

Note to the participants in the session 'Politiques de l'immigration: entre justice et démocratie' of the XIème Congrès de l'Association Française de Science politique:

The claims presented in this paper address the issue of the relations between the majority and minorities in general. As remarked in several parts of the paper, a particularly relevant example of minority is that of migrants, to whose case the claims of this paper are also applicable.

## **A Matter of Respect.**

### **On the relation between the majority and minorities in a democracy\***

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*ABSTRACT: The relations between the majority and minorities in a democracy have been standardly viewed as the main subject matter of toleration: the majority should refrain from using its dominant position to interfere with some minorities' practices or beliefs despite its dislike or disapproval of such practices or beliefs. Can the concept of toleration provide us with the necessary resources to understand and respond to the problems arising out of majority/minorities relations in a democracy? We reply in the negative building on the idea that resorting to toleration amounts to sanctioning the asymmetric relation between the majority and minorities and the negative judgement of the former towards some belief or practice of the latter. We suggest resorting instead to the idea of equal opacity respect for persons: all persons should be treated equally as moral agents, in accordance with their equally possessing the capacity for self-legislation, and as if they were opaque to our judgement for all those properties of theirs which exceed moral agency. Looking at the majority/minorities relations through such a lens enables us to understand (and appropriately respond to) what is problematic in such relations: the majority often fails to treat minorities as moral agents by failing to take their voices into account on an equal footing, by seeing them merely as recipients of certain provisions affecting them rather than their authors, and by considering them as legitimately exposed to the majority's (negative) judgment. The purchase of our argument is illustrated by reference to two minority groups whose treatment is paradigmatic of the problematic nature of majority/minorities relations across Europe: Muslims and Roma.*

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## 1. Introduction

The relations between the majority and minorities in a democracy have been standardly viewed as the main subject matter of toleration. Appeal has been often made to the majority to refrain from using its dominant position to interfere with some minorities' practices or beliefs despite the majority's dislike or disapproval of such practices or beliefs. Such a standard appeal to toleration has animated much of the liberal tradition and has been vigorously revived vis-à-vis the increasing cultural and ethical diversity connoting contemporary democracies. Relevant examples may be found in such well-known controversies as those revolving around Muslim minorities' requests for accommodation (as, for instance, those concerning the wearing of the *hijab* or the building of mosques) and those related to the integration of Roma minorities in Europe (as, for instance, those concerning the provisions related to their alleged nomadic lifestyle).

Can the concept of toleration provide us with the necessary resources to understand and respond to the problems arising out of the majority/minorities relations in a democracy? We suggest a qualified negative answer to this question. Toleration can help to understand the problematic nature of the relations between the majority and minorities in a democracy only *a negativo*, by sanctioning the asymmetric relation between the two and the negative judgement of the former towards some belief or practice of the latter. More precisely, we argue that by presupposing the asymmetric position of the parties (A can tolerate B if and only if A has – or believes to have – the power to interfere with B)<sup>1</sup>, toleration-inspired readings of the relations between the majority and minorities in a democracy tend to crystallize the unequal power relations between them by considering the latter as mere moral patients, at the receiving end of policies. Moreover, by presupposing the negative judgement of one party towards some practice or belief of the other (A can tolerate B if and only if A dislikes or disapproves of some belief or practice of B)<sup>2</sup>, toleration-based normative responses to the problems emerging out of the relations between the majority and minorities seem not to have any tools actively to contrast the negative prejudices that the former tends to have toward the latter.

In response, we suggest reading the relations between the majority and minorities in terms of respect for persons. The democratic idea of respect for persons is a distinctively egalitarian notion: all persons should be treated as moral agents by virtue

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<sup>1</sup> Failing such an asymmetry component, the relation between A and B (when A does not interfere with B despite her disliking or disapproving of some aspect of B) is standardly taken to be at most one of acquiescence, resignation or 'mere restraint' (see Andrew J. Cohen, 'What Toleration Is', *Ethics* 115,1 (2004): 68-95, at p. 72).

<sup>2</sup> Failing such a negative judgement component, the relation between A and B (when A does not interfere with B despite A's power to do so) is standardly taken to be at most one of indifference (see Cohen, 'What Toleration Is', *cit.*, p. 71).

of their all equally possessing the morally relevant capacity for self-legislation: the capacity to be the authors of their own life-plan. Moreover, with reference to an interpretation of equal respect for persons recently defended by Ian Carter,<sup>3</sup> respect requires treating persons as if they were opaque to our judgement for all those properties of theirs which exceed moral agency. Looking at the relations between the majority and minorities in a democracy through the lens of equal opacity respect for persons enables us to understand what is problematic in such relations: the majority often does not treat minorities as moral agents by failing to take their voices into account on an equal footing, by seeing them merely as recipients of certain provisions affecting them rather than as their authors, and by tearing the veil of opacity apart, as it were, and considering them as legitimately exposed to the majority's (negative) judgment.<sup>4</sup>

The paper unfolds as follows. In Section 2, we offer a working definition of toleration and show the sense in which many problematic relations between the majority and minorities in a democracy may be understood in such terms. This is done by reference to two minority groups whose treatment may be seen as paradigmatic of the problematic nature of majority/minorities relations across Europe: Muslims and Roma. In Section 3, we show the limits of interpreting such relations in terms of toleration. In Section 4, we suggest resorting to the idea of equal opacity respect for persons by defining it and showing what issues may emerge if one considers the situations of Muslims and Roma in Europe through this lens. In section 5, we draw the normative implications of adopting the ideal of equal opacity respect for persons to interpret the problematic nature of the majority/minorities relations both at the vertical (institutions – minorities) and horizontal (majority – minority groups in society) level. Despite sharing some common claims, such a double perspective makes our respect-based argument go beyond currently available critiques of toleration grounded in political neutrality, which are mainly focused on the vertical dimension.<sup>5</sup> Moreover, we aim at going beyond neutrality-based arguments also by suggesting normative implications at the vertical level which substantiate positive duties for liberal democratic institutions to enhance the political participation and social integration of minorities. In Section 6, we conclude.

## **2. The relations between a tolerant majority and tolerated minorities**

### *2.1 Toleration defined*

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<sup>3</sup> See Ian Carter, 'Respect and the Basis of Equality', *Ethics* 121,3 (2011): 538-571.

<sup>4</sup> In this paper we do not take a stand on the nature of majorities and minorities as collective agents. We shall make reference to the 'majority' and 'minorities' as short hand expressions simply to indicate aggregates of individuals finding themselves respectively in the majority or minority position in society.

<sup>5</sup> See, notably, Glen Newey, *Virtue, Reason and Toleration* (Edinburg: Edinburg Univeristy Press, 1999) and David Heyd, 'Is Toleration a Political Virtue', in M. Williams (ed.) *Nomos 48. Toleration and Its Limits* (New York: New York University Press, 2008).

A good summary definition of toleration has been recently proposed by Rainer Forst, according to whom the core of toleration

can be explained by the three components of *objection*, *acceptance* and *rejection*. First, a tolerated belief or practice has to be judged as false or bad in order to be a candidate for toleration; second apart from these reasons for objection there have to be reasons why it would still be wrong not to tolerate these false or bad beliefs and practices, i.e., reasons of acceptance. Such reasons do not eliminate the reasons of objection; rather, they trump them in a given context. And third, there have to be reasons for rejection which mark the limits of toleration.<sup>6</sup>

In addition to such features, relations of toleration have been standardly regarded as characterized by a further power asymmetry component: the tolerator standardly has, or believes to have, the power to interfere with what she dislikes or disapproves of. Putting this all together, we can reach the following working definition of the relation of toleration: A and B are in a relation of toleration if A dislikes or disapproves of B's doing *x* or believing *y* and, although A is – or believes to be – in the position to interfere with B's *x*-ing or *y*-ing, A refrains from doing so for some overriding reason which applies to *x* and *y* but not to some other practice *w* or belief *z*.

To sum up in less formal terms, I tolerate someone when I dislike some practice or belief of this someone but I refrain from interfering with her, even if I were in the position of doing so. This is the 'negative conception' of toleration. On other, more positive, understandings of toleration, the tolerator is expected to do more than non interfering (but, for example, publicly to recognize that the views held by this person are valuable *for her*). Nonetheless, what is common to all understandings of toleration is the negative attitude toward some feature of what is tolerated and the asymmetric relation between the tolerator and the tolerated.<sup>7</sup>

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<sup>6</sup> Rainer Forst, 'Two Stories about Toleration', *RECON Online Working Paper* 2010/15, available at <http://www.reconproject.eu/projectweb/portalproject/RECONWorkingPapers.html>, p. 2, emphases in original. See also Glen Newey, 'Is Democratic Toleration a Rubber Duck?', *Res Publica* 7 (2001): 315–36, at p. 316. For a more detailed discussion on the features of toleration, see Catriona McKinnon, *Toleration. A Critical Introduction* (London: Routledge, 2006), Cohen, 'What Toleration Is', *cit.* and Peter Nicholson, 'Toleration as a moral ideal' in J. Horton and S. Mendus (eds) *Aspects of Toleration: Philosophical Studies* (London and NY: Methuen, 1985), pp. 158-75.

<sup>7</sup> More precisely, despite the differences in the appropriate behaviour of the tolerator, both the negative notion of toleration as non interference and the positive idea of toleration as recognition share the objection, acceptance, rejection and power asymmetry components as characterized above (see Anna Elisabetta Galeotti, *Toleration as Recognition* (Cambridge: Cambridge University Press, 2002). Therefore, we shall not draw any distinction between the two conceptions of toleration but engage only with the underlying concept. One of the authors has engaged with the responses to dissenting minorities' claims that may be built on the two different conceptions of toleration in Emanuela Ceva 'Why Toleration is not the Appropriate Response to Dissenting Minorities' Claims', unpublished manuscript.

## 2.1 Majority/minorities relations as a matter of toleration

Thus characterized, the idea of toleration has been standardly invoked to make sense of the relations between the majority and minorities in a democracy and to devise responses to the problems arising out of them. Resorting to the idea of toleration seems appropriate as the relation under scrutiny is certainly one of an asymmetric kind: the majority in a democracy is no doubt in the position of interfering with the minorities, and, in fact, it has – at least to a certain extent – the legitimate power to do so. This is the case both as regards the vertical relations between the minorities and democratic institutions and concerning the horizontal relations between minority and majority groups in society.

At the vertical level, the power asymmetry is structural in so far as political decisions taken within the framework of and implemented by democratic institutions can be taken to be the expression of the will of the majority. In other words, standard democratic processes governed by the majority rule produce decisions implementing the will of the majority to which minorities are expected to conform and on whose respect on the part of the minority the majority is expected to exercise some control. This is how democracy works, for better or worse.

At the horizontal level, the power asymmetry concerns the control of social standards. As suggested by Anna Elisabetta Galeotti, the majority exercises control on the determination and protection of social standards concerning such issues of 'public decency' as appropriate clothing, the use of public space and – more in general – someone's life-style.<sup>8</sup> Minorities, especially when endowed with a culturally diverse background with respect to that of the majority, are standardly expected to conform to the majority's standards or, at any rate, retain a very limited and residual space (usually confined to the private sphere) for preserving their own. This is especially the case when it comes to minorities of migrants, often perceived as bringing with themselves alien and irreconcilable views and habits.

Issues of toleration are standardly taken to emerge at both of these levels anytime minorities challenge either the decisions taken by majority-driven democratic institutions or the social standards endorsed by the majority group. And it is at this stage that the objection component enters the picture of toleration-denoted relations. At the vertical level, decisions taken by the majority either allow or prohibit certain kinds of behaviour which are instead either opposed or cherished by some minority. Consider as an example the vexed question revolving around Muslim women's wearing of the *hijab*. Muslims represent one of the largest minorities in Europe and in many European countries a lively debate has revolved around the issues raised by Muslim women's

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<sup>8</sup> See Anna Elisabetta Galeotti, 'A European Issue of Toleration: Why Purpose Built Mosques are so Contested', unpublished manuscript and Galeotti, *Toleration as Recognition, cit.*, for example at p. 85.

wearing of the *hijab* (or of even more covering items of clothing, such as the *niqab* or the *burqa*) with respect to laws protecting public security (allegedly requiring the recognisability of people in the street), the secular connotation of public space (allegedly requiring the absence of all religious symbols), and the equal social status of women (allegedly requiring the removal of symbols of women's subjugation to men). As (some forms of) Islamic womenswear seem to challenge both public security, the secular connotation of the public space and the equal social status of women, they fall under the majority's negative judgement and become a possible object of (in)tolerance.

An analogous kind of reasoning applies to the horizontal level whenever some minority challenges with its practices or beliefs some kind of social standard endorsed by the majority. Consider as an example another minority group spread all over Europe: the Roma. Besides political reasons, the integration of the Roma minority in Europe has been the object of severe controversies as their life-style has been often perceived as incompatible with that of the majority of European societies. In particular, Roma are standardly perceived by the European majority as incurable movers and their nomadic life-style is seen as a threat to a number of social conventions which tend to associate social trust with stability. Therefore, the unconventional life-style attributed to Roma exposes them to the majority's negative judgement and becomes a possible object of (in)tolerance.<sup>9</sup>

So much for the standard characterization of the majority/minorities relations in terms of toleration: what are the normative implications of resorting to the idea of toleration in response to the scenarios above? An answer to this question requires calling on to the two remaining components of toleration-based relations as characterized by Forst: the acceptance and the rejection components. Facing a practice either, say, prohibited by law or judged negatively by the majority in society but cherished by some minority, toleration demands that the majority does not interfere with the minority's performing some practice (either by preventing the minority from performing it or by heavily stigmatizing it) so long as there are some reasons for acceptance (either principled or prudential) which override (but do not cancel out) the majority's reasons for objection and do not fall within the boundaries of the legitimate reasons for rejection (the limits of toleration).

To illustrate, in the case of Islamic womenswear, reasons for acceptance may consist in respect for cultural diversity (principled reasons) or derive from a commitment to avoid social conflicts (prudential reasons) and may lead to a variety of possible arrangements ranging from substantial accommodation (e.g. by granting exemptions to Muslim

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<sup>9</sup> We owe this example to Anna Elisabetta Galeotti.

women from restrictions on clothing)<sup>10</sup> to formal recognition of their dissent in the public arena (e.g. by letting their dissenting voices be aired in public).<sup>11</sup> Similar reasons for acceptance may apply at the horizontal level in the case of the majority's suspicious attitude towards Roma's life-style and lead to more or less accommodating responses ranging from the full recognition of their nomadic life-style as a legitimate life option,<sup>12</sup> to condemnation of hate speech addressed towards the minority.<sup>13</sup>

In any case, it is crucial that a normative response inspired by toleration be capable also to establish what are the limits to what minorities can do, sheltered from the interference of the majority. So for example, whilst toleration may demand that Muslim women be allowed to wear a *hijab* or a *niqab*, it may not allow them to wear a *burqa* as it would too heavily hinder their basic right to free movement by, for example, impairing their vision to such an extent that prevents them from driving a car. On the other hand, toleration may demand the public recognition of the worth of Roma's life-style as long as this does not undermine the equality of opportunity of the weakest members of the minority, as for instance children to whose education nomadism may be detrimental.

In sum, majority/minorities relations are standardly seen as apt for interpretation in terms of toleration as they are asymmetric relations, both at a vertical and a horizontal level, in which the party in the dominant position objects to some belief or practice of that in the dominated position. Notwithstanding the persistence of such a negative judgement on the part of the majority toward some minorities' beliefs or practices, toleration as a normative ideal demands that in the presence of certain reasons for acceptance, overriding those for objection under certain circumstances, the majority should not interfere with the minority and let it live in accordance with its disputed belief or practice, so long as this does not infringe upon the limits of toleration (as established by the presence of reasons for rejection).

Is this really the most accurate way to interpret the problematic nature of majority/minorities relations in a democracy? Even when factual conditions for its occurrence are met, is it to encourage toleration (within certain limits) the best normative response at hand? Our endeavour in the following section is to suggest a qualified negative answer to these questions.

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<sup>10</sup> See, for example, Gideon Calder & Steven R. Smith, 'Differential Treatment and Employability: A UK Case-Study of Veil-Wearing in Schools', in G. Calder & E. Ceva (eds) *Diversity in Europe. Dilemmas of Differential Treatment in Theory and Practice* (London: Routledge, 2010).

<sup>11</sup> See Jeremy Waldron, 'Rights and Majorities: Rousseau Revisited', in J. W. Chapman & A. Wertheimer (eds) *Nomos XXXII. Majorities and Minorities* (New York and London: New York University Press, 1990).

<sup>12</sup> This claim may be made within the framework of Galeotti's theory of toleration (see Galeotti, *Toleration as Recognition*, *cit.*).

<sup>13</sup> See, for example, David A. J. Richards, 'Toleration and Free Speech', *Philosophy and Public Affairs* 17,4 (1988): 323-36 and Roger A. Shiner, 'The Hateful and the Obscene: Studies in the Limits of Free Expression', *Canadian Journal of Philosophy* 35,4 (2005): 641-66.

### 3. The limits of a toleration-based approach to majority/minorities relations

If the definition of toleration on which we build is sound and the reconstruction we offered above of the possible toleration-based interpretations of and normative responses to the problems emerging out of majority/minorities relations in a democracy is plausible, then the following issues are in need of some serious scrutiny.

The first set of issues concerns the assumption that toleration-relevant relations are distinctively of an asymmetric kind. Taking asymmetry for granted, accounting for majority/minorities relations in terms of toleration cannot help to uncover those cases in which such an asymmetry is not simply the straightforward implication of a democratic system governed by the majority rule, but derives from unwarranted structural inequalities in the treatment of minorities. As said, that the majority rules in a democracy is a platitude. However, this platitude presupposes that all society members stand equal chances to make their voices publicly heard and to influence the political agenda on an equal footing with anyone else in society.<sup>14</sup> But such an egalitarian proviso is hardly realized in the scenarios described above.

Both Roma's and Muslims' voices are quite typically underrepresented in politics and misrepresented in public debates. At a basic vertical level, this is the case as many Roma and Muslim minorities in Europe are composed of migrants who enjoy very different levels of participatory rights. For example, the lack of political participation on an equal footing with national citizens has played a crucial role in the marginalization of Muslims in Italy. Muslims in Italy are mainly non-EU third country nationals and as such have no right to vote (nor to stand for office) either in national or local elections.<sup>15</sup> Such an exclusion from the formal channels of political participation, coupled with a very fragmented presence at the level of the civil society,<sup>16</sup> has had a negative impact on the capacity of Muslim residents to influence the political agenda on issues concerning the regulation of the presence of religious symbols in public spaces, as well as those concerning the allocation of urban space for building mosques.

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<sup>14</sup> See, to name but two prominent but different arguments, Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 2001) and Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2002).

<sup>15</sup> In Italy only Italian citizens have the right to vote (art. 48 of the Constitution). For more detailed considerations on immigration, the law on the acquisition of citizenship and the right to vote in Italy see Silvia Mocchi, 'No Integration without Participation. A Study of the Requests for Building Mosques in Milano', *RESPECT Project Working Paper Series*, no. 6/2011, available at <http://respect.iusspavia.it/?workingpapers>.

<sup>16</sup> Unlike other religions and in particular Christian denominations, Muslims are not organized in a unique church. Moreover, the varied ethnic, linguistic and geographic composition of the Italian Muslim communities has created a situation in which Muslims are divided in different associations with no single voice.

Moreover, even in such countries where Muslims enjoy some form of political participation, they have had an equally hard life to make their voices heard on an equal basis with respect to that of the majority at the horizontal level of public debate. In Denmark, for example, the relation between the majority and Muslim minorities has been riddled with some structural inequality in the way in which public debates on projects for mosques in Copenhagen have been organized and Muslims' views represented. Far from giving voices to all relevant positions within the Muslim community, only those sceptical about the opportunity of building a mosque were instrumentally aired to back the majority's scepticism, without an active involvement of the project's proponents.<sup>17</sup>

In sum, by presupposing the asymmetric connotation of majority/minorities relations, it seems that reference to the idea of toleration is unable to dig into the causes of such an asymmetry and disentangle its components so as to tell us what is wrong with the presence of such a structural inequality between the majority and minorities both at the vertical and horizontal level.<sup>18</sup>

Taking the asymmetry component as a non-questionable feature of the majority/minorities relations does not pose only problems in understanding the problematic nature of such relations. It also raises interesting issues concerning the possible normative responses that may be built on the idea of toleration. In this respect, we would like to suggest that prescribing non interference with minorities, toleration-based responses are not capable of redressing the structural inequalities shown above. For example, a tolerant response which does not prohibit Muslims either to campaign publicly in favour of *hijab*-wearing or to engage in fund-raising for converting buildings they own into proper mosques does not seem capable of remedying the obstacles that Muslims ordinarily encounter to make their claims reach the political agenda and have their religious needs met as those of any other religious group in society.

One may object that this critique applies only to negative understandings of toleration, but that it misses the target of more positive positions according to which toleration does not demand mere non-interference but also public recognition of the minority. For example, in the case of Muslims' requests for urban space to build mosques, toleration as recognition would not simply demand that no obstacles were placed on the way of Muslims' initiatives, but that institutions were ready to subsidize the building of

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<sup>17</sup> For instance, Iranian exiles critical of the Iranian funded Shia mosque project were among the most prominent Muslims represented in the Danish public debate. See Sune Lægaard, 'Grand-Mosque' Projects in Copenhagen: Intersections of Respect, Tolerance and Intolerance in the Distribution of Public Space', *Politics in Central Europe* 6,3 (2010): 60-80, at p. 68.

<sup>18</sup> For a discussion of the compatibility of the asymmetric nature of toleration with the egalitarian spirit of a liberal democracy which resonates with our argument see Newey, *Virtue, Reason and Toleration*, *cit.*; Heyd, 'Is Toleration a Political Virtue', *cit.* and Peter Jones, 'Making Sense of Political Toleration', *British Journal of Political Science* 37 (2007): 383-402.

mosques out of recognition of the equal worth of Islam compared to any other majority-endorsed religion. However, we would have a different complaint against such an approach. If it were not preceded by an adequate political and social debate where Muslims could put forward their claims on an equal footing, any permission to build mosques would amount to a concession made to Muslims, possibly for reasons cherished by the majority – such as a commitment to pluralism or social cohesion – which are not necessarily those underpinning the minority's request. Muslims would be seen this way as patients, at the receiving end of policies, rather than their authors.<sup>19</sup> By taking such an asymmetry for granted, toleration-based approaches to majority/minorities relations cannot provide the necessary resources either to explain what is wrong with such structural inequalities, nor to redress them to a satisfactory extent.

But this is only one side of the story, as a second set of considerations concerns the objection component inherent to any toleration-based reading of the majority/minorities relations. From this perspective, we suggest that by presupposing that the majority/minorities relations are informed by the negative judgement of the former towards some practice or belief of the latter, toleration-based interpretations are unable to unveil prejudices and, in fact, take them as a starting point to establish the terms of the relation between the two.<sup>20</sup>

An enlightening example concerns the problems of integration of Roma in many European countries. The prejudices concerning Roma's nomadic life style, and the negative judgement associated with it, have heavily influenced the relations between the Roma and other European citizens, especially at the horizontal level of the relations in society. Roma are often perceived as unreliable and impossible to be integrated in a democracy, life in which is taken to require a basic commitment to stability. On the basis of the majority's negative judgement, Roma have been standardly marginalized and not treated as equal members of European democracies. This does not only emerge out of the constant discrimination of which Roma are victims, for instance on the job market, but also out of their physical marginalization through their settlement in encampments located at the margins of many European towns.<sup>21</sup> By presupposing the negative judgment of the majority towards the minority, toleration does not seem to provide the resources we need to understand what is wrong with such a situation.

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<sup>19</sup> For a discussion of the critique of toleration as connoting a 'patronizing' relation between the majority and minorities see Andrew Shorten, 'Toleration and Cultural Controversies', *Res Publica* 11 (2005): 275–99.

<sup>20</sup> For a discussion of this point in relation to the alleged negative impact of the majority's negative judgement on the minorities' self-esteem and self-respect see Peter Jones, 'Toleration, Recognition and Identity', *Journal of Political Philosophy* 14 (2006): 123–43.

<sup>21</sup> On the interplay between geographical marginalisation and social exclusion see Gideon Calder, Francesco Chiesa, Mariann Dósa, Jean-Baptiste Duez, Chiara Testino, 'Spatial Marginalisation of Roma and Travellers Populations: A Comparative Study of Italy, Hungary, France and Wales', *Politics in Central Europe* 6,3 (2010): 81-100.

Moreover, at a normative level taking the negative judgement for granted, toleration-based normative approaches to majority/minorities relations do not seem capable of actively fighting the negative judgements and stereotypes denounced above. As it emerges on consideration of Rainer Forst's definition of toleration presented above, any normative reason for acceptance that could be given to the majority not to prevent the minority from doing what to which the majority objects does not cancel – nor does it actively engage with – the reasons for objection, but simply overrides them under certain circumstances.<sup>22</sup> This means that even a tolerant relation between the majority and some minorities would be laden with the negative judgement of the former towards the latter, with no instrument to fight against it directly. This is a problem *per se*, and also because it seems to legitimize the majority's conviction that a number of aspects of the life of minorities are open and exposed to its judgement and that such a judgement, however biased, can legitimately inform their relation.

In sum, we submit that toleration is unable to provide us with the necessary resources either to understand the problematic nature of majority/minorities relations, or to respond to them normatively. This is the case as (i) reliance on the asymmetry component tends to crystallize the structural inequalities affecting majority/minorities relations and makes it impossible to remedy them to a satisfactory extent and (ii) as the presumption that such relations are informed by the negative judgement of the majority towards the minority prevents actions to be taken to contrast actively such negative judgements and possible stereotypes. In the remainder of the paper, we shall suggest an alternative way to interpret and respond normatively to the issue at stake in a way apt to make sense of the shortcomings of toleration-based approaches presented above. To this end, we turn to the idea of equal opacity respect for persons.

#### **4. Majority/minorities relations reconsidered: A matter of respect**

##### *4.1 Respect defined*

The idea of respect relevant for democratic theory builds on that famously defined by Stephen Darwall in terms of 'recognition respect'.<sup>23</sup> Recognition respect is the sort of (positive) attitude warranted simply by others' presence in the community of moral concern. According to this idea, to say that persons are entitled to respect *qua* persons means that all other persons are under an obligation to give appropriate weight to their personhood when deliberating about what to do.

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<sup>22</sup> A similar point is made with regard to the idea of neutrality in Saladin Meckled-Garcia, 'Toleration and Neutrality: Incompatible Ideals?', *Res Publica* 7 (2001): 293-313, esp. at pp. 301-2. As we shall argue in Section 5, our respect-based argument has normative implications which go beyond state neutrality.

<sup>23</sup> Stephen Darwall, 'Two kinds of respect', *Ethics* 88,1 (1977): 36-49.

In keeping with large part of democratic theory, we endorse the idea that the distinctive trait of personhood consists in the capacity for self-legislation: the capacity all persons have to be the authors of their own life-plan. By virtue of their possessing the capacity for self-legislation, persons should be treated accordingly as moral agents.<sup>24</sup> The idea of respect for persons at work in democratic theory is distinctively egalitarian: all society members should be treated as moral agents on an equal basis as they are all presumed to possess the capacity for self-legislation, independently of the actual and variable abilities they show in the different ways in which they make use of this capacity.<sup>25</sup> Therefore, unlike asymmetric relations of toleration, relations of respect are inherently egalitarian – both at a horizontal level (as they are relations between equals) and at a vertical level (as they imply egalitarian treatment).

Moreover, we should like to draw attention to the significance of one specific understanding of recognition respect recently formulated by Ian Carter as it seems particularly apt to capture the egalitarian basis of the respectful treatment due to persons only by virtue of their possessing some morally relevant property (as is, on our account, the capacity for self-legislation). This is the idea of ‘opacity respect’.<sup>26</sup> Opacity respect, understood as an attitude or a form of behaviour, consists in ignoring the differences between people in terms of their agential capacities. Agents are taken as given, and are not assessed in terms of their variable abilities to make rational choices, to form and pursue life plans, to develop and express a sense of justice, and so on. Only a minimum of such abilities is assumed, as a result of which moral personality is conceived as a range property (a property which, past a threshold, one is either taken to possess or not).<sup>27</sup> To adopt the attitude of opacity respect is to adopt an external perspective, refusing to ‘look inside’ agents – that is, refusing to assess the capacities in virtue of which people possess the range property of moral personality. The idea of treating agents as opaque reflects certain common intuitions about respect, among which the idea that the assessment of such fundamental capacities undermines their dignity as agents.<sup>28</sup> Therefore, unlike relations of toleration which are informed by the negative judgement of one party towards some aspects of the other, relations of respect are – on

<sup>24</sup> See Carla Bagnoli, ‘Respect and Loving Attention’, *Canadian Journal of Philosophy* 33 (2003): 483-515; Colin Bird, ‘Status, identity and respect’, *Political Theory* 32, 2 (2004): 207–32 and Emanuela Ceva ‘Self-legislation, Respect and the Reconciliation of Minority Claims’, *Journal of Applied Philosophy*, 28,1 (2011): 14-28.

<sup>25</sup> See Ceva, ‘Self-legislation, Respect and the Reconciliation of Minority Claims’, *cit.*, p. 16.

<sup>26</sup> Carter, ‘Respect and the Basis of Equality’, *Ethics*, *cit.*.

<sup>27</sup> The idea of a range property was introduced by John Rawls (*A Theory of Justice* (Oxford: Oxford University Press, 1971), p. 443).

<sup>28</sup> ‘When is opacity respect an appropriate attitude? I suggest that we have reason to adopt the attitude of opacity respect toward a particular being when two (jointly necessary) conditions obtain: first, that being possesses *dignity as agential capacity* (which is to say, it possesses at least a certain absolute minimum of the relevant empirical capacities); secondly, we stand in a certain relation to that being such that it is appropriate for us to view that being *simply as an agent*’ Carter, ‘Respect and the Basis of Equality’, *cit.*, p. 24, emphasis in original. Treating persons as opaque is not the appropriate response to all situations, e.g. in ‘thick’ relations such as friendship, but it is especially required in the public sphere, between institutions and individuals, for it is the correct way of treating persons equally as agents.

this understanding – connoted by a high level of agnosticism regarding the specific ways in which persons exercise a morally relevant property, which we take to be their capacity for self-legislation.

So I respect someone when I relate to this someone as a person, as someone who is capable of deciding for herself what is good for her and take on responsibility for this, however rationally or efficiently such decisions are made and independently of their inherent quality. More precisely, at a horizontal level, equal opacity respect for persons requires that persons recognize other persons as their equals as they all equally possess the range property of moral personality, independently of their scalar properties which should not be a matter for others' judgment or evaluation. At a vertical level, equal opacity respect for persons requires that all society members be treated on an equal footing as moral agents, independently of what they happen to think or do. In a democracy, the commitment to equal opacity respect for persons translates into the imperative of giving all society members an equal voice in political participation and decision making, independently of their actual agential capacities (evaluation of which is prevented by opacity respect), so that they can all regard themselves as co-authors of the norms regulating their life together.<sup>29</sup>

#### 4.2 *Disrespect in majority/minorities relations*

What do we gain by drawing on the concept of equal opacity respect for persons rather than on that of toleration in interpreting the problematic nature of majority/minorities relations in a democracy? Our hunch is that we can gain a great deal, both at a vertical and at a horizontal level.

As anticipated in Section 3 above, the majority/minorities relations in a democracy are certainly of an asymmetric kind, both at a vertical and at a horizontal level. This is the case as democracies are standardly run according to the majority rule and as social standards are normally set by the habits of the majority. Minorities are expected to conform, at least in public, to the latter and to abide by the outcomes of the decision making process governed by the former. However, such a double-level asymmetry conceals some important structural inequalities both concerning the terms of minorities' political participation and the ways in which minorities' views are represented in the public debate. As appeals to toleration are at trouble at making sense of such inequalities, we claim that resorting to the notion of equal opacity respect for persons can provide some precious insight.

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<sup>29</sup> See Stephen Macedo, *Liberal Virtues. Citizenship, Virtue, and Community in Liberal Constitutionalism* (Oxford: Clarendon Press, 1990) and Jeremy Waldron, *Liberal Rights* (Cambridge: Cambridge University Press, 1993).

In particular, majority/minorities asymmetric relations are riddled with disrespect. As shown above, minorities do not often enjoy equal chances of political participation and to influence the political agenda. This situation is caused in part by the politically marginalized status of minorities, especially those of migrant origins which enjoy very different levels of political participation in different European countries, and in some (such as Italy) they are cut off any channel of decision making.<sup>30</sup> As suggested, this is the status affecting many Muslims of migrant origins across Europe. This certainly counts as a disrespectful treatment by the standard presented above: Muslim minorities in these cases are not treated in accordance with their capacity for self-legislation as they are not given an equal voice in the decision making process and therefore they are prevented from regarding themselves as the authors – but merely as the recipients – of norms binding also on them. The same order of considerations applies to non-EU Roma within EU countries.

Moreover, we should note also another kind of obstacle which may amount to disrespect in the vertical relations between the majority and minorities. As argued above, respect requires that all society members be given equal chances to influence the political agenda. But minorities may find factual barriers to do so, especially if they hold particularly controversial views opposed by the majority or somehow contrary to the majority's perception.<sup>31</sup> This latter has been frequently the case with Roma, whose requests for decent housing have hardly made it to the political agenda and which have, rather, been met by policies aimed at providing spaces for provisional encampments coherent with their alleged nomadism, *pace* the sedentary habits of many Roma.<sup>32</sup> In such cases, Roma have been treated as mere patients, at the receiving end of policies through which the majority unilaterally tried to put up with their presence in the public space. A similar faith has been shared by Muslims and their requests for urban space for building mosques which have had serious difficulties in such countries as Italy to make it to the political agenda as they have been standardly opposed by Italian citizens, fuelled by xenophobic parties, in a general battle for the preservation of the identity of the public space.<sup>33</sup> In all such instances, disrespect is shown by the lack of consideration of the minorities' requests on an equal footing with those of the majority, the *de facto* exclusion of their claims from the political agenda and the consequent frustration of the minorities' capacity to pursue their life-plans as their authors.

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<sup>30</sup> Most European countries (except, for instance, Italy, Germany and Greece) recognize the right to vote, at least in local elections, to migrants that have been residents for some years in the country. Further information may be found on the website of the European Union Democracy Observatory on Citizenship at <http://eudo-citizenship.eu/>.

<sup>31</sup> See Ceva, 'Why Toleration is not the Appropriate Response to Dissenting Minorities' Claims', *cit.*.

<sup>32</sup> See Chiara Testino, "'Nomadism' and Housing Policies. Roma in Italy: a Hard Case for the Theory of Minority Rights', *Notizie di Politeia* 99,26 (2010): 97-112, and Jean-Baptiste Duez, Milena Doytcheva, and Charles Girard, 'Integrating or segregating the Roma population in France? A spatial analysis of "villages d'insertion"', unpublished manuscript.

<sup>33</sup> Stefano Allievi (with Ethnobarometer), *Conflicts over Mosques in Europe. Policy Issues and Trends*, (Alliance Publishing \_Trust, 2009), pp. 68-70.

The situation does not look rosier at a horizontal level. In many instances, the views of minorities have hardly been considered and represented on an equal footing in public debates, dominated by the views of the majority and by those of those members of the minority holding positions backing the majority's views (see the case of the Copenhagen mosque's project presented in Section 3). Such a situation is denoted by disrespect, as it further hinders the minorities' chances to make their voices heard on an equal footing with those of the majority even at the (supposedly more open) level of the civil society.

Moreover, studying the majority/minorities relations in terms of equal opacity respect for persons would allow another important set of considerations to emerge concerning the role played by the negative judgement of the former towards some aspect of the latter in determining the terms and conditions of such relations. As argued in Sections 2 and 3 above, toleration-based readings of the majority/minorities relations are connoted by the persistence of the negative judgement (what Forst called the objection component) of the majority towards some aspect of the minorities' life-style (as in the case of Roma's nomadism) or set of beliefs (as in the case of Muslim's conception of the status of women). However, taking such a negative judgement component for granted in the majority/minority relations has important drawbacks as it does not give much room for questioning the prejudices on which it is often based (as in the case of Roma's supposed nomadism, contradicted *de facto* by the high percentages of sedentary members of the Roma population)<sup>34</sup>. Moreover, and most importantly, toleration-based approaches are unable to question whether the majority has the moral authority to make such kinds of judgement, in the first place, and retain them. On our account of equal opacity respect for persons, however, such a presupposition is unwarranted as it implies considering minorities as exposed to the judgement of the majority for those properties of theirs which exceed their recognition as moral agents. This is in open contradiction with the respectful attitudes and behaviour of agnosticism demanded by a commitment to treating persons as opaque, that is by not looking into their specific features which go beyond what we need to know to recognize them as moral persons.<sup>35</sup>

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<sup>34</sup> Despite the difficulty of calculating the total number of Roma, it is estimated that 90% of Roma in Europe is sedentary. See Testino, "Nomadism" and Housing Policies. Roma in Italy', *cit.*, p. 98.

<sup>35</sup> Note that our point concerns the kind of treatment to which persons are entitled by virtue of their dignity (possession of moral personality) and does not regard the impact that such a treatment may have on them (e.g., the enhancement of their self-respect) as argued instead by theorists of recognition (see Galeotti, *Toleration as Recognition*, *cit.* pp. 8–9, 12, 96–9, 100–5, 112–3 and, for a discussion, Sune Lægaard, 'On the Prospects for a Liberal Theory of Recognition', *Res Publica* 11 (2005): 325–48 and Jonathan Seglow, 'Rights, Contribution, Achievement and the World: Some thoughts on Honneth's Recognitive ideal', *European Journal of Political Theory* 8 (2009): 61–75). Note also, as an aside, that despite sharing the same wariness of the majority's disapproval of minorities, whilst toleration as recognition demands the positive regard of the former towards (some aspect of) the latter, equal opacity respect for persons yields to relations of agnosticism.

In sum, disrespect is visible both at a vertical level, in the relations between minorities and democratic institutions, and horizontally, in the relations between minority and majority groups in society. At the vertical level, disrespect is shown when minorities do not participate on an equal footing to the decision making process or when their voices do not stand equal chances to influence the political agenda with respect to the majority. In such cases, minorities stand in a subordinated relation to the majority and their members' capacity for self-legislation is undermined by the subjection to decisions to the formulation of which they could not participate on egalitarian terms.

At the horizontal level, disrespect is shown by the prejudices often informing the attitudes of the majority towards minorities and the resulting negative judgement in light of which toleration seems to be required. In such cases, minorities are treated in a demeaning manner as the veil of opacity is torn apart and their beliefs and practices exposed to public judgement.

## 5. Normative implications

As shown in Section 4, if we frame the interpretation of the majority/minority relations in terms of equal opacity respect for persons rather than toleration, a new whole set of issues emerges. And this has important normative implications, both at the vertical and at the horizontal level.

At the vertical level, the most important implication is that equal opacity respect for persons requires an enhancement of the terms of participation of minorities to the political life of their society, with a view to redress the structural inequalities characterizing the majority/minorities relations.<sup>36</sup> A serious reflection is in order on the terms and conditions of the political participation of minorities (whether they are composed by citizens or residents) in decision-making processes, their capacity to make their voices heard both politically and at the level of the civil society. This is the first normative gain we can have from couching the majority/minorities relations in terms of respect rather than toleration: we can unveil a matter of injustice, *qua* a lack of respect, in the minorities' misrepresentation, underrepresentation if not exclusion from the formal channels of political participation and at the level of the public debate. The troublesome matter would not (only) be what practices or beliefs they are allowed or not allowed to stick to, nor would it be the lack of symbolic recognition of the worth of their identity in public (as denounced by theorists of recognition), but more fundamentally that of the recognition of their moral personality, of their status of self-legislators, who should be able to regard themselves as the authors of the norms binding on them, of their role as active agents in the political life of their society.

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<sup>36</sup> See also Cillian McBride, 'Demanding Recognition: Equality, Respect, and Esteem', *European Journal of Political Theory* 8 (2009): 96-108.

At the horizontal level, another distinctively normative advantage of couching the issue in terms of respect would emerge on consideration of a specific understanding of equal respect for persons in terms of opacity. On this understanding, as explained above, treating persons with respect means to treat them as if they were opaque to our judgement for all those properties of theirs which exceed moral personality. It would mean to treat them as if the only thing that matters is that they are moral agents, while remaining agnostic on their other features. Such a no-judgement component is important to contrast the negative attitudes majorities often tend to have towards minorities, which are instead crucial to any understanding of toleration. This paves the way also for some institutional indirect action in terms of policies aimed at enhancing egalitarian relations between the majority and minorities through the promotion of a culture of agnosticism so as to encourage the majority to treat minorities as equal moral agents and not as mere patients exposed to their judgment.

Some may lament that opacity respect and its ensuing agnosticism leads to indifference. Many theorists of toleration have insisted that this latter may not be reduced to mere indifference and what drives a wedge between the two ideas is the importance of the trait which is the potential object of toleration.<sup>37</sup> But to respect someone, according to opacity respect, does not mean to remain indifferent yet it requires being agnostic towards even very important differences on which, however, we are not morally entitled to make a judgement, let alone to let this judgement influence our relation to the others.

Before closing, we should like to mention a couple of qualifications distinguishing our proposal from some arguments other commentators have recently made, which may appear to go in the same direction as ours. To start, one could argue that Rainer Forst's respect-conception of toleration goes in the direction we have in mind. According to such a conception, person A opposes practice z on the grounds of her ethical convictions, but she has a moral reason R not to interfere with person B's doing z, where R is respect for B's autonomy in circumstances of moral disagreement, under which there is no true, or at least generally valid and mutually non-rejectable reason P on the basis of which A's interference with B's doing z could be publicly justified.<sup>38</sup> Such a conception of toleration does certainly some interesting work, but we would like to make a bolder claim. We think it more fruitful to abandon the parlance of toleration (central to which is the idea of there being a negative judgement of A towards B's doing z) all together, and resort to that of equal opacity respect for persons instead. On this account, A's ethical reasons against z – where z is a practice or belief grounded in B's conception of the good – simply becomes irrelevant, as respect demands A not to make any judgment on B's practices or beliefs (so long as no obvious harm to others is involved – e.g. in terms of the violation of their fundamental rights), in order to treat

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<sup>37</sup> See McKinnon, *Toleration. A Critical Introduction*, *cit.*, p. 14; Nicholson, 'Toleration as a Moral Ideal', *cit.*, p. 160 and Shorten, 'Toleration and Cultural Controversies', *cit.*, pp. 284-88.

<sup>38</sup> Forst, 'Two Stories About Toleration', *cit.*, pp. 11-2.

him with opacity-respect. In other words, opacity respect goes as far as arguing that A is not morally entitled to make any judgement about z (nor to make it the object of its dislike) as this would violate the dignity of B by treating him as transparent and not opaque.

As anticipated, our point is not so much conceptual as normative: we *should* keep the concepts of toleration and respect separate when we account for majority/minorities relations, as this would be more in line with a general liberal commitment to promoting a culture of equality rather than one of antagonism. Moving the emphasis from the ideal of toleration to that of respect would allow policy makers to emphasize the importance that members of the same polity regard each other as equals in some fundamental sense, thus actively fighting those negative attitudes people may happen to have towards each other (and which are presupposed by toleration).

Another attempt at rethinking the notion of toleration in order to meet some democratic desiderata (in particular the equality between citizens) is that proposed by Peter Jones. Against those who claim that toleration is a 'relic of a bygone age that has been superseded by, rather than instantiated in, liberal democratic institutions',<sup>39</sup> Jones claims that if the idea of toleration still makes sense in contemporary liberal democracies, it should be understood as a political ideal informing rules and institutions that 'secure an order of things in which people can live their lives as they see fit, unprevented by disapproving others who might otherwise impede them.'<sup>40</sup> Such an order, Jones acknowledges, includes no specific act of toleration, but it realizes the ideal of toleration by protecting persons from intolerance, *qua* an illegitimate restriction of someone's freedom. Although this is an interesting reformulation of the idea of toleration and aims at preventing some of the drawbacks of the traditional idea of toleration that we point out in this paper, it is, as Jones recognizes, a highly unspecific notion,<sup>41</sup> for it consists in the negative idea of preventing intolerance. More specifically, it is unclear in what sense this idea of political toleration differs from the traditional liberal idea of an institutional setting designed to respect and to enforce the largest system of equal freedom for each individual. Jones clearly distinguishes his idea of political toleration from the notion of neutrality, in that political toleration regulates a society whose members are not requested to be neutral in respect of each others' views. But, as already pointed out for Forst, such an ideal seems to be incapable of promoting a culture of equality among the members of a society and of understanding the normative importance of seeing people as opaque, except for what is required to recognize their moral personality and so long as no obvious harm to others is involved.<sup>42</sup>

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<sup>39</sup> Jones, 'Making Sense of Political Toleration', *cit.* p. 384.

<sup>40</sup> Jones, 'Making Sense of Political Toleration', *cit.*, p. 387.

<sup>41</sup> Jones, 'Making Sense of Political Toleration', *cit.*, p. 402.

<sup>42</sup> Needless to say, the identification of the limits of what constitutes harm to others is far from being a straightforward operation. But, as the same problem is shared also by the theories of toleration we oppose, for the purposes of the present paper, we can content ourselves with this general statement (and with an

This seems to be important, for example, *vis-à-vis* such issues as those raised by the 'mosque case' where the object of dispute (the allocation of public space for building a place of worship) is not a possibly harm-causing practice, but a matter concerning the fundamental right to religious freedom every person has and whose details should be preserved from the evaluation of others.

Moreover, and similarly to what suggested in Section 3 in relation to Galeotti's account of toleration as recognition, Jones's toleration-talk is intimately related to what people are entitled to do, sheltered from others' interference, within a tolerant arrangement.<sup>43</sup> However, it remains silent on the *way in which we get to* some kind of tolerant arrangement, or better, on the way in which minorities are treated – whether as moral agents or as mere moral patients – in the making of such an arrangement. Our main claim here is that toleration-talk has little, if anything, to say regarding the procedural component of the majority/minorities relations and on the terms and conditions of the latter's political participation in society. But – as we tried to show above – this is an important *locus* of justice as minorities are at risk of being treated in a demeaning way, as mere patients, by not having their views taken into account on an equal footing with those of the majority and by being considered merely the recipients of policies rather than their authors. Adopting a respect-talk is crucial to make such a possible source of injustice (*qua* disrespect) emerge and to contrast it.

This seems to be important, for example, *vis-à-vis* such issues as those raised by the 'Roma case' in which what is at stake is not only – and not primarily – the capacity of Roma to perform any specific action or carry out some controversial practice, but their structural physical and symbolic marginalization and lack of a social and a political voice.

## 6. Conclusion

In this paper, we have defended two main claims: (i) that toleration is unable to provide the conceptual and normative resources we need to understand the problematic nature of the majority/minorities relations in contemporary democracies and to respond to them to a satisfactory extent; and (ii) that we should resort to the idea of equal opacity respect for persons instead.

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equally general reference to the safeguard of persons' fundamental rights) and leave the discussion to another work. See Emanuela Ceva, 'Toleration and Cultural Defence', unpublished manuscript.

<sup>43</sup> 'An arrangement that secures for A the freedom to do *x*, by holding at bay those whose disapproval of *x* would otherwise lead them to impede A, secures what is valuable about toleration.' Jones, 'Making Sense of Political Toleration', *cit.*, p. 389.

In so doing, we could enhance our understanding of the problematic nature of the majority/minorities relations both at the vertical level (by bringing out the structural inequalities to which minorities are exposed in the way in which they participate in politics) and at the horizontal level (by unveiling different forms of minorities' marginalization and stigmatization in society). Such an enhanced understanding can be the basis for the development of normative answers which demand more than the neutrality of institutions and less than relations of positive recognition of diversity in society. At the vertical level, equal opacity respect for persons demands that institutions take positive action to enhance the terms and conditions of minorities' political participation and social integration; at the horizontal level, it translates into a commitment to fighting actively the negative judgements which inform, instead, toleration-based relations between the majority and minorities.

We advocated such a change of paradigm, from toleration to equal opacity respect for persons, as a crucial move to treating minorities in ways appropriate to the dignity associated with their status as moral, self-legislating agents on an equal footing with the majority. Thus presented, our argument has not been to the effect of issuing a death sentence for all interpretative and normative usages of the concept of toleration. We have rather aimed at making a case for its retirement, as it were, as regards the interpretation of and normative responses to the problems arising out of the majority/minorities relations in a democracy.