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Chapter 10

What is wrong with the Swiss Minaret Ban?[1]

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The issue of Muslim integration in Switzerland has received a great deal of attention internationally since the vote for the popular initiative 'against the minarets'. The initiative, which aimed at forbidding the building of minarets in Switzerland—even though only four minarets existed in the country at the time at which the vote took place—was presented by the initiators as respecting the right of Muslims to practice their religion, yet provided a clear symbolic message and legal limitation to what the Swiss People's Party (*henceforth* SPP) termed the *Islamization* of Swiss public space. In November 2009, 57.5 per cent of Swiss voters accepted the ban, providing a direct democratic legitimation to a decision that, according to several observers, involves the unfair treatment of Muslims (Vatter 2011).

The Swiss controversy began with a Turkish cultural association's application for a construction permit for a minaret to its Islamic community centre in 2005 in *Wangen bei Olten*. When faced with residents' opposition, the controversy ultimately went before the *Federal Supreme Court* which approved the construction permit. Right wing political parties, especially the *SPP*, succesfully launched a referendum and added a clause to the Swiss Constitution that banned the construction of new minarets. This form of popular consultation is called a 'federal initiative' in the Swiss political system; it allows citizens to 'initiate' changes to the constitution. It is a demanding process that requires 100,000 signatures—to be collected in 18 months—in order to be launched, as well as a double majority of citizens and cantons to succeed. *Normatively,* the proposed initiative should not breach *jus cogens* principles.[2]

There is a consensus amongst normative political philosophers who have written on the topic that the ban is unjust, and we agree on this; yet exactly why it is so is much more controversial. The main culprits are breaches of democratic requirements (e.g. Miller 2016) and equal citizenship (e.g. Zellentin 2014; Thompson 2018; Laborde *forthcoming*). In this chapter, we extend the equal citizenship argument by supplying a contextual explanation for what is wrong with the Swiss minaret ban. Like others, we argue that it is not only the ban itself that is unjust, but also—and more importantly—some aspects of the democratic process that led thereto. In particular, we argue that, given the role of and the values embedded in direct

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democracy in the Swiss polity, Muslims suffer of a lack of recognition as autonomous and political subjects, and that this calls into question the ban's legitimacy. In our view, the contextual normativity inherent to direct democracy, i.e. values underpinning and legitimating direct democracy as a just modality of adopting political decisions, entails recognising the equal status of *all* as autonomous citizens and political agents, if democratic decisions are to be legitimate. These preconditions were not satisfied in the overall Swiss political setting leading to the ban. Therefore, we expand the meaning of equal citizenship at the level of its implementation in the Swiss context in order to capture political injustices inherent in the way that direct democracy produced the ban by popular vote.

In this paper, we aim to complement and extend Cécile Laborde's argument against the ban, which emphasises the exclusion of Muslim citizens from equal *national* belonging. We argue that if we take seriously the normativity that is embedded in the Swiss direct democratic context (Carens, 2004), especially in its ability to determine the substance of *national* belonging, then the symbolic exclusion of Muslims from *political* belonging is more relevant than the former with regard to democratic justice. Section 1 defines basic notions and presents some arguments that were circulated in Swiss society during the referendum campaign. Section 2 will present extant arguments in normative political philosophy about the ban. Section 3 expands our argument, which can be summarized as follows: the double absence of recognition of Muslims as (i) equal autonomous subjects and (ii) as political agents calls into question the legitimacy of the direct democratic process that led to the ban, making it unjust by the standards implicit within democratic practices in Switzerland.

1. Contextual Arguments

This section systematically presents the political arguments for and against the ban and how they relate to the Swiss context; prior to that we clarify what the ban concretely implies *formally* as well as *contextually* with respect to the background political process.

The federal initiative succeeded in adding a clause to Article 72 of the Swiss Constitution, an article entitled 'Church and State'. Previously, this article had only two clauses: (1) Cantons are competent to determine the nature of the relationship between Church and state; (2) Within the scope of their powers, both cantons and federal authorities take measures to preserve public peace between the members of different religious communities. With the constitutional amendment, a new clause was added: (3) The construction of minarets is prohibited. The *formal* subject of this clause is straightforward: it does not require the removal

of minarets already constructed in Switzerland; it is also independent of prayer calls, given that prayer calls never existed in Switzerland as a practice; it prohibits neither the construction of new mosques, nor the banishment of the collective worship of Islam. Yet, from within the Swiss political context, there has been an ongoing *political process* running in the background, expanding this limited *formal* subject into a broader *contextual* one that problematizes not only the construction of new minarets, but also the *public visibility of Islam* in Switzerland. Indeed, the most commonly spread argument for the ban concern the fact of stopping what defenders of the ban qualify as the *Islamization* trend in Switzerland. This includes the wearing of headscarves; Islamic burial customs; *burka/burkini* wearing; and the domination of Muslim women. Defenders of the ban have politicized all such issues, before and after the vote (a decade later, such matters are still relevant, and are often debated in their intersection with citizenship-related questions, i.e. naturalization and integration.). Thus, the campaign against minarets, orchestrated by populist political actors, aimed at agenda-setting Islam and Muslims in the public debate, possesses a temporal character that extends into the *pre-* and *post*-vote dynamics.[3] Meanwhile, opponents of the minaret ban contested it through different political arguments.[4] One of these was often mentioned implicitly, in different ways, namely what we call the *recognition* argument. According to this, the political process led people to *question the political belonging* of Muslim residents/citizens to Switzerland, and this was detrimental to equal citizenship. To give an idea of the background context, it is important to mention that the campaign aggressively represented Muslims as a threat to democracy: as 'radical fundamentalist foreign elements threatening Switzerland'.[5] An emblematic campaign poster, a common feature of many Swiss walls, featured a drawing of a Muslim woman in *niqab* alongside some minarets on a Swiss flag represented in a way 'reminiscent of missiles.' The *SPP* did not hesitate to publish another version of the poster with the minarets protruding through Swiss flag. It is against this background that many different actors repeatedly voiced the recognition argument, such as the Swiss authorities, Christian religious associations, Muslim and other minority organizations.

The Swiss authorities, while not known for being very active in intervening in the political process, were nonetheless against the ban. The Federal Council recommended that Swiss people oppose the ban as it 'infringes guaranteed international human rights and contradicts the core values of the Swiss Federal Constitution. Such a ban would endanger peace between religions and would not help to prevent the spread of fundamentalist Islamic beliefs' (Press Release: Opinion on the Popular Initiative against the Construction of Minarets 27.08.2009). After the vote, the head of the Federal Department of Justice and Police, Eveline

Widmer-Schlumpf, stated that the ban on minaret construction should be understood not as 'a rejection of the Muslim community, religion or culture. Of that the Federal Council gives its assurance' (Press Release of the Federal Council 2009). The Federal Council's *malaise* is well expressed by this quote, which captures the worries that were present before the vote and concern the implications that the ban would have had on the equal belonging of Muslims in the Swiss nation.

The reaction given above resonates with Muslim organizations' and representatives' concerns in Switzerland. Farhad Afshar, the president of the Coordination of Islamic Organizations in Switzerland asserted: 'Most painful for us is not the minaret ban, but the symbol sent by this vote…Muslims do *not feel accepted* [our emphasis] as a religious community' (Cumming-Bruce and Erlanger 2009). Similarly, during an interview conducted prior to the vote, Youssef Ibram, an imam at Geneva's main mosque and the Islamic Cultural Foundation, was reported to have said that 'whatever the outcome of the vote, Muslims would lose out from a campaign that had played on fears of Islam and exposed deep-seated opposition to their community among many Swiss' (Cumming-Bruce and Erlanger 2009). These statements clearly put an emphasis on the campaign's process and imply that irrespective of the outcome of the vote, the campaign had already succeeded in calling the national belonging of Muslims in Switzerland into question.

Opponents of the ban also drew attention to the aggressive nature of the process *targeting* Muslims in Switzerland. The former president of the Swiss Federal Supreme Court, Giusep Nay, stated that: 'The Muslim minority is being attacked.[…] This is an exclusion campaign hindering all kinds of on-going integration efforts' (Euronews 2009). In a similar manner, the president of The Federation of Islamic Organizations in Zürich, Taner Hatipoğlu, emphasized the risk of Swiss Muslims' marginalization (Euronews 2009). This aggressive targeting was also contested by minority organizations. For example, the Swiss Association for the Minorities, the Swiss Federation of Israeli Communities and the Platform of Liberal Jews of Switzerland all argued that social cohesion in Switzerland is safeguarded by respecting Switzerland's linguistic, cultural and religious diversity. According to them, the campaign favours the discrimination and exclusion of citizens of Muslim religion, given that it obliges them to give up one of their religious symbols, while there is *no discussion* of a restriction for other communities.

To conclude, a number of different political actors agreed that the public debate which occurred before the vote failed to recognize Muslims as equal political agents. Muslims were repeatedly depicted as lacking a commitment to democratic culture, and for that reason were

symbolically excluded from national belonging. In the following section, we show that, with the partial exception of Miller, arguments proposed by political philosophers against the ban broadly resonate with this interpretation. Nonetheless, we argue, in the last section, that focusing on the denial of equal citizenship through the symbolic exclusion of Muslims from national belonging almost exclusively, they underestimate a more relevant form of political misrecognition. This is the fact that Muslims are not only symbolically excluded from national belonging, but also from the *political* belonging as autonomous actors who have a fair chance to have a political voice when supporting their conception of the good in the Swiss polity. As we will show, such a misrecognition calls into question the contextual legitimacy of direct democracy in the production of legitimate outcomes.

2. Philosophical Arguments

Political philosophers who have written about the Swiss vote mostly agree that the minaret ban is unjust. Nevertheless, they disagree about exactly why this is so. There are two main kinds of arguments contesting the ban: the first concerns breaches of democratic requirements such as revisability and subsidiarity (Miller 2016), whilst the second concerns equal citizenship (Zellentin 2014; Thompson 2018; Laborde *forthcoming*). This section provides a systematic overview of these arguments, focusing in particular on arguments about equal citizenship. According to our reading, arguments such as Miller's are about inclusion within a 'national community', whilst the other arguments are about inclusion into a 'nation understood as a political community'. The difference is that whilst in the former view it is enough that minorities be recognised as belonging to the nation, the latter view requires that they also be recognised as full and equal members of the political community.

According to David Miller (2016), the decision to ban the construction of minarets is objectionable in two respects. First, the substance of the decision is objectionable, since although Miller believes that it is generally permissible for historical majorities to shape public spaces in order to reflect their own culture, this can at most justify selective restrictions on minaret building, and not a general prohibition (Miller 2016, 454). Second, Miller also objects to the procedure by which the decision was reached. Not only did it fail to respect the principle of subsidiarity, which states that decisions about the character of public space ought to be taken at the local level, but it also violated the principle of revisability, since it took the form of a constitutional amendment and thereby removed the issue from future democratic contestation (Miller 2016, 453).

Strikingly, Miller rejects two additional arguments against the ban. First, in accordance with his minimalist understanding of human rights (Miller 2007, Ch 7; Baycan 2014), he insists that the ban did not violate a human right to freedom of religion, because the construction of minarets is not an essential religious practice (Miller 2016, 445). Second, he also argues that the ban did not violate the principle of equal treatment, because that principle does not apply to contested public spaces. Instead, in accordance with his commitment to liberal nationalism, he argues that majority precedence in public spaces is both permissible and compatible with equal citizenship.[6]

For Miller it is permissible for liberal states to promote their national cultures in public spaces. He allows that immigrants ought to be free to contest particular constructions of the national identity and to propose revisions. However, he thinks that they have no right to insist that their culture also be promoted, since by migrating they waived their rights to their own 'societal culture' (Miller 2016, 449). Moreover, if they fail to persuade the majority about the need to revise the national culture, then Miller insists that they have no grounds for complaining that their equal status has been undermined (Miller 2016, 452). However, in our view, this is plausible only if citizenship is understood as a *formal* set of equal individual rights. Whereas when it is instead understood as a practice in which we form, revise and inter-subjectively define the content of the popular will, then citizenship has broader implications. Being unable to participate on an equal footing to the (re)framing of national identity, or not being considered as having the relevant democratic skills to participate to such a process, means that one is not regarded as an equal and full member of the political community.[7] We will return to this point below.

Alexa Zellentin argues that the Swiss minaret ban is unjust because it does not respect the equal and fair value of political rights, which in turn is detrimental to equal citizenship. Departing from Rawlsian premises, she argues that cultural differences—and not just economic ones—can threaten the fair value of equal political participation rights (Zellentin 2014, 50). In her view, citizens are equals to the extent that they are 'equally entitled to participate in shaping society' (Zellentin 2014, 48). Equal standing requires both that citizens have equal rights and that these rights have 'fair value' for all citizens (Zellentin 2014, 49-50). The Swiss ban harms both of the components of equal citizenship, and is, therefore, unjust with regard to equal standing. The fair value of political rights demands a roughly equal position for making *formal* use of the rights (Zellentin 2014, 48). Under the circumstances of post-migration cultural diversity, this demand is undermined, given that the culturally diverse citizens are unfairly burdened most especially when a historically dominant majority fails to recognize cultural

minorities' belonging as members with equal standing (Zellentin 2014, 50). From these premises, Zellentin concludes that the ban made *the already unfair situation worse* (Zellentin 2014, 52 (FN8))*,* given that such an outcome sent two different messages both to voters and to Muslims. To the former, it reassured them that non-recognition of Muslims citizens' belonging and religious visibility is legitimate; to the latter, it affirmed that their political input is unwelcome, which in turn cannot but lead Muslims to question 'their standing and self-respect as free and equal citizens' (Zellentin 2014, 52 (FN8)).

While we agree with Zellentin, that equal citizenship requires the equal standing and self-respect of citizens of migration background, we think that she underestimates the political implications of a lack of equal standing in a *direct democratic context*. Equal standing and self-respect are required to allow Muslims in the national community and assess whether they are equal citizens in relational terms to majority nationals. However, they seem to be too abstract to fully capture what can go wrong when the content of a national identity is defined through direct democratic procedures whose outcome are not submitted to judicial review. In such settings, and given the unequal distribution of political and symbolic resources among majority nationals and citizens of, or assigned to, cultural-religious minorities, what is particularly relevant is *political equal standing,* namely the recognition of minority citizens as full members of the political community and as fully autonomous political agents. This is true even if they are predominantly considered as not fully belonging to the nation or foreigners (as is the case in Switzerland). As we argue later, in a society such as Switzerland, marked by majority/minority tensions, and where direct democracy can be used to enforce a particular national identity at the expense of some people's equal political standing, this latter becomes more relevant to equal citizenship than equal national standing.

Cécile Laborde (forthcoming) goes a step further in this direction. She argues that the minaret ban is unjustified as it is an instance of arbitrary majority domination over Muslims. This is due to the use of *religion* as an *assigned identity*. It is assigned, because, as a matter of fact, very few Muslims demand minarets. She opposes Miller, not only because for her majority national precedence is incompatible with equal citizenship, but also because she believes that people ought to have a degree of discursive control over how their identities are constructed. In contrast, the direct democratic campaign dominated Muslims, both by denying them this minimum civic standing and by excluding them from the imaginary community of citizens and of the national community. The civic standing of Muslims was undermined by assigning a negative identity to them and by depriving them of control over that identity. By turning

Muslims into irreducible aliens, the referendum's outcome gave to this majority domination *a permanency (forthcoming)*.

There are two aspects of Laborde's perspective that we tackle in our attempt to reconstruct the relevant injustices inherent to the ban. The first is the need to broaden the meaning of the ban and of the overall process of the politicization of Muslims in order to better assess the wrongs with regard to equal citizenship. As mentioned previously, when the process of constructing Muslims as figures of alterity is understood as larger than the particular direct democratic campaign itself—something that Laborde does not do—then the contextual meaning of the ban concerns the *visibility of Islam*, namely Muslim's visible presence in the public space, rather than *the Islamization of Switzerland*, namely a voluntarist political strategy to impose rigorist Islam in Swiss society, as Laborde argues. This latter meaning stems from the proponents' way of framing the debate promoting the ban and we are convinced that she cannot avoid reiterating the Islamization view, unwillingly and by using a reductive interpretation of the reasons advocated to support it. She does so by emphasizing that what the ban rejected was not Muslims or Islam but Islamism, understood as a radical and anti-liberal-democratic ideology dismissed by most Muslims. However, when the contextual meaning is understood as concerning the *visibility of Islam,* the ban's meaning includes aspects other than minaret construction and results in the targeting of Muslims much more directly in almost all forms of their religious visibility. In fact, the frame mobilized by the supporters of the ban inevitably disregards the possibility of recognizing that Muslims may just be being themselves/be seen as themselves without intending to *Islamize their surroundings.*

Secondly*,* and more importantly for our argument, Laborde considers *religion functioning as a category of assigned identity* as problematic. This is because such an assignation calls into question the minimal political standing which includes, at least, a degree of discursive control over how one's identity is construed and assigned by others (*forthcoming*). Therefore, she argues, Muslims have been unfairly treated by the minaret ban, not as Muslims, but as citizens. In her view, Muslims did not suffer from a lack of recognition, but from the fact of being considered too different to belong to the national community (what she calls an excess of misrecognition). This is a very interesting point, which strongly resonates with what we also see as morally wrong in the ban, namely the marginalization of Muslims in the political community of citizens. Nonetheless, we believe that Laborde underestimates what happened in Switzerland and the extent to which the unfair treatment of Muslims—and the social representations justifying it—has significant implications for the lack of recognition of Muslims` equal citizenship.

We argue that the unfair treatment Laborde is writing about can be better captured by analysing the nature of the lack of recognition experienced by Muslims. We take equal recognition as a central aspect of equal citizenship.[8] This is because the latter implies at least (1) respecting the autonomy of all individuals, namely their inner capacity to determine their conception of the 'good life'; (2) granting the members of minorities the symbolic and institutional resources to participate as equals in democratic decision-making; and (3) granting some opportunities or legal protections to minorities to avoid or to be protected against majority decisions that go against (1) and (2). Theories of recognition provide several reasons to question the legitimacy of the process that led to the ban of minarets. For instance, regarding the belief that Muslims' religious particularities are unworthy of being socially visible, Galeotti has argued that '[i]f a social difference is denied public visibility and legitimacy in the polity, [then] the group associated with it inevitably bears social stigma' (Galeotti 1993: 597). Stigma is a social condition that affects equal citizenship for the members of the group. In a similar way, Honneth (1996) identifies the lack of equal rights and of social esteem as clear cases of misrecognition, implying that as such Muslims suffer a condition of status subordination (Fraser 2005). Although such theories present different insights into the moral or ethical worth of recognition, all share a common element: equal citizenship is not fulfilled if citizenship rights are not supplemented with the recognition of all in their capacity as equal participants and as equal autonomous moral actors in a given polity.

According to Laborde, the main form of misrecognition raised by the minaret ban is that it led Swiss national identity to be limited to its external borders to prevent Muslims from joining—by imagining it per definition as a European-Secular-Christian identity (Laborde *forthcoming*). In our view, such a misrecognition results in a more grievous structural injustice in the Swiss case. It resides in the fact that the systematic politicization of Islam and of Muslims in Switzerland is made possible by a lack of recognition of them as equal actors in the political community. A more fine-grained consideration of the context, and of the process, shows that this lack of recognition is not only unjust because it goes against an abstract theory of recognition; but that it also violates some of Switzerland's own central values of public philosophy, namely democracy and citizenship.

More specifically, as we will argue in the next section, in the case of Muslims, the content of the religious identity that the majority has assigned to them has important political implications that affect the recognition of their status as equal political subjects, and therefore as citizens. They are indeed not only excluded from national belonging, but also—and more importantly for the sake of equal citizenship—from equal political belonging, considered as fair

opportunities provided to them to have a say in the political definition of the content of national belonging. We maintain that the identity assignation which affects Muslims is based on two distinctive failures of recognition, which can be summarised as the refusal to recognize Muslims as 'equally autonomous individuals' with 'equal political agency'. Both of these recognition failures call equal citizenship into question. This is not only problematic at the ideal level of democratic justice; it is also problematic with regard to the Swiss contextual understanding of what counts as a legitimate process of constructing the popular will, of enforcing it, and of managing cultural-religious pluralism in the country.

Switzerland is *a sui generis* polity in many respects, but this is especially true regarding the peculiarly *radical* trade-off it strikes between democracy and justice. The fact that democracy and justice may come into conflict is nothing new, as the democratic procedures may produce unjust decisions either because: 'democratic majorities [...] can act in good faith but be mistaken about what justice requires, or they can vote selfishly, with no regard for the interests of minorities' (Valentini 2013, 180). In general, as Laura Valentini mentions, the general solution to striking a justice-enhancing trade-off adopted by liberal democracies is 'giving the most fundamental requirements of justice the status of constitutional rights, thus removing them from the democratic process' (2013, 180). This is where Switzerland is actually quite radical in its trade-off: it is the only country in which the popular initiatives do not require any form of judicial review (El Wakil *et.al*, 2016). This comes from some specificities of Swiss political culture, namely the fact that citizens are understood to be able to freely determine their will and to search for compromises when needed (given the ethno-cultural and linguistic pluralism on which the country is historically built). The fact that citizens are allowed through direct democracy to revise the constitution (besides imperative law) well illustrated the idea that, as citizens are autonomous and free enough to determine their political will, the decisions taken by them are considered as being procedurally legitimate, whatever the outcome may be. Therefore, concerning the issue of minarets and given the significant value of direct democracy to Swiss national and political identity, it would have been very difficult for institutions (such as the national assembly) to override the initiative and avoid the popular vote. Although, as mentioned in section 1, fears about the legitimacy of the ban had been voiced during the campaign, the saliency of the Swiss specific injunction of 'letting the People decide' prevailed among political actors. But, is this enough to say that the vote, as well as its result, are legitimate with regard to the procedural normative standards implicit within democratic practices in Switzerland ?

3. Direct Democratic Process and Its Injustices

The banning of minarets in Switzerland was the result of a popular vote. Is there something about the respect of the procedural characteristics of the democratic process that can be apprehended by a more fine-grained contextual approach (Carens, 2004) and that might expand the qualification of the moral wrongs produced thereby? We contend that this is the case. The campaign to ban minarets took place in a context that had previously been marked by strong negative representations of values and behaviours of Muslims, and especially of their presumed unwillingness to integrate into the nation and the democratic polity more generally. In our view, such a misrecognition involves a lack of respect for some important contextual preconditions that allow Switzerland's direct democratic process to produce minimally legitimate outcomes. These preconditions include the necessity of protecting minority groups against majority decisions, respecting their autonomy, and including them in political processes that aim to accommodate conflicts between divergent interests or conceptions of the good. Indeed, the focus on the direct democratic process allows us to apprehend two forms of a lack of recognition that affect the practice of equal citizenship in the Swiss case. We call them a lack of *recognition of equal autonomy* and a lack of *recognition of political agency*. These two forms of recognition are intrinsically relational and, therefore, are dependent on existing social conditions and power relations. We argue that assigning an essentialized religious identity to Muslims fails to recognise both their capacity for autonomy and their actual political opportunities to influence and shape the norms that govern them. Before addressing these aspects, let us first introduce some elements of the Swiss direct democratic system.

Swiss Direct Democratic Process: Normativity and Functioning

Direct democracy is a fundamental pillar of the Swiss political system and of its political culture (Kriesi 1998). Normatively, Swiss citizens recognize it as being the ultimate procedure by which to provide legitimacy to collective decisions (in the case of disagreements between political actors or in civil society). This ideal is based on a thick conception of citizenship (Barber 1988), one grounded on a positive conception of freedom, and on the idea that—some constitutional constraints notwithstanding—the ultimate legitimacy of any decision requires acceptance by the people. Nonetheless, besides imperative law, the expression of popular sovereignty is partly limited by at least two features. First, the protection of ethno-linguistic minorities. Indeed, a double majority (citizens and cantons) is required for constitutional

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amendments, in order to protect small cantons against the more demographically powerful ones. Second, Swiss institutions have implemented what is called 'consensus democracy' (Lijphart 1999, 31) in order to avoid an excess of direct democracy, which would hamper governance— i.e. the need to find compromises among the political elites through a long, extra-parliamentary, decision-making process. This means that all of the relevant political actors who are affected by the proposal of a new law often discuss it at length, even outside the parliament, in order to find the most consensual expression thereof and in order to avoid the commencement of a referendum. Indeed, this structuring principle of Swiss democracy is based on the view that the individuals affected should have a say in the construction of the contents of the laws that concern them directly (Barber 1988).

However, direct democracy is not only a legitimating principle, it is also a device available to political parties and civil society's actors by which to organize their political strategies. It functions as a modality of agenda-setting topics that are considered as sufficiently relevant to call for a political decision. In this perspective, the launching of federal initiatives does not necessarily aim to win a vote, but more often to structure the political debate around certain issues that will continue to arise even after the vote itself. Indeed, the Swiss direct democratic process has a *temporality* that both precedes and that goes beyond the vote itself. Although the success rate of actually winning the vote is very low—1 out of 10 on average, actors use the instrument of Federal initiative to keep issues salient and to reaffirm their political programs. This is particularly the case with regard to the issue of foreigners, which has historically been a key topic in the Swiss public debate. In fact, direct democracy has been regularly used to define the politics of belonging, namely to perform and reiterate the symbolic exclusion of some groups from common belonging—e.g. the Jews in 1891, foreigners in general in the sixties and seventies, refugees, and now Muslims (Vatter, 2011). Nevertheless, although such topics ineluctably raise racist or xenophobic implications, the idea that 'the People decides' is endorsed by political actors as a legitimate way to adjudicate collective decisions in Swiss political culture.

As mentioned previously, bearing in mind the normative values that legitimize it, and the political role played by direct democracy in Switzerland, it would be implausible to argue that the vote should not have taken place because it violated the principles of equal citizenship or equal belonging. However, this does not mean that there are not contextual reasons to explain why the vote should have been avoided, or why the easily foreseeable wrongs that arose during the campaign should have been thwarted. This is because, given the constant politicization of the Muslim question in recent years (Gianni, 2016a), actors knew that the minimal

preconditions needed to ensure that the public debate did not reinforce the symbolic exclusion of Muslims were not present when the initiative was launched and when the National Assembly decided to formally allow the vote. In fact, that Muslims were affected by a lack of symbolic recognition as full participants and as fully belonging to Swiss society was hardly a novelty. The politicization of Muslims in Switzerland is the product of a programmatic organization, one orchestrated by political actors involved in the agenda-setting of Islam and Muslims as a problem. The contents of this politicization proceed from a structure of negative representations that are continuously performed by those same actors who are setting an agenda that suits their interests.

A double lack of recognition of Muslims: Equal Autonomy and Political Agency

In our view, and referring to Laborde's terminology, the arbitrary domination over Muslims results mainly from the lack of two forms of recognition, namely of *equal autonomy* and of *political agency*. We take autonomy to mean 'the real and effective capacity to develop and pursue one's own conception of a worthwhile life' (Anderson and Honneth 2005, 130). Analogously, political agency is the capacity to have a say and equal standing in the political definition of common values and norms. Although they are related, the two aspects remain distinct, given that autonomy does not necessarily entail that political agency has been performed.

We argue that some 'socially supportive conditions' (Anderson and Honneth, 2005) to ensure equal autonomy are not present in the Swiss context. Muslims had already been symbolically excluded from the boundaries of the Swiss imagined-identity long before the vote on minarets. Since 2004, when citizens rejected a proposal to facilitate the procedure to obtain Swiss citizenship for the third generation of immigrants, Muslims have been constructed as figures of alterity, namely as subjects who cannot belong to the Swiss nation if they are unwilling to assimilate—which also involves being less *visible* in the public space. This politicization, *via* identity assignation, has led to the crystallization of the figure of the 'generalized Muslim' (Van den Brink, 2007). Public controversies prominently portrayed 'him' as possessing given and fixed cultural-religious attributes, as deeply opposed to the ethos of democracy and gender equality, as carrying with him a threat of violence and, more generally, as being a problem for the democratic *ethos* because of his religious radicalism. Such a 'generalized Muslim' is represented as an actor who is devoid of moral autonomy with regard to democracy, given that he is heteronomously driven by religious values and, therefore, is

maladjusted to democratic interactions or practices. For instance, claims articulated by Muslims about the need to reinterpret the content of some Swiss civil laws, in order to provide better ways of accommodating their religious practices, have systematically been represented as a dangerous contestation of non-negotiable secular democratic values. Muslims are represented as lacking the democratic culture needed to participate in the determination of collective norms on an equal footing. Indeed, such an 'assigned identity', in Laborde's terms, not only excludes Muslims from common belonging, but also from the Swiss conception of citizenship. Their supposed over-religiosity entails their lack of autonomy, namely the capacity to partially revise their religious conception of the good and to endorse democratic values.

Of course, research has shown that this is not the case empirically (Gianni, Giugni and Michel, 2015); however, symbolically, the disavowal of their autonomy calls into question the intrinsic value of their practices of citizenship because, according to Swiss contextual values, citizenship is precisely the expression of one's autonomy and freedom. The assignation of this negative identity has not been produced through the campaign on minarets; it is rather the opposite: the campaign is the performative result of the processual construction and reiteration of such an essentialised identity that took place almost a decade previously. Unsurprisingly, the ban on minarets has not stopped the politicization of Muslims' presence in the national community. Other issues pertaining to their religious practices—e.g. the banning of the *burka*, Islamic headscarf, cemeteries reserved for Muslims, calls for the strengthening of integration policies' requirements, respect for secular institutions, respect of gender equality—have all been (and continue to be) debated since the vote. Indeed, the vote did not produce, but instead crystallized, previous representations of Muslims that call their autonomy into question.[9] Therefore, a central aspect of the Swiss contextual understanding of democratic legitimacy, namely that members of the political community are conceived of as autonomous, and that their autonomy should at least minimally be protected in order to respect democratic principles, is partially denied to Muslims, thus calling into question their actual standing as equal citizens.

The lack of recognition of Muslims' political agency follows on from their lack of recognized autonomy. By political agency, we refer to the actions undertaken by free and equal citizens in participating in, supporting, or contesting the norms, values or power relations that structure the polity. In Switzerland, to have political agency means at least two things: to have the ability (recognised and supported by institutions) to resist and reject injurious identity assignations that occur in public debate, and to be recognized as a social and political actor who is allowed to participate in compromise-building procedures (necessary to avoid the imposition of majority decisions). Neither of these conditions are satisfied for Muslims in Switzerland.

Muslims' political voices have been rendered inaudible by negative representations regarding their intrinsic autonomy, namely their capability to endorse democratic values while pursuing their conception of the good. Therefore, Muslims are *depoliticized* as political actors. Put otherwise, the injunction to unilaterally assimilate to democratic norms, in order to belong to Swiss society and polity, entails their *de-politicization as citizens*. With regard to equal citizenship taken as a normative principle, we consider that the injustice inherent to de-politicization is more fundamental than the exclusion from national identity. If the exercise of Muslim political agency—in claiming issues that pertain to their religious practices for instance—is automatically categorized as incompatible with democratic values, then their political voice is disregarded as a legitimate component of the process of definition of common norms and of the contents of national identity. Instead of being democratically and deliberatively legitimated (or eventually modified) by the participation of (all) affected individuals, such common norms are enforced by the majority as though they were non-negotiable, *pre-* or *extra-political*; therefore, they are treated as if they should *neither be the object nor the result* of a democratic deliberation with Muslims. When a conflict between Muslims and public authorities does occur, the institutional response is mostly based on law or formal decisions, but does not open up to the setting of political devices intended to build post-conventional identities based on an inter-subjective recognition of all actors concerned (Williams 1995). Such a view contradicts some of the basic contextual values that legitimize Swiss direct democracy.

In Swiss political culture, the idea of reaching an agreement or a compromise between opposing political forces is an important requirement to legitimize collective decisions. It is an historical specificity of the functioning of Swiss democracy and a central part of Switzerland's paradigmatic success in accommodating the country's original multicultural setting (Linder, 1994). Indeed, as a consensus democracy, the Swiss polity is built around a very large set of formal and informal political procedures that seek to foster agreement between actors that belong to territorialized cultural and linguistic groups. However, the situation is almost the opposite concerning non-territorialized minority groups. In the case of Muslims, and given the negative representations spread throughout society, almost nothing has been done by political institutions in order to provide them with political opportunities to be part of the process of defining the terms of their inclusion in society. For instance, Muslim associations have not been systematically contacted by the federal state to try to promote a strategy by which to counter negative representations or to find common agreements—as has been done in some cantons. Very few associations have obtained public recognition from the state to be associations of

general interest (namely pursuing objectives that go beyond ethnic groups or religious communities, but considered of social utility for all the population; Christian associations generally obtain such a status). The state is also reluctant to enforce article 261 of the penal code that punishes hate speech towards religious, ethnic, or racial minorities.

Indeed, Swiss political elites have decided that direct democratic value (according to which the people have the last word) was superior to the values of respecting Muslims' capability for autonomy and of the political accommodation of conflicts through their inclusion in the decision-making process. This choice is mainly driven by political reasons: (1) the reluctance of political parties to be seen as unpopular (or illegitimate) if they deny the exercise of democratic, popular sovereignty on this issue; (2) the reluctance of political actors to go against the negative views about Muslims spread throughout the population in order to hold onto their electorate. In sum, neither the recognition of autonomy, nor the empowerment of political agency have been a clear goal for specific public policies. These contextual choices have triggered and perpetuated a process in which Muslims are unfairly treated and in such a way that calls into question the legitimacy of the campaign and the vote, as well as its outcome. Through the popular initiative on minarets, the direct democracy allowed majority citizens to determine the content of national identity. However, the side effects of such a process go far beyond the content of national identity: they result in the symbolic and political confinement of Muslims in a position of "second class" citizens, as lacking basic competences to be full participants to the democratic process. Instead of being a procedure providing all citizens an equal and fair way to take a collective decision respecting the equal standing of all—what equal citizenship should be—the Swiss democratic process, not limited by judicial review, has contributed to the creation of unequal citizens.

In conclusion , in our view, the moral wrong of the minaret ban mainly concerns the fact that the iteration of negative identity assignations to Muslims has taken place in a context marked by the lack of recognition of their *equally being full citizens*—understood as providing an autonomous subject with the political opportunity to strive for their conception of the good. In order to recognize Muslims as being part of the Swiss community, and allowing for a minimally legitimate democratic process, the public debate should have been more strictly regulated (by the state and by political actors) in order to avoid the crystallization of negative representations. This would not necessarily have changed the outcome of the vote, but it would have provided a minimal institutional recognition that Muslims belong to both society and the political community and that, like every other citizen, they have to be protected against injurious categorizations that undermine their equal footing with the members of the majority in terms of

their autonomy and political agency. Institutions and political actors have not made significant steps, neither formally nor symbolically, to provide Muslims with such a double recognition, which is necessary for a contextual legitimation to the direct democratic outcomes. In so doing, they have undermined the preconditions that provide legitimacy to Swiss direct democracy's outcomes, whatever these outcomes may be.

4. Conclusion

In this chapter, we have argued that the injustice inherent in the ban of minarets is twofold. On the one hand, as argued by Cécile Laborde, it affects the principle of equal citizenship needed to sustain democratic justice; on the other, it results from the disrespect of some crucial preconditions providing legitimacy to the contextual normativity embedded in the Swiss conception of direct democracy. As shown in section two, several political philosophers, with whom we agree, argue that the ban is unjust. In our view, for instance, in focusing on a single religious minority and restricting the civil rights of its members, it entails a form of discrimination. However, we believe that such a conclusion is insufficient to fully make sense of the injustice at stake. The latter also emanates from some characteristics of the broad process that led to the ban and whose temporality largely precedes and follows the 2009 vote. We have shown how the assignation to Muslims of a negative and essentialized religious identity, through a contextual specification of Laborde's arguments, not only excludes them from national belonging, but also, and more importantly for us, from the opportunity to be considered as full citizens in the political community. Such a politically unfair treatment cannot be captured by referring only to a formal principle of equal citizenship; a contextual analysis of the case is needed to uncover it. Our analysis shows that the lack of recognition suffered by Muslims ultimately calls the legitimacy of the minaret ban into question, regarding the specific values that inform the direct democratic *ethos* in Switzerland. If this is true, then the minaret ban is much more than a case of majority precedence in the religious composition of the public space; it clearly shows injustices that fix Swiss Muslims in a second-class position regarding the worth of their citizenship. Given that such an injustice is democratically sanctioned by popular vote, it is much more relevant, in our view, to once again take up the challenge of coming up with a fair accommodation of cultural-religious groups in multicultural societies marked by a strong majority's power over minorities.

References

Anderson, Joel, and Axel Honneth. 2005. 'Autonomy, Vulnerability, Recognition, and Justice.' In *Autonomy and the Challenges to Liberalism*, edited by John Christman and Joel Anderson, 127–49. Cambridge: Cambridge University Press.

Barber, Benjamin. 1988. 'Participation and Swiss Democracy.' *Government and Opposition* 23 (1): 31–50.

Baycan, Esma. 2014. 'Review Essay: Justice for Earthlings, David Miller.' *Ethical Perspectives*, 3: 429–39.

Carens, Joseph. 2004. "A contextual approach to political theory". *Ethical Theory and Moral Practice*, 7: 117–132.

Cumming-Bruce, Nick, and Steven Erlanger. 2009. 'Swiss Ban Building of Minarets on Mosques.' *The New York Times*, November 29, 2009. https://www.nytimes.com/2009/11/30/world/europe/30swiss.html.

El Wakil, A., Baudoui, R. et Gianni, M. 2016. 'Etat d'exception, Démocratie Directe, Exception Démocratique : Le Cas Suisse.' *En Jeu* 7: 105–16.

Euronews. 2009. 'Minaret Debate Angers Swiss Muslims.' *Eurnews*, November 19, 2009. https://www.euronews.com/2009/11/19/minaret-debate-angers-swiss-muslims.

Federal Statistical Office. 2012. Ständige Wohnbevölkerung ab 15 Jahren nach Religions- und Konfessionszugehörigkeit in den Sprachregionen (revidierte Daten vom 11.10.2012). [online] <http://www.bfs.admin.ch/bfs/portal/de/index/news/04/01.Document.159819.zip>

Fraser, Nancy. 2005. *Qu'est-ce que la justice sociale? reconnaissance et redistribution*. Paris: Éd. la Découverte.

Galeotti, Anna Elisabetta. 1993. 'Citizenship and Equality: The Place for Toleration.' *Political Theory* 21 (4): 585–605

Gianni, Matteo. 2016. 'La régulation de l'Islam et l'intégration des musulmans en Suisse: Une relation paradoxale ?' In *Réguler le religieux dans les sociétés libérales ?*, edited by Amélie Barras, François Dermange, and Sarah Nicolet, 45–62. Genève: Labor et Fides.

Gianni, Matteo. 2016a. "Muslims' integration as a way to defuse the Muslim Question ? Insights from the Swiss case", *Critical Research on Religion*, 34, 1: 21-36.

Gianni, Matteo, Giugni, Marco and Michel, Noémi. .2015. *Musulmans en Suisse. Profils et intégration*. Lausanne : Presses polytechniques et universitaires romandes.

Gladney, Dru. 2009. 'Non a l'initiative Antir-Minarets.' Amnesty International Switzerland. March 2009. https://www.amnesty.ch/fr/pays/europe-asie-centrale/suisse/docs/2009/non-initiative-minarets/initiative-anti-minarets.

Honneth, Axel. 1996. *The Struggle for Recognition: The Moral Grammar of Social Conflicts*. Cambridge, Mass: MIT Press.

Kriesi, Hanspeter. 1998. *Le Système Politique Suisse*. 2e éd. Collection Politique Comparée. Paris: Economica.

Laborde, Cécile. forthcoming. 'Miller's Minarets. Religion, Culture, Domination.' In *Political Philosophy, Here and Now*. Essays in Honour of David Miller. Oxford University Press.

Lægaard, Sune. 2015. 'Multiculturalism and Contextualism: How Is Context Relevant for Political Theory?' *European Journal of Political Theory* 14 (3): 259–76.

Langer, Lorenz. 2010. 'Panacea or Pathetic Fallacy - The Swiss Born on Minarets.' *Vanderbilt Journal of Transnational Law* 43 (4): 863–951.

LeNews. 2017. 'Swiss Feel Threatened by Islam, According to Survey,' August 30, 2017.

Lijphart, Arend. 1999. *Patterns of Democracy: Government Forms and Performance in Thirty-Six Countries*. New Haven: Yale University Press.

Linder, Wolf. 1994. *Swiss democracy: possible solutions to conflict in multicultural societies*. Palgrave Macmillan Press.

Miller, David. 2007. *National Responsibility and Global Justice*. Oxford: Oxford University Press.

Miller, David 2016. 'Majorities and Minarets: Religious Freedom and Public Space.' *British Journal of Political Science* 46 (2): 437–56.

Mills, Charles W. (Charles Wade). 2005. 'Ideal Theory as Ideology.' *Hypatia* 20 (3): 165–84.

Modood, Tariq, and Simon Thompson. 2017. 'Revisiting Contextualism in Political Theory: Putting Principles into Context.' *Res Publica* 24 (3): 339–57.

'Press Release of the Federal Council.' 2009. Swiss Federal Council. November 29, 2009. https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-30430.html.

'Press Release: Opinion on the Popular Initiative against the Construction of Minarets.' 27.08.20018. Federal Office of Justice. 27.08.2008. https://www.bj.admin.ch/bj/en/home/aktuell/news/2008/ref_2008-08-27.html.

Rescher, Nicholas. 2000. *Process Philosophy: A Survey of Basic Issues*. Pittsburgh, Pa.: Univ. of Pittsburgh Press.

Taylor, Charles. 1994. "The Politics of Recognition", in: *Multiculturalism: Examining the Politics of Recognition*, edited and introduced by Amy Gutmann, Princeton: Princeton University Press, pp. 25-74.

Thompson, Simon. 2018. "The Expression of Religious Identities and the Control of Public Space." Ethnicities: 146879681878593.

Valentini, Laura. 2013. 'Justice, Disagreement and Democracy.' *British Journal of Political Science* 43 (1): 177–99

van den Brink, Bert (2007): "Imagining civic relations in the moment of their breakdown: a crisis of civic integrity in the Netherlands", in: Laden, Anthony S. / Owen, David (eds), *Multiculturalism and Political Theory*, Cambridge: Cambridge University Press, pp. 350-372

Vatter, Adrian. 2011. *Vom Schächt- zum Minarettverbot. Religiöse Minderheiten in der direkten Demokratie,* Zürich: NZZ Verlag.

Williams, Melissa. 1995. "Justice toward groups. Political not Juridical". *Political Theory*, 23:1, pp. 67-91

Zellentin, Alexa. 2014. 'Freedom, Equality, Minarets.' *Res Publica* 20 (1): 45–63.

Notes

[2] The *jus cogen*s, established to safeguard the 'core' principles of human rights, protects some fundamental principles of international law, crimes against the humanity or human trafficking for instance.

[3] It is, therefore, possible to distinguish an *ex-ante* and an *ex-post* instantiation of the same process. During the rejected vote on *facilitated naturalization for foreigners* in 2004, the *SPP*

mainly argued that: 'if the vote was accepted, Switzerland would risk to become a majority Muslim state by 2040'. Similarly, an upcoming vote banning the face-covering—the *de facto burqa ban*—will continue to keep the political stamina alive with an *ex-post* instantiation about 10 years later.

[4] Other arguments oppose the ban in order to: protect Switzerland's international reputation; guarantee different liberties protected by the Swiss Constitution; efficiently fight against religious fundamentalism; and refute the defense of banning minarets as a replication of the limits put on Christian religious practices in Islamic countries. See Gladney (2009).

[5] The presence of Muslims in Switzerland is a very recent phenomenon: the Muslim population increased by almost 20 times between 1970 and 2000 (from about 16,000 to 311,000), amounting to 4.3 per cent of the residents. According to the most recent estimations in 2010, the Muslim population has increased to 440,000, or 5.5 per cent of the overall population. Muslims living in Switzerland are mainly foreigners, although the proportion of Muslims holding a Swiss passport is increasing: while only 11.7 per cent of them were Swiss citizens in 2000, estimates based on more recent data suggest that 31 per cent or more of the Muslim population are Swiss citizens (Federal Statistical Office 2012).

[6] Simon Thompson (2018) has suggested that Miller has three arguments for majority precedence when it comes to shaping public space, namely contribution, expression and alienation (Thompson 2018, pp. 5-12). However, Thompson argues that, by the standards of Miller's own theory, at least some of the claims on public space that come from minorities should be recognized (Thompson 2018, 7).

[7] We thank the anonymous reviewer for having emphasised this aspect.

[8] According to Charles Taylor: "equal recognition is not just the appropriate mode for a healthy democratic society. Its refusal can inflict damage on those who are denied it [...]. The projection of an inferior or demeaning image on another can actually distort and oppress, to the extent that the image is internalized" (1994: 36).

[9] According to a survey presented in August 2017 by the *Sonntags Blick*, 38% of the 1,003 people surveyed said that they feel threatened by Muslims in Switzerland. This percentage is more than double the 16% recorded in a similar survey in 2004 (LeNews 2017). It is important to note that nothing particular happened in Switzerland during this time span—terrorist attack, etc.