



## Citizenship and Equality: The Place for Toleration

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## CITIZENSHIP AND EQUALITY

### The Place for Toleration

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**I**N OCTOBER 1989, AT CREIL IN FRANCE, three French girls of Muslim faith came to a public school with their head covered by the traditional Muslim scarf, or *chador*. The controversy erupted at once: the school authorities ordered the girls to uncover their heads, claiming that they had to dress like all other students; the girls, supported by their families and by the Islamic community, refused to comply and, as a consequence, were expelled from school. The case became public and was widely debated through the country. Similar episodes started to happen in other public schools. At that point, the Minister Lionel Jospin, in order to provide clear guidelines for the whole school system, asked the opinion of the Conseil d'État, which, in November 1989, formally took issue on the matter, ruling that French students had the right to express their religious beliefs in the public school, as long as they respected others' liberty and on the condition that such an expression did not hinder the normal teaching and school order. Thus, although the girls were readmitted in the school with their Islamic veil, the legal decision in favor of tolerance looked more like a *de facto* compromise than a principled choice. Nor did it stop the controversy over what has become known as "the chador case."

As a matter of fact, the three girls were not wearing a "proper" chador but simply a headscarf. That the *affaire* was everywhere discussed as the "chador case" could be the symptom of the Western unwillingness to differentiate within the practices of a different culture, but it might also be the easiest symbolic way to label the general attitude of the three students in the school,

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who wore not only the traditional scarf but also refused to attend physical education and biology classes. In any case, in the ideologically highly polarized debate that followed, no persuasive position emerged: the arguments for tolerance, by and large, tried to minimize the case. In so doing, however, they missed the relevant points at issue. Meanwhile, those opposing toleration were liable to be suspected of prejudice and racism.

My claim is that the difficulty lies not so much in French and Western prejudices against different cultures nor, in the first place at least, in the clash between religious fundamentalism and the secular state. The major problem is rather with the usual conception of toleration, which, bluntly stated, fails to differentiate meaningfully between wearing the Islamic veil and wearing a funny hat at school.

I do not intend to provide a historical or sociological reconstruction of the case; rather, I will take the chador case as a paradigmatic example of theoretical problems in political toleration. Problems of political toleration arise when the political authority is faced with the question as to whether certain kinds of practices or behavior are entitled to noninterference or protection by the state. The chador case is definitely a problem of political toleration; in that respect, what is especially relevant about it is not why the solution was a matter of dispute but why it became a political problem. That such a development took place was not obviously a foregone conclusion: after all, France is a liberal democracy, one that overcame religious wars a long time ago and where the value of toleration is recognized and embodied in political institutions. That issues around toleration often arise in liberal societies like France does not mean that, in a world where toleration has already been "invented" and universal rights of liberty have been recognized, their very possibility is self-evident: in fact, it is quite the contrary. It is first of all necessary, then, to understand why a case like the "chador" can be a matter of concern for a liberal democracy. I claim that the "normal" views of toleration, commonly those of the liberal tradition, are inadequate to grasp what was at stake. They fail to provide a solution that properly considers the claims and the demands involved in the standoff. I then suggest an alternative interpretation, supported by a different understanding of the problems of toleration, one more sensitive to the issues posed by a pluralist society.

### *CHADORS AND FUNNY HATS*

In the light of what probably is the most widely shared conception of toleration, the behavior of the French school authorities at first appears utterly

narrow-minded, if not chauvinistic and racist. This conception views toleration as the liberal principle according to which each person should be left free to follow her ideals and style of life as long as she does not harm anyone else.<sup>1</sup> The theoretical model backing this conception can be summarized as follows:<sup>2</sup>

1. The circumstances of toleration, or, in other words, what generates problems of toleration, are important differences of individuals or groups which are disliked or disapproved by individuals or groups who have the power to interfere with those differences.<sup>3</sup>
2. The nature of toleration is consequently defined as the suspension of the power of interference toward disliked or disapproved differences.
3. The justification of toleration as a value<sup>4</sup> can be found in various arguments, among which the most prominent are the skeptical one and the moral one for respect of other people's conscience or autonomy.
4. The limits of toleration are set by Mill's harm principle, which justifies the interference whenever a third party can be harmed by the differences in question.<sup>5</sup>

The problems of this model emerge if we apply it to the chador case. Here, one is confronted with a difference in dress, required by a specific religious belief, disliked or disapproved by the French officials, who claimed they were not questioning the religious choice of the girls but their choice of dress in the name of equality in the school. Yet if, as claimed, the religious difference is accepted and respected, why should the difference in dress not be? After all, equality among students does not seem threatened by the wide and extravagant variety of adolescent clothing. The dress was certainly not harmful to any third party. Such an equation of the headscarf to a clown's hat disguises the *raison d'être* of the controversy.

In fact, applying the model sketched above, a possible justification of the prohibition can be provided, but to do that, the fact should be redescribed. Its crucial feature becomes the religious implication of wearing the veil; this marks the difference between the headscarf and any eccentric hat. Given this redescription, the argument for the prohibition would run as follows. Within the above liberal model, the value of toleration is usually grounded on the respect of others' autonomy: toleration is a dutiful attitude in relation to any autonomous choice, no matter how disliked. By the same token, then, nonautonomous choices, supposing such a distinction can be easily traced, are not automatically entitled to toleration. In the chador case, lack of autonomy in the behavior of the three girls can actually be invoked, claiming that, at their age, their religious choice cannot count as autonomous, being rather the outcome of family pressure. Were this the case, the state would

find a ground for paternalistic intervention to protect the weak party, the underage individual, from her family's imposition.<sup>6</sup> But this line of reasoning is questionable, anyhow: by definition, people under age are subject to family choice in matters of socialization, of culture, and of education. The liberal democratic state, as a rule, interferes only when there is evidence of harm done to the person or to society in general. It is far from evident that chador-wearing would be harmful, whereas, say, Catholic symbols (e.g., necklace with the cross) are not so. Such an argument would open the way to a wider range of state interference than we would be prepared to accept.

This liberal model also fails to understand what is at stake, primarily because it refers to a conception of toleration as a *social* virtue, which might have political implications but whose focus remains basically on social interaction. If the political relevance of the chador case is to be grasped, a conception of toleration as a *political* virtue is required instead—one, that is, envisaging it as a virtue directly embodied in political arrangements and institutional design, prescribing legitimate public actions and prohibitions of state interference in certain social areas.

### *THE LIBERAL MODEL OF POLITICAL TOLERATION*

In the liberal tradition, the view of toleration as a virtue of the political order strictly depends on the private/public distinction. The liberal model of political toleration can be reconstructed in the following terms. What matters as circumstance of toleration is not moral disapproval of a specific different trait in individuals or in groups; rather, it is the very fact of pluralism, namely, that societies are composed by individuals and groups exhibiting socially relevant and virtually conflicting differences of various kinds. The salient circumstance generating problems of political toleration is the potential or actual conflict among differences rather than their moral disapproval. The latter may or may not be the reason for the conflict. Political toleration is then the virtue of the political order that allows for the peaceful coexistence of differences that do not spontaneously combine in harmony.<sup>7</sup>

Such a virtue has been built in liberal polities, by generalizing the model that provided the solution for the religious wars at the beginning of modern Europe. Briefly, it consists in the principle of state neutrality with reference to certain social spheres and practices, which, typically, include religion, lifestyles, conceptions of the good, and cultural preferences.<sup>8</sup> In the history of toleration doctrines, the principle of state neutrality is articulated and justified in many different ways (in France and in continental Europe, for

example, in the ideal of the secular state), but despite that variety, the underlying structure of the argument remains more or less the same.

On the one hand, there is the primitive fact of differences, understood as reducible to individuals; on the other, there is the moral principle of individual sovereignty over one's preferences and choices—a principle that can be presented in a negative form as the prohibition from others' interferences or in the positive sense of personal autonomy. Then, given the consensual theory of political obligation and the difficulty of a general agreement on many issues and questions, the liberal solution limits the political to a defined sphere,<sup>9</sup> which is the subject of legitimate political decision and intervention. It separates the political from other social spheres, defined as private, that is recognized as politically neutral and therefore pertaining exclusively to individual choices, always with the proviso of reciprocal respect of boundaries. These private social spheres constitute the proper subject of political toleration. In sum, the individualistic presupposition of the liberal model construes what is to be tolerated as rigidly private vis-à-vis a public sphere, where on the contrary the same rules apply to all.<sup>10</sup> Therefore, toleration pertains to questions that are defined as without relevant public consequences, which is why the political can afford to be neutral about them.<sup>11</sup>

This neutrality principle is now under heavy attack from many directions. The first line questions whether a plausible and coherent interpretation of the principle can be spelled out. A second raises the matter of adequate justification, and a third, whether neutrality is possible and desirable.<sup>12</sup> The last critique is at the core of the communitarian objection, according to which liberal neutrality, in fact, is not neutral among all conceptions of the good because it is tailored to include only the ones already fitting into the liberal polity while filtering out those produced by alien cultures. The supposed universality of liberal theory thus turns out to be only a disguised form of particularism.<sup>13</sup>

Although powerful, none of these objections are, in my view, conclusive. Liberal neutrality is not indeed a universal, transcendent, archimedean principle for the grounding of public ethics. Rather, it is the result of a historical production taking place in a given social, political, and conceptual context as a way of dealing with the conflicts caused by irreducible social differences within that context. Moreover, neutrality is a relational concept and, by its very logic, cannot ever be absolute but must be always contextually defined. Which differences are socially relevant, which are irreducible, and what is at stake are matters that can be settled only historically and by means of pragmatic interpretation.

A more significant problem, also much underlined but not so deeply analyzed, lies in the fundamental insensitivity of state neutrality to differences. The goal of the state is indeed to free people from their differences in the public

domain and to equalize all members in their political capacity, *independently* from the particular human beings they are. That implies denying public relevance to their special identity, which, as mentioned above, is defined as private and in these terms is the legitimate subject of political toleration.

This political goal is not a form of moral baseness and narrow-mindedness; it has been fundamentally important in modern history, supporting the emancipation process from hierarchical and despotic societies to liberal democracy, and it displays a theoretical and ethical force in its linear universal language that easily allows for claims of inclusion and extension of rights for everybody.<sup>14</sup> However, it also fails to recognize the nature of the claim put forward by the three Muslim students, a claim that requires public recognition of a collective identity in the public space (and not the Islamization of political life). In other words, I contend that the lack of sensitivity toward differences in the liberal theory does not derive from bad faith but, rather, from the presuppositions that require that the sphere of toleration be constructed as indifferent toward the political order. The latter domain, by contrast, is the proper subject not of toleration but of political choice and actions on the basis of the democratic procedures, universally binding and legally enforced in a political system.

In the contemporary debate on these issues, the individualistic framework of the liberal model has also affected the notion of pluralism entertained by contemporary liberal theorists. Pluralism is basically conceived of as pluralism of the conceptions of the good.<sup>15</sup> In this way, all relevant differences, that is, all differences that create problems of toleration, can be conceptualized and reduced to individual claims and demands. Two consequences follow: First, relevant differences are basically treated as if they were matters of choice, which implies that ascriptive differences as such are not recognized as germane to the problem.<sup>16</sup> Second, public actions and omissions prescribed by the neutrality principle concern rights and liberties of individuals. The problems arising from social differences, including the ethnic, linguistic, and sexual, are thus ignored.

Obviously, ethnic identity includes a shared culture and the latter implies a conception of the good. But the conception of the good is not the original difference, as if it were a political opinion that a person comes to hold after a certain amount of reflection, of weighing contrasting interests and values, and so on. What is at stake when problems of toleration arise is not freedom of conscience, as a formulation in terms of pluralistic conceptions of the good would have us believe. What is demanded is not simply to leave people free to believe and express unorthodox views and to behave eccentrically. Indeed, the eccentric, the snob, and even the libertine have never created genuine problems of political toleration.<sup>17</sup> What *is* at stake is the contrasted recognition of collective rights for the different groups.

*THE SECULAR STATE AND THE FUNDAMENTALIST THREAT*

Let us now turn to the interpretation of our case through the grid of the liberal model of political toleration. The behavior of the three girls expressed a conception of the good different from and potentially conflicting with that of the majority of their classmates. This is typically a problem of pluralistic democracy, requiring a political solution. At first glance, it would seem that the principle of liberal neutrality simply requires toleration as a matter of course, for it prescribes noninterference of the state with individual choices regarding the conception of the good, and wearing the headscarf clearly belongs to such a sphere.

As a matter of fact, even adopting such interpretation, a justification for its prohibition can be found within the classical liberal doctrine of toleration provided by John Milton and John Locke. The argument holds that toleration should not be extended to the intolerant as that would undermine the very possibility of a tolerant society. In Milton and Locke, this limitation was explicitly meant for Catholics, popism being represented as the most vivid specimen of intolerance. Yet to apply the same argument to the Muslims of present time one would have to prove, first, that their conception of the good is actually intrinsically intolerant and that all members of the group homogeneously endorse that spirit of intolerance and, second, that the group that endorses that conception possesses indeed the power to undermine the tolerant society. It is far from clear that the two conditions actually would obtain.

Whether or not this argument does apply, however, its premises do not hold. To state that the neutrality principle should imply toleration of *any* conception of the good simply overlooks the public/private dimension that regulates the very working of the neutrality principle. State neutrality implies that whereas political authority and officials should practice toleration with reference to the many different conceptions of the good within the "private" realm of civil society, they should in the public sphere be neutral, blind, and indifferent to differences in order to treat everyone equally. In the public sphere, indeed, everyone participates in his or her capacity of a member of the polity, and as such, he or she is just a citizen like everybody else. The equality of citizens qua citizens constitutes the basis for public equal treatments and the liberal guarantee against discrimination. Therefore, whereas citizens are free to pursue their own ideals and to practice their culture and religion within civil society, in the public sphere they should disregard their special and particular memberships and be "just citizens" on an equal basis. The boundaries of the public sphere are those of political obligation and are meant to preserve the loyalty of the citizen against the pressure of any other particular loyalty.<sup>18</sup>



In continental Europe, the private/public distinction is particularly deep, being embedded in a legal tradition built around this opposition and reaching back to Roman law. In France, moreover, the neutrality of the public sphere is historically articulated in the ideal of the secular state, where the *citoyen's* choices and actions should be instances of the general will, as opposed to the particularistic, interest-oriented decisions of the *bourgeois*. The historical tradition behind this conception is clear: the Enlightenment, Rousseau, the Jacobin state with the republican tradition revisited. No matter how utopian or ideological or simply unrealistic such conception proved to be in its applications, it is relevant for making sense of the framework in which the case was understood and dealt with by French public authorities.

The public sphere here includes the public education system: the school is an instrument of the secular state for the public education of the future citizens, where all religious symbols are banned and public spirit should be taught. In this picture, the initial prohibition to wear the headscarf is the reaffirmation of the boundaries of the secularized public sphere against any religious interference.<sup>19</sup>

In that sense, the original position of the French school authorities was totally consistent with the principle of toleration as embodied in the liberal state. They did not want the three students to give up their religion: they only wanted religion to be kept from trespassing on the public domain.

But the very notion of what counts as trespassing is a contestable matter. After all, the three girls were not requesting to study Islamic religion at the public school, where no other student is provided with religious education. They were instead wearing a symbol of their faith. Nor was this symbol a matter of "indifference," according to a classical distinction,<sup>20</sup> but one that pertains to the integrity and the identity of the female believer. On this basis, if the general universally binding rule is that every religious symbol must be banned in the public school, a case for conscientious objection to the general rule can be made, given the special meaning of the symbol for the integrity of the believer.<sup>21</sup>

As a historical entity, neither the French state nor any other state is absolutely neutral, nor can it be. For instance, it is not neutral about nationality: the public sphere in France is French, and the members of the public are French citizens, itself a historical concept. As a national state and not an immigrant society until very recently, France has never viewed nationality as a controversial issue, one that could generate conflicts among different ethnical groups as religion did.<sup>22</sup> Therefore, although the state became neutral with reference to religion, and, extending the same principle, to opinions and beliefs in general, it was not so with reference to nationality. The public school is then meant to produce French citizens and not the citizens of a multiethnic polity.

Whether this can be justified is a matter that I undertake shortly; for now, however, let us consider whether the secular state acted discriminatively, objecting to the chador and, for example, de facto accepting the necklace with the cross. The argument on this point is quite complex. In general, I believe that wearing the cross is different as a religious symbol from wearing the chador, and such a difference can account for the different treatment. On the one hand, wearing a cross is not very visible, and its quasi-invisibility discounts it as a public statement of religious faith, trespassing on the boundary of the public sphere. In this respect, had the girls simply wore a chain with a crescent, would that still have created problems? I do not think likely that it would.

On the other hand, the girls were not wearing a chador in the proper sense but simply a headscarf, and, if the difference in visibility between the cross and the chador is wide indeed, such a difference is much reduced in the case of the headscarf. Yet two issues are relevant to the visibility question. First, whereas from an abstract objective viewpoint, a cross and a headscarf might have the same visibility, in a context like France, where the secularized political culture has adjusted to the original Catholic tradition, a necklace with a cross has lost its visibility, much in the same way as a man with gray pants is not visible. A woman with her head covered by a scarf in a room is, on the other hand as visible as the first who wore a miniskirt in the early 1960s. Thus it is the fact that the French are accustomed to the cross but not to Islamic headscarves that makes the first quasi-invisible and the second highlighted to them. Second, and more important, even if a headscarf is less strong and less loud than a chador as a religious symbol, the students wore them in the context of refusing to attend physical educational and biology, this in a school system where there are no optional classes and all students take the same courses. All in all, their behavior was not only much more noticeable than coming to school with a chain with the crescent but explicitly put forward a demand to the school authorities, who had to give or to refuse licenses for not attending certain classes.

Thus what the French officials argued was that the three students were making a *public* statement of what is a legitimate position only of the *private* conscience, and thus were trespassing illegitimately in the public domain where religious choice, beliefs, and affiliations do not belong and should not count. The authorities could not simply be blind toward the girls' behavior, equating it to coming to school with a funny hat, because its religious meaning was too loud and the distance between the idealized secular student and the chador<sup>23</sup>-wearing one appears irreducible.

I should add that tolerating the chador at school simply by means of interpreting it as a funny hat is even less respectful toward those wearing it than is the recognition of the religious significance of the act and its

prohibition on the basis of the state/church separation. The first case would be an example of Marcuse's well-known concept of repressive tolerance;<sup>24</sup> in the second case, at least, a justification is provided with the recourse to public reasons, no matter how persuasive.

In conclusion, as far as the initial position of the school authorities was involved, whether or not racially and culturally biased, I think their stance to be consistent with the liberal model of political toleration. It was not an instance of intolerance but, rather, of the limits that the liberal model sets for political toleration. In such an understanding, a case for "conscientious objection" could have been an honorable solution. That would have confirmed tolerance without giving up the principle of the secular state (much as in Italy the law exempts doctors and nurses conscientiously opposed to abortion from performing it in public hospitals). The fact that this solution was not even broached is probably a symptom of prejudice and bias.

At the end, the final decision, which was indeed a compromise, given that differences proved irreducible and suppression was neither conceptually nor ethically available, declared that religious symbols should be tolerated in public schools but only in a limited way. The Conseil d'État took the position that religious symbols, including the chador, are compatible with the secular state, as long as they are not used as means of pressure or proselytizing or do not hinder security and teaching,<sup>25</sup> that is to say, as long as their dimension is private and they can be disregarded as *statements* while being interpreted as *tastes*. In this way, their disruptive and threatening quality is contained and made acceptable.<sup>26</sup> What is lost by this compromise is exactly the recognition of the collective identity of the girls for which the chador claims public visibility.

### THE QUEST FOR COLLECTIVE IDENTITIES

The crucial problem of the liberal model of political toleration lies in the reductionist attitude toward the differences and the claims at stake when toleration questions arise. Differences are conceived by the liberals as reducible to individual claims. Even if differences might be collectively shared by a group, what is considered relevant is that they pertain to individuals. Hence toleration problems are construed in term of the abstract recognition of equal individual dignity, implying that the distinctive differences among individuals are defined as publicly irrelevant. Thus neutralized in the private dimension, differences properly qualify then as subjects for toleration. This implies that a crucial demand implicit in toleration problems is not perceived and ignored, namely, the quest for public recognition of group identity.

When toleration questions arise, the political order is often faced with the problem of minority *groups* who are perceived as posing a threat to the social and political stability of that system. It is the real or imaginary threat posed by the group that renders the specific differences of which it is the advocate—linguistic, religious, ethnic—disliked and even disapproved by the other citizens' majority. This is the crucial circumstance that creates problems of toleration to the political order of pluralist democracy just as it did for the absolute state of the sixteenth and seventeenth centuries.<sup>27</sup> Individuals who are different might be a curiosity or be marginalized in the social context, but they do not pose questions of political toleration.

Actually, in the case of religious toleration, had the issue simply been the existence of unorthodox religious views held by individuals, characterizing their consciences, the political order would not have taken such interest in the matter—a costly and devastating interest. The point to be stressed is that, even if the circumstances of political toleration have always had to do with different groups demanding public recognition, the original theory of toleration was framed in individualistic terms, as the protection of the individual's free conscience. This theory worked reasonably well in the case of religious toleration because there the distinction between the claim to religious collective identity and the claim to individual free choice could easily be blurred. That is no longer possible when sex, race, and ethnicity are at issue, cases in which membership is clearly a matter of ascription instead of choice. Why originally the argument for toleration was framed in individualistic terms is an interesting question having to do with the need to reassure the political authority that religious dissenters were not a threat for the political order.<sup>28</sup>

Moreover, the minority groups of contemporary democracies resist the reduction of their claims to the individualistic quests for equal rights, equal opportunities, and equal treatments not because they want discrimination but because gaining formal equal citizenship is not enough,<sup>29</sup> as it does not capture the demand for public recognition of collective identities. Roughly, this is the ground for what is labeled as "the equality *versus* difference controversy."<sup>30</sup> In fact, the label misrepresents the controversy because the *difference* party advocates a different, comprehensive view of equality and rejects only the ideal of equality as *sameness* or *likeness*.<sup>31</sup>

Let us now try to interpret the behavior of the three Muslim students along the line of the demand for collective identity. The liberal interpretations previously examined viewed chador wearing either as an illegitimate invasion of religion in the public sphere of the secularized state or as a personal expression of the religious liberty granted by the liberal state. In the latter interpretation, the chador qualifies for toleration within the limits defining the right of religious freedom *versus* proselytism and religious interference

in the public order and teaching. Although the solutions run in the opposite directions, the two interpretations share the view that the chador is a strong, loud, perhaps provocative expression of individual religious choice. Furthermore, it is that of a religion that, rightly or wrongly, is perceived as undermining the ideal of tolerance and of secularization. (After all, the *Rushdie affaire* has left a vivid impression in the Western mind.) So what was feared was the penetration of a virtually fundamentalist religion in the neutral secularized public sphere. But this is silly: Islamization of the public school and of the state was not an aim of the three students. The misreading of the girls' claim derives from the reduction of their difference to a difference in the conception of the good, which, whether or not shared in groups, leads to disregarding the intrinsic collective dimension of the claim; the answer can therefore be framed in terms of individual liberties and rights.

In fact, the behavior of the three girls had a wider meaning than the expression of their religious belief: it was precisely the public, provocative assertion of their membership in the Muslim community and culture. It implied a double rebellion: one against the forced assimilation that the secular French state requires as a condition for citizenship rights<sup>32</sup> and the other against the prejudices and stigma that their community as a disadvantaged minority group in a foreign country has had to suffer because of its cultural, ethnic, and religious difference. Religious symbols were a representation of a more general and comprehensive collective identity. In other words, wearing the chador was a way of asserting "I want to be what I am and I am proud of it." That is hardly a novel statement; indeed, it is exactly what all contemporary minority or oppressed groups in democratic countries have been proclaiming all along, starting with the blacks in the United States and then with the feminists, gays, lesbians, and so forth. The nature of such a claim is the public recognition of collective identities, which have been denied in their public relevance, thus reproducing the social prejudice and bias.

The model of liberal toleration is too narrow a model to be able to capture the nature of the above claim and, consequently, to provide an adequate answer. One can easily see that to be left free to pursue one's conception of the good does not meet the quests for identity, respect, dignity, recognition, and justice, implicitly posed by minority groups as groups. For a persecuted group, the security of survival against physical suppression is certainly an important achievement, but it is far from being a satisfactory condition of existence, let alone of flourishing. The legal recognition of equal rights and citizenship, which is the other side of toleration, is not enough to meet the claims of a disadvantaged minority:<sup>33</sup> had all groups coexisting in a society been part of the constitutional definitions of basic principles and rules on an equal basis, then the recognition of equal rights would probably have been

sufficient. But, in fact, toleration questions arise in ongoing social and political contexts in relation with *different* groups, which are not on an equal footing with other citizens. It is difficult to bracket one's collective identity in the public sphere when the usual social intercourse, outside one's community, leaves little room for individual and personal identification.

### NORMATIVE QUESTIONS

Thus far, I have attempted to interpret the "chador case" as a paradigmatic example of questions of toleration in terms different from the liberal model. The result is a reconsideration of the nature of the claims involved as demands for public recognition of collective identity. This might be an important step, but its normative implications are not yet clear. First of all, is such a claim legitimate, and should it be considered accordingly by liberal politics? Second, what does the public recognition of collective identities imply in terms of public action and policies?

The liberal purist might contend that the liberal democratic state has already answered this claim by means of the right to free association, granted and protected by the law. This right plus the principle of equal treatment under the law and some distributive mechanisms for balancing off the disadvantaged social positions is all the liberal democratic state can legitimately be asked to do in order to accord each member of the polity, whether belonging to majority or to minority groups, equal dignity and equal opportunity for his or her identity to flourish. The state can stretch its authoritative boundaries and intervene to protect its citizens against forms of social discrimination or harassment in the social realm, if such behavior can be proved, but it cannot command respect, recognition, approval, or esteem for anyone: although it would be desirable that such reciprocal feelings characterized social intercourse, the liberal polity exhausts its task by avoiding conflicts and granting equal rights and distributive justice.

The liberal purist's answer will not satisfy the group claims, which, however, are entitled to be considered carefully, as I will argue. The quest for public recognition of collective identities, asserting social differences, in fact, underlies a fundamental demand for equality. The kind of equality at stake here is equality of respect.<sup>34</sup> If a social difference is denied public visibility and legitimacy in the polity, the group associated with it inevitably bears social stigmata; hence its members lack the possibility of "appearing in public without shame"—a crucial condition, much emphasized by Adam Smith,<sup>35</sup> for individual well-being and self-esteem. The incapability of ap-

pearing in public without shame, in this case, is not an individual problem because it is linked with the public stigmatization of the group of which the individual is a member. If certain social differences are actually banned (or have been until recently) from the public sphere, if the veiled student is expelled from school, if women and gays cannot enter the army, and so on, shame is the consequence of the public attitude toward those differences and the correspondent collective identities. In a word, the members of those groups lack the conditions for self-respect and self-esteem because, due to their social difference, they do not enjoy public respect. Now equality of respect is one of the basic values underlying both liberalism and democracy: both the liberal rejection of privileges and of social distinctions in the public sphere and the democratic affirmation of the equal weight and worth of each individual vote are indeed acknowledgments of the principle of equal respect due to anyone. If the principle of equality of respect is then crucial in liberal democracy, and if inequality of respect is what is at stake in claims to public recognition of collective identity, then these claims are entitled to full attention by liberal politics.

The question is now what follows in terms of public action and policies from the acknowledgment of these claims' legitimacy? Should, for example, all demands and requests concerning social differences be accepted and translated into practice with no further discussion? If not, on what ground should the different demands be considered? To such questions, the answer can be only tentative because the state's moves aimed at granting respect to the discriminated group cannot be decided once and for all by a theory but only by assessing case by case. Among the variables to be taken into account, the following are crucial: the history of the group (which should be an oppressed or excluded group) vis-à-vis other social groups and their expectations; the cultural tradition, which constrains the viable options and their public justifiability; the historical moment, which makes some issues more relevant than others; and finally, economic considerations, balancing off costs with expected results. Any sensible and satisfactory solution of toleration questions depends on the articulation of the general principle of equality of respect in connection with a contextual analysis along these lines. Once the principle of public recognition of collective identities has been established, the liberal democratic state could fairly negotiate on the specific requests put forward by minority groups with the aim of reciprocal adaptation.

In the case of the chador issue, a sensible and less ad hoc solution probably would have been that of a more general agreement between the French state and the Islamic communities. Such an agreement is under scrutiny these days in Italy, and the lines of the proposal seems promising for granting to this minority consideration and respect equal to other religious organizations and

yet accommodated to the country's cultural traditions. If this agreement is signed, Muslim girls will be able to choose between going to a public school with their chador but also attending all the classes envisaged by the curriculum or going to a licensed, private Islamic school, where they will be taught both Islamic culture and the standard curriculum of the Italian public school. The point about this second alternative is that their diplomas will be legally recognized, implying that they will be admitted to college.

Obviously, such a solution makes sense only in a context characterized as follows: the minority group is an immigrant group, relatively recently moved to the country; the country is a relatively homogeneous society, in cultural terms; and the public education system is centralized, with unified curricula, public exams, and legally valid diplomas—which is the case of both France and Italy. For example, appearing at school with the chador probably would not have made a political case in the United States, which is not only a more multiethnic country than France but where public schools are not organized on a centralized basis, with unified curricula, and have a different symbolic meaning. At the same time, in the United States maternity leaves are still a controversial issue, whereas in Europe they are taken for granted as the recognition of gender differences in the workplace.

Two liberal objections can be raised against this position: the first concerning the problem of differential treatments and the second concerning the fact that the opening of the public neutral sphere to group identities would expose the liberal order to the invasions of particular memberships and loyalties and of illiberal attacks. Let us consider them in turn.

Differential treatment is a matter of concern for the liberal who is afraid that it might open the way to privileges and injustice. In general terms, this concern is misplaced: justice, as already recognized by Aristotle, does not coincide with treating people equally but with treating equal cases equally and different cases differently. Pragmatically, however, which differences qualify for a just differential treatment is an open issue. The decision should be oriented by a more articulated conception of discrimination. If discrimination is conceived as that differential treatment whose effect is to impair the enjoyment of rights to individuals, all those treatments aiming at equal enjoyment of rights are just and nondiscriminatory.<sup>36</sup> The stress should therefore be not on *equal treatment* but on the *aims* and *effects* of public actions, which should be directed to treating people *as equals*, as the liberal Ronald Dworkin nicely put it.<sup>37</sup>

For example, the general rule that every religious symbol should be banned from public schools was abstractly aimed at treating all students equally and as equals. But when Muslim girls became students, the equal treatment they received *as students* was unequal to them *as Islamic* students.



In fact, only the Muslim girls were ordered to give up the mark of their religious identity in order to be students like the others, whereas Christian students, with no gap, could consistently be obedient Christians and respectful students. Equal treatment for the Muslim girls has thus meant discrimination of their religious and cultural identity.

The second liberal objection would run as follows. Once the public sphere is open to the chador (or to other symbols of collective identities), it will be gradually invaded by particular memberships; the effect will be that group loyalties will take over in public decisions and the conflicts among the different groups and cultures will become political conflict. Moreover, the liberal order will be exposed to illiberal attacks by fundamentalist groups. Against such possibilities, the principle of a neutral public sphere, where everyone belongs just as a citizen, should not be touched, not even symbolically. Two arguments are, in fact, included in this objection: one relative to the risk that particular memberships and loyalties would threaten the universality and independence of the citizen's role and the other concerning the fundamentalist challenge to the liberal order.

The answer to the first argument points out that the liberal public sphere has always been open to some particular collective identity, namely, to the white Christian male: to him, the public/private divide does not require him to change his dress, his appearance, his behavior, or his habits about religion and everyday life. What it does ask is only that his obligations and their priority should differ in the two domains. More precisely, the public domain does not require the dismissal of one's personal beliefs and convictions or attachments but the selection of arguments and reasons that are relevant and adequate and open to public discussion and criticisms.<sup>38</sup> Whether these requirements can be and are met in the liberal practice is another matter, but human imperfection in this regard, widely recognized and discussed in political discourse, has never been perceived as a threat to the very principle of the public duty of citizenship.

If this picture is correct, then the public sphere can easily and should be reinterpreted in such a way that no one should pay for access to citizenship by the denial of his or her identity. In the case of the white Christian male, apparently this identity has not dramatically impaired the dutiful performances of the citizen's role; moreover, his public obligations have been recognized as compatible with personal convictions and beliefs that can be defended by public reasons, so that no division between the private and the public self is produced. Hence the exclusion of different identities from the public sphere is unjustified or could be justified only on the ground of special reasons. If the obligations of citizenship come down to the use of relevant and appropriate arguments, then only the public discussion and the free press

can check the proper use of the public sphere and not its fictional representation as a homogeneous physical space.

This argument, it should be noted, runs opposite to the multicultural attack against liberal neutrality. According to the latter, because liberal neutrality is indeed tailored on a particular identity that disguises particularism and partiality under the pretense of universality and impartiality, we must do away with the idea of the public, of impartiality, of general procedures. Despite its radical character, this position is not prepared to give up the liberal principles of individual liberties, free press, equal worth and respect, and the like, which are intrinsically linked with some form of public/private divide.

On the contrary, I claim that because the public space has not been perceived as under threat by the presence of a specific social identity—the white Christian male—it need not be by the admission of many other different identities. If the imperfections and the transgressions of the white Christian man in the use of public reasons has not destroyed liberal democracy, the latter need not be destroyed by the many defects of the public arguments of women, Islamics, and blacks.<sup>39</sup>

Yet the liberal can still invoke a special justification for excluding any marks of Islamic identity because of the supposed fundamentalist invasion of liberal politics. In recent years, the fundamentalist challenge has been taken seriously by liberal theory, which has asked whether the political legitimacy of the liberal order could be recognized also by someone holding a nonliberal worldview.<sup>40</sup> The answer is highly controversial, so that fundamentalism has become the theoretical and pragmatism limit for contemporary neoliberalism. However, the constitutional question of the justifiability and acceptability of liberal institutions for the fundamentalist, its general theoretical relevance notwithstanding, is not crucial for deciding cases like the chador, which Western culture associates with fundamentalist symbolism. Toleration for the chador does not follow from showing that even the fundamentalist has good reasons to endorse liberal institutions but from a careful consideration of the nature of toleration questions. The claim of public recognition of differences implied in questions of toleration is indeed one of inclusion, of a qualified participation in the polity: it is not a demand of political or cultural secession. In such circumstances, the fundamentalist issue should be considered as taking into account that at stake there is a quest for inclusion of a different identity in the public domain of liberal politics. Given the nature of the claim, the political authority can easily ask the members of the group in question to acceptance of the basic political outlook of liberal democracy as the condition of considering the claim legitimate. The possibility of the free rider fundamentalist, who makes an opportunistic use of liberal institutions to destroy them, seems more a fantasy of the

Western mind than a real threat. On the contrary, the liberal democratic state has a clear obligation to grant all people living under its rule, given their different identities, equal respect and dignity.

### NOTES

1. This is a popularized version of John Stuart Mill's position in *On Liberty*, in *Collected Works*, vol. 18, *Essays on Politics and Society*, edited by J. M. Robson (Toronto: University of Toronto Press, 1977), 213-310.

2. The theoretical model specifying circumstances, nature, justification, and limits of toleration can be found throughout the four volumes resulting from the Morrell Toleration Project of York University: John Horton and Susan Mendus, eds., *Aspects of Toleration* (London and New York: Methuen, 1985); David Edwards and Susan Mendus, eds., *On Toleration* (Oxford: Clarendon, 1987); Susan Mendus, ed., *Justifying Toleration* (Cambridge: Cambridge University Press, 1988); Susan Mendus, *Toleration and the Limits of Liberalism* (London: Macmillan, 1989).

3. The question of the circumstances of toleration was originally addressed by Preston King, *Toleration* (London: Allen & Unwin, 1976), and then reexamined by Albert Weale, "Toleration, Individual Differences and Respect for People," and by Peter P. Nicholson, "Toleration as a Moral Ideal," in Horton and Mendus, eds., *Aspects of Toleration*, at 16-35 and 158-69, respectively.

4. The justification of the value of toleration as a matter of fact turns out to be rather problematic: indeed, it is not evident why permitting something that is subject to moral disapproval, for which one believes to have good reasons, open to public discussion (and not mere idiosyncratic preferences) should count as a virtue, beyond mere prudential motives. For an analysis of the paradoxical nature of toleration, conceived in this way, see Brenda Cohen, "An Ethical Paradox," *Mind* 76 (1967): 250-59; and more recently, D. D. Raphael, "The Intolerable," in Mendus, ed., *Justifying Toleration*, 137-53.

5. The harm principle is indeed too vague and elusive to settle the question of what should not be tolerated. For example, what counts as harm to others: only actions or also speech? What are the potential sources of harm: only other-regarding or also self-regarding behavior? Is legitimate only the claim of being harmed in one's internal preferences, or also in one's external preferences? Finally, are these distinctions acceptable? For a discussion on this point, see the following in Horton and Mendus, eds., *Aspects of Toleration*; Susan Mendus, "Harm, Offence, Censorship," 99-112; John Horton, "Toleration, Morality and Harm," 136-57; T. Baldwin, "Toleration and the Right to Freedom," 36-52. See also Joseph Raz, "Autonomy, Toleration and the Harm Principle," in Mendus, ed., *Justifying Toleration*, 155-75.

6. It is well known that paternalism is a *vexata quaestio* for the liberals; the possibility of justifying paternalistic state intervention has been recently defended by Danny Scoccia, "Paternalism and Respect for Autonomy," *Ethics* 100 (1990): 3318-334.

7. John Rawls, "Justice as Fairness: Political Not Metaphysical," in *Philosophy and Public Affairs* 14 (1985): 219-51.

8. In the current liberal thought, the best examples of this position are John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies* 7 (1987): 1-25, and "The Priority of the Right and the Idea of the Good," *Philosophy and Public Affairs* 17 (1988): 251-76; Thomas Nagel, "Moral Conflict and Political Legitimacy," *Philosophy and Public Affairs* 16 (1987): 215-40, and

*Equality and Impartiality* (Oxford: Oxford University Press, 1991); Roland Dworkin, "Liberalism," in Stuart Hampshire, ed., *Public and Private Morality* (Cambridge: Cambridge University Press, 1978), and *Philosophical Foundations for Liberal Tolerance* (mimeo, Napoli 1988).

9. The argument for limiting the political domain can be found in John Rawls, "The Domain of the Political and the Overlapping Consensus," in *New York Law Review* 64 (1989): 233-55.

10. This argument is classically worked out in John Locke, *A Letter Concerning Toleration*, edited by Mario Montuori (The Hague: Nijhoff, 1963).

11. This point is clearly stated in all classical theory of toleration: John Milton, *Aeropagitica*, edited by J. W. Hales (Oxford, 1917); John Locke, *A Letter*; and Voltaire, *Traité sur la tolérance: A l'occasion de la mort de Jean Calais*, in *Mélanges* (Paris: Gallimard, 1961), 563-650. In a somewhat different style, this point is underlined by Kristie M. McClure, "Difference, Diversity and the Limits of Toleration," *Political Theory* 18 (1990): 361-91, in her analysis of Locke's political discourse, at 378.

12. On the neutrality controversy, see Gerald Dworkin, "Non Neutral Principles," *Journal of Philosophy* 71 (1974): 491-506; Bruce Ackerman, "What Is Neutral about Neutrality?" *Ethics* 93 (1983): 372-90; Patrick Neal, "A Liberal Theory of the Good?" *Canadian Journal of Philosophy* 17 (1987): 567-81; Robert Goodin and Andrew Reeve, eds., *Liberal Neutrality* (London: Routledge, 1989); Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon, 1986), and "Facing Diversity: The Case of Epistemic Abstinence," *Philosophy and Public Affairs* 19 (1990): 3-46; Peter De Marneffe, "Liberalism, Liberty and Neutrality," *Philosophy and Public Affairs* (1990): 107-77; Will Kymlicka, "Liberal Individualism and Liberal Neutrality," *Ethics* 99 (1989): 883-905; and R. B. Douglass, G. R. Mara, and H. S. Richardson, eds., *Liberalism and the Good* (London: Routledge, 1990).

13. For the communitarian critique to liberalism, see Charles Taylor, *Human Agency and Language (Philosophical Papers 1)* and *Philosophy and the Human Sciences (Philosophical Papers 2)* (Cambridge: Cambridge University Press, 1989); and Alisdair MacIntyre, *Whose Justice? Which Rationality?* (Notre Dame, IN: Notre Dame University Press, 1988). Even some liberals agree with that point: for example, see Larry Alexander and Maimon Schwarzschild, "Liberalism, Neutrality and Equality of Welfare vs. Equality of Resources," *Philosophy and Public Affairs* 16 (1987): 85-110; and Patrick Neal, "A Liberal Theory of Public Good."

14. This nonconspirative view of the liberal lack of sensitivity for differences is implicitly recognized even by Iris M. Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990) 156-57.

15. A point clearly stated by Henry S. Richardson, in "The Problem of Liberalism and the Good" in *Liberalism and the Good*, quoted, 1-28, at 8.

16. Going to the origin of the liberal theory of toleration, it is to be noted how Locke underlined the character of voluntary association of Churches: "I say it [the church] is a free and voluntary society. Nobody is born a member of any church" (*A Letter*, 23).

17. I have argued this point at some length in *La questione della tolleranza, Politeia, Working Papers* (Milano: Bibliotechne, 1990).

18. This problem is particularly present in Kent Greenawalt, *Religious Convictions and Political Choices* (Oxford: Oxford University Press, 1988).

19. Such a position is strongly endorsed by Mario G. Losano, "Contro la società multietnica," *Micromega*, Dic. 1991: 7-16, who contrasts the ideal of the secular state with the ideal of toleration, meaning that toleration is out of place in the public domain of the secular state. What is odd in his position, widely shared in Europe by leftist liberals, is that the state, especially in Italy, has never been completely secularized from the Catholic religion.

20. The doctrine on "indifferentia" was part of the original building of the toleration ideal. It has to do with the tracing of the divide between the state and the church; although it was

affirmed that political power was independent from spiritual invasion in worldly matters, toleration was originally limited to the protection of creeds and faith and not extended to religious ceremonies and rituals. Those were proclaimed to be a matter of "indifference" to faith and salvation and therefore subjected to the political authority. This position was endorsed by Locke in his first writings on toleration, and later rejected in the *Letter*. See John Locke, *Works*, vol. 6 (London, 1823; reprinted by Scientia Verlag, 1963).

It is interesting to note that a similar argument is made by the Muslims who want to accommodate Western tradition; they make a distinction in the Quran between principles concerning faith and matters of discipline indifferent to the faith; the latter can be given up with no consequence for the believer. See *The New York Times*, January 1992.

21. At this point, another question arises: is it actually true that in the French public schools all religious symbols are banned? Is it not the case that certain religious symbols enjoy privileged status? Apparently, wearing a necklace with the cross has never created a similar problem: it is not a matter of formal acceptance or prohibition, but it is a matter of course. This fact might suggest that, as the critics of liberalism have remarked, neutrality is not so neutral after all, and the secular state is not so thoroughly secularized. In that sense, although French officials formally applied the liberal model of toleration, a flavor of discrimination could nevertheless be detected in their behavior. Of course, that might have been the case; whether or not, I do not think that the subjective attitude of the officials involved is relevant here in order to understand the general debate that the "chador case" has provoked.

22. This argument was suggested to me by Michael Walzer.

23. Having clarified that headscarves and not chador were the case, I nevertheless use the term chador not only because that is the way in which the case has been discussed publicly everywhere, in France as everywhere else, but also because "chador" is a salient symbol of the kind of attitude of the Muslim girls in the public school.

24. Herbert Marcuse, "Repressive Tolerance," in Robert P. Wolf, R. Barrington Moore, and Herbert Marcuse, *A Critique of Pure Tolerance* (Boston: Beacon 1965).

25. Mario G. Losano, quoted, at 10. I have no actual information on whether the girls were granted the exemption from physical education and biology; the letter of the sentence seems to exclude this. It seems to grant tolerance even to a proper chador but to reinforce the general rules about teaching.

26. J.G.A. Pocock maintains that the history of religious freedom between the seventeenth and the eighteenth century is a two-step process: the first step consists in the division of State from Church and assertion of the political independence from spiritual invasion, and the second step consists in the redefinition of religious experience as holding opinions. In this redescription, the revolutionary spiritualism of the sect is transformed in the radical liberty of the private conscience. See "Religious Freedom and the Desacralization of Politics: From the English Civil Wars to the Virginia Statute," in *The Virginia Statute for Religious Freedom*, edited by M. D. Peterson and R. C. Vaughan (Cambridge: Cambridge University Press, 1988), 43-73, at 60-61.

27. Along these lines, Jay A. Singler reinterprets the emergence of toleration out of the religious wars. See Singler, *Minority Rights: A Comparative Analysis* (London: Greenwood, 1983). See also J. P. Day, *Liberty and Justice* (London: Croom Helm, 1987); Larry Gostin, ed., *Civil Liberties in Conflict* (London: Routledge, 1988).

28. The reason is well explained in Pocock's article, quoted above.

29. Among the many possible examples, see Iris Young, quoted.

30. The "difference versus equality" debate has been developed especially by feminist thought. See, for instance, M. Thorton, "Sex Equality Is Not Enough for Feminism," in C. Pateman and E. Gross, eds., *Feminist Challenges* (Sydney: Allen & Unwin, 1986); Joan

Scott, *Gender and the Politics of History* (New York: Columbia University Press, 1988); M. Minow, *Making All the Difference* (Ithaca, NY: Cornell University Press, 1990); and Iris Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990).

31. See Young, *Justice*, quoted; and Drucilla Cornell, "Gender, Sex and the Equivalent Rights," in Joan Scott, ed., *Feminists Theorize the Political* (London: Routledge, 1992).

32. The forms of immigrant integration vary significantly in different countries. For example, in Germany the immigrants have recognized welfare rights, but they are excluded from access to citizenship; on the contrary, the French model is characterized by a tendential inclusion of immigrants into citizenship but via a forced assimilation into French culture and nationality. See Giovanna Zincone, "Due vie alla cittadinanza: il modello societario e il modello statalista," *Rivista Italiana di Scienza Politica* 19 (1989) 223-65.

33. See Owen M. Fiss, "Groups and the Equal Protection Clause," *Philosophy and Public Affairs* 5 (1975-76): 107-77; Vernon Van Dyke, "Justice as Fairness: For Groups?" *American Political Science Review* 69 (1975): 604-14.

34. The fundamental importance of equality of respect for our valuing equality has been underlined in the well-known essay "The Idea of Equality" by Bernard Williams in *Problem of the Self* (Cambridge: Cambridge University Press, 1976), 230-49.

35. See Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations* (London: Everyman's Library, 1954 [1776]), 2: 352. This condition is discussed by Amartya Sen as part of the functioning vector that must complement resources in a definition of well-being. See Sen, "Well-Being and Freedom," *Journal of Philosophy* 82 (1985): 169-221, at 199.

36. This point is well made in Vernon Van Dyke, *Human Rights, Ethnicity and Discrimination* (London: Greenwood Press, 1985), 5-6.

37. See Ronald Dworkin, "Liberalism."

38. See Onora O'Neill, "The Public Use of Reason," *Political Theory* 14 (1986): 523-51, and Amy Gutmann and Dennis Thompson, "Moral Conflict and Political Consensus," *Ethics* 101 (1990): 64-88, who propose something similar to my conception of public reasons. The point of making public choice on the basis of personal convictions as long as those convictions are arguable with public reasons is widely discussed by Kent Greenawalt, *Religious Convictions and Political Choice*, quoted. See the criticisms to Greenawalt's position by Michael Perry, "Neutral Politics?" *Review of Politics* 51 (1989): 479-509.

39. See Young, *Justice*, 186-87.

40. The problem of the political legitimacy of liberal institutions is the crucial issue of the recent liberal literature. See, for example, John Rawls, "The Idea of an Overlapping Consensus," quoted; Thomas Nagel, *Equality and Impartiality* (Oxford: Oxford University Press, 1991); Charles Larmore, *The Patterns of Moral Complexity*; R. B. Douglass, G. R. Mara, and H. S. Richardson, eds., *Liberalism and the Good*.

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