that is, if they avoid judging those aspects of the minorities that are disliked by the majority but are nevertheless legitimate *per se*.

The last part of my scheme therefore comprises 'respect'. I considered it as a sort of 'magnifying lens' that is useful for analyzing laws and policies that regulates minority life.

From a respect perspective is possible to see extra unfair aspects of a law or policies that actually are not visible with (simply) a legal analysis nor from a toleration perspective.

In order to show the potential that the respect perspective has, I focused specifically on the Lombardy Law against mosques (2015), a law issued by the Lombardy Region and afterwards modified by the Constitutional Court (2016). I considered this case relevant to see how respect lets us see unfair aspects otherwise not perceptible through the lens of toleration nor through a simple legal analysis. In the second chapter I therefore addressed specifically the issue of the Lombardy Law. I argued that a critical analysis of this law is relevant because the Lombardy law, despite its limited scope, can be considered as a paradigmatic law discriminating against a marginalized minority at local level. The local level is crucial for the treatment of minorities, because every country in Europe is equipped with constitutions and laws that protect minorities but at local level this system of rights can be more easily undermined.

The Lombardy law is thus not only controversial from a legal point of view, as explained the Constitutional Court (63/2016), but also from a moral point of view. A mere legal analysis would in any case be incomplete and would not underline all the controversial aspects and potential effects of the law (Anello, 2016; Croce, 2016). In order to elucidate which values such a law undermines and, on the other hand, which values a fair law regulating building of places of worship ought to be based upon, the Lombardy law was analyzed first from the perspective of toleration and second from the perspective of respect.

In light of toleration (as non-interference), it is possible to argue that the Lombardy law is not only unfair because it bans mosques but also because the rules as conceived by the Lombard council are too stringent and they limit autonomy of Muslims (Cohen, 2007; Dryden, 2017; Christman, 2004), treat them in a paternalist way and deny proper justification (Forst, 2010, 2012; Gaus, 2005). By limiting this set of rights, the Lombard law

denied recognition of Muslims on an equal footing with the majority. However, recognition is a basic human need (Taylor, 1994) and its denial implies undermining self-respect (Rawls, 1971; Leitinen, 2009).

However, as already stated, even toleration can provide a limited explanation of the unfairness of the Lombardy Law. For this reason, the third chapter was devoted to the analysis of the law through the lens of respect. This focus has highlighted further unfair issues, in particular that the law is unfair because Muslims' self-legislation right was not respected in the law-making process. The issue is problematic for two reasons: they did not take part in the formulation of the law nor in a public debate about the issue.

Respect for minorities can be granted through a system of enfranchisement, as defined by Baubock (2015): 'a multilevel architecture of enfranchisement', which also includes outsiders. Different levels characterize this system. First of all there is a general/national level. The *demos* must be expanded as much as possible in order to include outsiders or politically marginalized individuals (Abizadeh, 2008; Miller, 2009) because the presence of a large part of the population without rights of participation results in problems of democratic legitimacy (Song, 2009; Walzer, 1983).

 The second level is granted by the expansion of the demos at local level: enfranchisement should be determined by residency since residents, independently from their status, are all affected by decisions taken by the Local Council (Baubock, 2003, 2015; Eisenberg, 2015). Nevertheless, this system of enfranchisement only partially grants minorities an adequate degree of self-legislation rights. This system at local level should therefore be complemented with a third layer of specific participation rights for minorities, inspired by a 'proportionality principle' (Brighouse and Fleurbaey, 2010). Minorities would thus be able to elect a representative that would have a right of veto but only on specific issues. In addition, since respect is dialogue, advisory bodies should be established in order to give

minorities' members the possibility of expressing opinions and to build a dialogue and exchange opinions with their fellow citizens.

In the fourth chapter the perspective was slightly changed and I argued that the law was unfair not only because it prevents Muslims to build a mosque, not only because it undermines their autonomy and self-legislation rights, but also furthermore because the law reverberates throughout society and contributes toward creating a hostile environment for Muslims. Even if the law was partially invalidated by the constitutional court, it could produce long-lasting effects in society; broader than the effects specified by the law itself, because it may shape the ways in which Muslims are perceived in society and undermine their integration. Muslims, through this law, were also constructed as culturally determined bodies whose culture needed to be adjusted or integrated (Humphrey, 2009: 151). Indeed, this law reinforced anti-Muslim sentiments and the standard view of Muslims as a threat to security, and of mosques as shelter for terrorists (Cesari, 2007; Fekete, 2004). In particular the law contained some rules that expressed a need for control and containment of Muslims, and for this reason it is possible to say that Lombard institutions applied a securitization approach to Islam (Huysmans, 2006; Humphrey, 2009, Cesari, 2009, Sunier, 2009). Securitization is generally used to justify the use of exceptional measures (Bigo, 2002) and the treatment of Islam as a phenomenon to contain. In particular, Lombard institutions were not transparent at any level of the law making process, not even in the display of the law on the official websites (Plaisance, 2007). Feeding prejudices and addressing the issue of Muslims' claims through a securitization approach could further marginalize Muslims and hence undermine their integration. The Lombard law is hence problematic because actually fair laws in democratic contexts must be committed to in order to avoid any kind discrimination and at the same time to promote social cohesion. Opposing discrimination and supporting integration must not only be direct effects of laws but also their indirect effects (Raz, 1979; Collins, 2003).

In the last chapter, the focus was on the Catalan law for places of worship (16/2009) because it can be considered as a positive example for regulating building places of worships for minorities. Indeed, the Catalan law has many aspects that are completely different form the Lombard law. The Catalan law was promulgated with the general aim of supporting Muslims' integration into society and promoting their political participation. The Catalan law on places of worship was designed because the Catalan institutions did not merely tolerate minorities but also respected them and because of this, they allowed them to decide about their own lives. In particular the minorities were involved in the procedures so they became both the 'authors and the addresses' of the law.

In the last part of the chapter, I elaborated on the basis of the Catalan law a list of suggestions for lawmakers committed to writing (or re-writing) a law on places of worship. So first of all local institutions should establish specific bodies that would deal with the accommodation of religious claims. Second, the local institutions should establish a formal register of the religious groups and open a dialogue with them. Third, the region should establish advisory bodies for immigrants in order to improve the level of their political participation, on the model described in the third chapter. Fourth, on the specific issue of all the people or groups that might be affected by the decision of the local councils, such as laws on building mosques, such groups must have the ability to express their opinions and even have a veto right. Fifth, the law must be clear and well written in order to avoid any exceptionality. Sixth, procedures must be transparent at every level: from the preliminary debate to the publication of the law. Seventh, institutions should promote through formal public meetings and ad hoc events the knowledge of religious minorities living in the territory, especially those particularly marginalized.

The above-mentioned list of suggestions is a way to substantiate one of the goal of this thesis, which is not only to contribute to the debate about toleration and respect but also to empirically ground respect especially at local level where institutions must deal with minorities' claims. Policy and law-makers should care about this thesis because it offers a

set of values on which is possible to ground laws and policies specific for regulating some aspects of minorities' lives or for regulating majority-minority relations. In particular, lawmakers must avoid the top-down imposition of the law on a group and the reinforcement of stereotypes because these can act to detriment of the cohesion of society as a whole.

Even if this case study is specific to the Lombard law, it can highlight certain issues related to majority-minority relations and hence be useful outside Lombardy. More specifically, the findings of this thesis could be useful in inspiring new ways of enabling minorities to participate at political level. Furthermore, NGOs and associations promoting coexistence should give consideration to this because it can may help them to draw up projects regarding social inclusion and coexistence.

Nevertheless, I do not consider this thesis as the last stage of my exploration of relations between majority and minorities. On the contrary, I consider this thesis the starting point for a more articulated analysis both at theoretical and practical level. The study of the concept of respect could be enriched for example by analysis of further scholarship. In addition, the respect implication could also be analyzed in depth in other contexts such as schools. Education is, indeed, sensitive to the presence of minorities because in schools the members of minorities from time to time need to have their demands or claims accommodated; for example, learning their own language or eating according to their religious creed.

Moreover, the case study about Lombardy should be completed with a field research study, for example with interviews of Muslims, in order to understand how they perceived the lack of involvement in the process of the law aimed at regulating their life. It would also be useful to ask them their opinion about how to improve their participation at local level. However, representatives of institutions and party members should also be heard in order to listen to their opinions.

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