

## **Toleration and non-domination**

(Preprint version; definitive version published in *Tolerance, Intolerance and Respect: Hard to Accept?*, edited by J. Dobbernack and T. Modood (Palgrave, 2013))

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The need for toleration is understood to derive from disagreements that arise from religious and cultural diversity. While a number of different justifications can be offered for toleration, the value of freedom is one of the most significant. This chapter focuses on the specific conception of freedom as non-domination, rather than on other conceptions such as non-interference or autonomy, and seeks to examine what light can be thrown by this conception on the way in which contemporary states should deal with issues arising from the fact of religious and cultural diversity. It considers whether there is a place for toleration in the strict sense of ‘allowing something with which one disagrees’, which has been criticised as paradoxical, out-moded and dominating. It argues that freedom as non-domination grounds a conception of secure toleration that avoids these criticisms, while requiring some elements that are normally associated with respect and recognition.

### **Introduction**

Across Europe, there is a broad movement away from the presumption that all instances of diverse minority cultural and religious practices should be accommodated or recognized, towards a more selective or critical approach, whether this concerns religious dress, the use of immigrant languages, or other cultural practices. This movement has been justified in terms of various values, including social cohesion, equality, and a ‘muscular’ liberal defence of autonomy. Thus there is a real debate about which practices should be accommodated or recognised in liberal democratic states, and which should not (see also Mouritsen and Olsen, and Schiffauer, this volume). This brings toleration strictly speaking - allowing what one disapproves of and could obstruct - to centre stage once more.<sup>1</sup> Here, as in other contributions to this volume, I understand the various ways of dealing with cultural and religious practices

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<sup>1</sup> This strict sense of toleration is distinct from a looser, widespread popular usage of tolerance as broad acceptance that does not contain the negative moment and constraint on action that is characteristic of strict toleration. A widespread confusion in this area is indicated by the fact that most people consider it desirable to be tolerant, but not desirable to be tolerated.

as lying on a spectrum of three levels of acceptance, ranging from non-toleration or *non-acceptance* through toleration (*Accept 1*) to recognising or endorsing (*Accept 2*).<sup>2</sup> The current retreat from recognition and other more demanding conceptions thus gives rise to the question whether the only available options are *not* to tolerate (albeit on a principled basis, in forms of ‘liberal intolerance’), or merely to y tolerate diverse cultural practices that do not fit within existing social norms.

While intolerance of some practices may be justified, there is a widespread sense that toleration, strictly speaking, of other practices is not necessarily a satisfactory solution.<sup>3</sup> Even if seen as necessary, it is often also seen as having negative connotations in that it involves both disapproval and acceptance at the same time. Thus it is regarded as problematical or at least not wholly desirable for both the tolerator and the tolerated person. Toleration has been subject to more specific criticisms, including that it is paradoxical, obsolete, and most importantly for this chapter, entails an arbitrary exercise of power. This chapter addresses arguments that toleration is paradoxical in that it combines a negative attitude to a practice with restraint from interfering with it when one could; that it is or should be obsolete; and finally that the permission it allows is at best condescending, and at worst an exercise of arbitrary power.

If toleration represents an arbitrary exercise of power, far from being a wholly benign response to diversity and disagreement, it is especially problematical.. Drawing on contemporary theories of domination, I develop an account of the conditions under which toleration in the strict sense can avoid such a charge. In this approach, it may be noted, the value of toleration is not taken as absolute or independent; it derives from the importance of other values.<sup>4</sup> Toleration may be justified on a number of grounds, ranging from peace through respect and equality; here the ground considered is freedom, perhaps the most widely shared, if differently interpreted, value in contemporary society. This chapter addresses the problem of toleration from the

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<sup>2</sup> See also Jones (2010: 48) for a similar schema.

<sup>3</sup> Definitionally at least ‘mere toleration’ is close to what Bader (this volume) terms ‘minimal toleration’. In this chapter I deliberately do not differentiate between toleration and tolerance, which have been distinguished on a number of different and often conflicting bases, but for which there is no systematic and agreed distinction.

<sup>4</sup> See Tan (2000) and Tan (2011) for distinctions between *toleration-liberalism*, where toleration is fundamental, and *autonomy-liberalism*, where autonomy is fundamental. Here non-domination is the focus.

perspective of freedom understood as the absence of domination, rather than in either the narrower sense of non-interference or the more substantial sense of autonomy. Thus non-domination is a specific account of freedom, and represents just one value that may be endorsed in society, but which may appeal to a wider constituency than either non-interference or autonomy.<sup>5</sup>

On the basis of this account, in what follows I distinguish two ways in which strict toleration may be embodied, either literally in ‘mere toleration’, which may be dominating, and more substantially in ‘secure toleration’, which is not. Non-toleration, toleration and recognition involve not just attitudes to beliefs and practices, but also relationships between people (see the introduction to this volume). I show that non-domination fosters secure toleration through guaranteeing the equal status of citizens; it entails toleration of practices, but respect and recognition for citizens. Thus, toleration, when grounded in non-domination, requires some elements that are normally associated with respect and recognition.

<b>Mode of acceptance</b>	<b>Attitude</b>	<b>Relational status</b>
Non-tolerance	Disapproves, does not permit	Subordinate status
Tolerance – mere	Disapproves, permits	Subordinate status
- secure	Disapproves, permits	Equal status
Respect, recognition, endorsement	Accepts	Equal status

The chapter thus defends the conceptual validity, relevance, and normative appropriateness of *strict toleration* in contemporary contexts of diversity, drawing on recent theories of domination and non-domination to outline a reconceptualisation that excludes the exercise of arbitrary power that some have identified as intrinsic to and fatal for toleration.

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<sup>5</sup> The focus in this chapter is exclusively on non-domination. There are arguments for developing a republican account of political autonomy that would engage more extensively with recognition, without necessarily endorsing cultural and religious practices (see Honohan, 2002, Ch. 8 on acknowledging the specificity of minorities and on authorizing their voices).

## 1. Toleration: the issues

I first consider the critiques of toleration as paradoxical, anachronistic and as an exercise of arbitrary power.

### a) Toleration as paradoxical

The first line of criticism of toleration is its *paradoxical nature*. This is directed at the *form* of toleration, which is to allow, or not to interfere with, something we disapprove of or dislike and are in a position to obstruct. In toleration, a negative attitude to something does not follow through to obstructing. It may thus appear counter-intuitive or an indicator of confusion about values or priorities among values.<sup>6</sup>

Thus it may seem desirable to avoid this paradox and to approach diversity differently. On the one hand, we might think that liberal democratic states should move along the spectrum in the direction of intolerance in order to follow their citizens socially agreed intuitions and prohibit practices of which they disapprove, whatever the criteria and however broadly or narrowly these may be drawn. Such a view is taken by some of those who, for example, oppose gay marriage, or the building of mosques, or who reject behaviour that departs from current liberal-democratic views of gender relations or child rearing. On the other hand, we might think that we should move towards the opposite end of the spectrum towards recognition (or other more demanding normative possibilities), and reconsider our preconceived values to become open to all forms of diversity, accepting or endorsing gay marriage, the building of mosques and diverse family practices.

It has been shown repeatedly, and the examples above confirm, that in societies marked by diversity neither of these solutions is desirable or even possible to carry through fully. They run up against the fact of conflicting values and basic principles of freedom. We need to acknowledge that not all practices, however culturally or religiously significant to those who practice them, are, or should be, endorsed or even allowed (to take obvious examples, slavery, or the ritual killing of other human beings). In modern diverse societies, there are disagreements about many other

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<sup>6</sup> See, for example, Horton (1996) and Mendus (1989) for treatment of this issue.

practices, which some groups see as central or important to their culture or religion, and others consider problematic in the light of their values. The answer cannot be as simple as *either* prohibition *or* endorsement just in order to resolve an apparent conceptual paradox. Even if respect for all human beings has become a shared basic principle, it remains the fact that people frequently do disapprove of the ideas, practices and values of others in the light of their own deeply-held values. People will in many cases see the reasons for disapproval being of a higher order than the reasons for acceptance, and feel entitled to obstruct others on that basis. Tolerance may be an appropriate alternative if a form can be found that does not fall foul of the other criticisms I consider.

### **b) Toleration as anachronistic: the circumstances of toleration**

The second criticism of toleration is that it is, or should be, obsolete. It has been argued that toleration emerged in particular historical circumstances which no longer obtain. Yet, if we look more closely, the early modern conflicts can be seen as just one manifestation of the circumstances in which toleration becomes relevant.<sup>7</sup>

The argument is that tolerance arose in a context of religious conflicts, and more specifically of religious conflicts between monarchs and their subjects holding different faiths (Heyd 2008) Tolerance emerged as an alternative to the widespread coercion, inquisition or mass execution, revolutions and civil wars that accompanied the growth of religious diversity in the early modern period. Tolerance was a top-down permission to subjects by a ruler who allowed but still rejected their religious beliefs as wrong. It was thus doubly hierarchical: the relationship between a powerful figure and his subjects and a specific conditional permission.<sup>8</sup> In contrast to such 'permission' conceptions of religious toleration, it is argued that it is identity, rather than religion, that is now at stake and that the modern state is a relationship among equals, not the inherently hierarchical relationship between monarch and citizens that was characteristic of toleration. Thus toleration, as it was originally conceptualised or

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<sup>7</sup> I take the term the 'the circumstances of toleration' from Catriona McKinnon (2006).

<sup>8</sup> This is not to deny that there were some instances of 'horizontal' social tolerance at this time, just to say that the hierarchical form was particularly influential in the formation of the concept. See Kaplan 2007.

practiced, is no longer an appropriate concept or practice for dealing with contemporary diversity.<sup>9</sup>

I focus here on whether this argument should lead us to discard the concept of tolerance, or rather to reconsider the circumstances in which the need for tolerance arises, and the harm to which tolerance is a response. The argument that it is not or not primarily religion which is now at issue but identity, is not persuasive. Religious practices and conflicts connected with religious difference remain highly significant. In any case, other kinds of diversity can give rise to relevant conflicts among individuals and groups as well as between monarchs and subjects.

Furthermore, the harm involved may be construed more broadly than the coercion or the threat of death that made a hierarchical permission acceptable. We can agree that in the historical instance, and in situations of religious conflict between the sovereign and subjects, what is at stake is the absence of killing and coercion. We may argue that tolerance provides relief here from the threat of death or coercion to act or make a profession contrary to one's religious beliefs in the face of the threat of death. The problem that gives rise to the need for tolerance arises in contexts of diversity in which people who live in close conjunction are deeply committed to diverse beliefs or practices that in some way run counter to one another. This arose historically in Europe at a critical stage where a new religious diversity encountered monarchs who were increasingly consolidating their power and authority.<sup>10</sup> The problem was that people held conflicting and highly valued beliefs and practices; the harm threatened was death or coerced practice or profession of belief. In this context any kind of tolerance was a significant solution to the problem.

The harm to which tolerance was an answer, and which is still an issue in contexts of diversity, can be understood in a more inclusive way in terms of *unfreedom*. This may be understood as interference, of which being killed may be an extreme form, but we will see that this unfreedom may also need to be considered more broadly. Likewise, the solution of toleration may need to be seen as more than the absence of immediate

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<sup>9</sup> I do not here address specifically the issue of the relevance of identity to as the putative object of tolerance. See Bader, this volume, for a further discussion of this point.

<sup>10</sup> See Kaplan 2007, Ch.4.

coercion.<sup>11</sup> The circumstances of toleration may be understood as a situation where there are diverse beliefs or practices, where these combine with disapproval or dislike, and where there is the possibility of intervention to constrain or to change these practices or beliefs. This intervention is often conceived as that of a political authority, but can also be personal. In such contexts of diversity, a broader view of the harm of unfreedom still calls for a response in the general domain of tolerance, if somewhat different from that which emerged in early modern Europe.

### **c) Tolerance as an arbitrary exercise of power**

First, however, we must address issues arising from the final, and, from a practical point of view, perhaps the most damning criticism of toleration, which is the principal focus of this chapter. This is that toleration itself is an arbitrary exercise of power. For example, in the context of personal attitudes of tolerance, it means withholding interference in the other's disparaged expressions of belief or practices when one is in a position to obstruct them. The point raised here is that this may be condescending: it involves treating others as unequals, or conditional:– it involves the possibility that one may change one's mind about toleration, thus leaving the threat of intervention hanging over them (Addis, 1999; Brown 2006).<sup>12</sup> The point can be taken: if toleration is conditional in this way, and leaves the tolerated in a condition liable to interference should the tolerator change his mind, and dependent on the continuing good will of the tolerator, it may indeed represent an exercise of power. Embodied in this conception, even if it offers a situation better than death or exile, toleration may be seen as sometimes necessary, but not in itself desirable)<sup>13</sup> This is a view implicit in many theoretical and popular arguments that we need to go 'beyond toleration'.

## **2. Domination unpacked**

The need for toleration to be understood and practised in a way that does not involve this exercise of power is supported (and can be given more detail) by an examination

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<sup>11</sup> This may not involve otherwise radically unequal power between the tolerator and the tolerated; just that one is in the position to obstruct the other's practices

<sup>12</sup> For Brown, 'Practices of tolerance are tacit acknowledgments that the Other remains politically outside a norm of citizenship, that the Other remains politically other, that it has not been fully incorporated by a liberal discourse of equality and cannot be managed through division of labor suffused with the terms of its subordination.' (Brown, 2006: 75)

<sup>13</sup> This is a long-standing view, going back further than Goethe's dictum 'to tolerate is to insult' (See Forst 2007: 220-1; this interpretation corresponds to what Forst terms the 'permission' conception of toleration)

of the contemporary theory of non-domination. The next sections outline the key features of this theory and of the idea of freedom as non-domination, which will provide further support for why toleration is necessary and allow us to fill out the possibility and characteristics of *non-dominating toleration*.

Here I draw on the republican-inspired theory of domination, which conceives of freedom as a matter of non-domination, and sees this as a primary goal and achievement of politics. The idea of unfreedom as domination was historically most clearly emphasised by thinkers in the republican tradition, but can be considered independently of republican theory. Thus the contemporary theory of domination has been developed with varying connections to republicanism by, for example, Philip Pettit, Cecile Laborde, John Maynor and Frank Lovett. It is not necessary to take the whole of republican theory on board in order to see domination as a serious harm which government should aim to minimise. The point here is that it offers a more inclusive conception of unfreedom than interference. This bears on the current issue precisely because it identifies arbitrary exercises of power as a serious harm to be addressed, even when those in a position to arbitrarily interfere with others do not do so. If there is to be toleration in this perspective, it will need to avoid the arbitrary exercise of power.

The situation in which people are systematically subject to the threat of interference, without necessarily being interfered with at a particular point in time, has been identified by theorists, notably Philip Pettit, as one of domination. The classic examples are those of the slave or the wife in a Victorian marriage, where the master or husband has the right to interfere, but if well-intentioned or disinclined, may choose not to do so. But the *status* of the wife or slave remains one of subordination, since a change of master or in the master's inclination may result in their physical or psychological abuse. Consequently, those who are dominated adopt behaviour designed to propitiate the dominating party and reduce the incidence of interference. Thus domination constitutes a status in which people are vulnerable to interference and whose lives are under threat in such a way as to undermine their freedom.<sup>14</sup>

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<sup>14</sup> It has been argued that there is an ambiguity in Pettit's account of the kind of action that counts as arbitrary. On the one hand, it seems to be a matter of acting according to a personal whim – rather than the consistent rule of law, for example. On the other hand, the arbitrariness sometimes is defined as a matter of acting without regard for the interests of those affected – rather than 'tracking' their interests (Pettit, 1997: 55). Although action according to the whim of the dominator certainly *will* not, action



Domination may come from the *state itself* or from *groups within civil society*. In contrast to some strands of liberalism, republicans have focused on the threat of domination in society as well as potential domination by the state.<sup>15</sup>

This conception of domination has been refined and given more extensive analysis by Frank Lovett (Lovett 2010a).<sup>16</sup> He defines domination more precisely as follows: ‘Persons or groups are subject to domination to the extent that they are dependent on a social relationship in which some other person or group wields arbitrary power over them’ (Lovett 2010a: 119).<sup>17</sup> Dependency here is partly defined in terms of the non-voluntary nature of participation in the relationship; someone is completely dependent if they cannot leave it at all, but even if they can, they are still dependent in proportion to the costs of exit. This addresses the problem that someone may not be seen as vulnerable to domination if they can leave the situation of arbitrary exercise of power by taking into account the costs of exit that lead to dependence.

Further unlike Pettit’s account, in my understanding for someone to be dominated does not require that they are fully *aware* that they are dominated, as in some circumstances dominated people act in ways to ingratiate themselves with their dominators without being fully conscious of being dominated.<sup>18</sup> It is also consistent with cases in which people are aware of their domination, but *consent* to it for a variety of reasons.<sup>19</sup>

### 3. Promoting non-domination

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according to the rule of law *may* not track interests (Markell, 2008: 13, 14.) For this and for other difficulties with the idea of ‘tracking interests’, the arbitrariness of domination is better identified with the first aspect of personal whim.

<sup>15</sup> For others this domination does not always lie in the exercise of interpersonal power, but in *structural conditions*. While it may be true that there are forms of domination that do not depend on interpersonal domination, but on structural positions, the potential arbitrariness of toleration does not lie in structural conditions, but in personal terms

<sup>16</sup> This refinement aims to avoid some of the criticisms levelled at Pettit’s idea of domination (e.g. Markell, 2008 and Bader (this volume)

<sup>17</sup> For Lovett domination is always an interpersonal relationship, and is distinguished from the wider concept of oppression that includes structural limitations and pressures, which thinkers such as Iris Marion Young include under the heading of domination.

<sup>18</sup> This is not to suggest that those dominated are typically not conscious, as in one conception of hegemony, just that they may not be. Even two people in the same situation may have different degree of awareness of their domination; the person less aware is not necessarily less dominated.

<sup>19</sup> Laborde further refines the idea of domination in this way. This is different from Pettit’s account, which depends on common knowledge of the lower status of those dominated. But it still means the lack of a recognised status as equals (Laborde 2008: 23; 151-2). Even those who are aware may consent – in the light of trade-offs.

If the harm of unfreedom is considered in terms not just of actual interference, but of the threat of interference, promoting non-domination requires not just protecting people from instances of attack or obstruction, but aiming to ensure that people do not live with the threat of arbitrary interference or obstruction hanging over them. Pettit has drawn on early modern expressions to elaborate what it means to be free in this sense: it means first and foremost having a *legal status* that secures a certain independence from such threats.

On this account, freedom is understood as the absence of domination, not simply the absence of interference, and involves the achievement of a more *secure status*. This conception of freedom is more demanding with respect to the conditions required for its enjoyment than the conception of freedom as the absence of interference. Whereas the non-interference conception of toleration requires only that someone is not currently interfered with, the non-domination conception requires that they have a status of political equality, and legal structures that secure this, which do not just penalize actual interferences retrospectively, but protect people from the constant threat of arbitrary interference. It requires institutional safeguards and takes account not only of public domination by the state but also of areas such as work and the family that have often been understood as private and non-political. One of the central goals of government is to promote non-domination by providing such a secure status against arbitrary incursions both by other individuals and institutions in society and by government itself.

Clearly this is an ideal that can rarely be fully realized. Yet it is not a utopian goal but one which may be achieved to a greater or lesser extent. Laws and institutions are framed to ensure a public status of equality and the public knowledge that one is in this respect equal to others (even if a capacity to interfere can never be entirely pre-empted). This implies the self-confident knowledge of one's equality – as distinct from the need to ingratiate oneself or be wary of the possible change in inclinations of the powerful. It requires that people, instead of accommodating themselves to domination, can look others in the eye as equals. And it requires that this knowledge of equal status is mutual. We may note that, while people may be dominated without being aware of it, they cannot be free in this sense without being conscious. Consciousness of their equal status is a part of their freedom.

These provisions and the secure status which they realize should be distinguished from other preconditions, such as socio-economic security.<sup>20</sup> While the full institutional requirements of non-domination cannot be developed in detail here, there are three key features that directly secure this: a) the rule of law – the limitation of discretionary power; b) the accountability of institutions and the contestability of political decisions; c) the internalization of the values of non-domination, or civility among citizens.

### **(a) The rule of law**

Among the political implications of this conception of freedom is a system of laws that provide guarantees against illegitimate interference, so that citizens may be able to act independently. According to the view of non-domination, freedom is not a condition that exists prior to law, nor an external consequence of the laws, but is *constituted* by the institutions of rights and accountability. By creating a recognised legal status that deters interference, these give immunity from interference rather like antibodies in the blood (Pettit, 1997: 108). It is arbitrary power, not law, which is incompatible with freedom. Individuals cannot single-handedly secure themselves from exercises of power. When they are dominated they are subject to uncertainty, need to ingratiate themselves with the more powerful, and cannot establish their free status publicly. Laws provide security in non-interference, or resilient protection from domination. Freedom is a status, recognised by all, which receives institutional support.

So constraints of law are compatible with this (wider) status of freedom. The state that does most to promote freedom is not the most permissive, as in libertarian accounts of freedom and law, but one that protects citizens from the threat of arbitrary interference. On this understanding, the state is not at best a necessary evil, providing security at the cost of some freedom, but a leading promoter of the ideal of freedom as non-domination. It should also be noted that, on this view, the state is not strictly neutral, but what may be

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<sup>20</sup> Domination theorists recognize that radically unequal social and economic conditions tend to undermine what is achieved through institutions and attitudes of non-domination. But the provision of more equal conditions is not an intrinsic part, but an underlying condition of non-domination. In brief, non-domination requires that inequalities of wealth be limited to the extent that these undermine the independent status of citizens, and does not necessarily entail distributive equality on its own account. Republicans disagree on what kind or degree of socio-economic equality this implies. Historically, republicans held that citizens should be independent property holders; Pettit favours a society with some limits of inequality;; but other republicans envisage more egalitarian distributions, achieved, for example through basic income schemes (White, 2003)

termed ‘quasi-perfectionist’ – that is, it is committed to realising the value of non-domination. While this does not itself embody any particular idea of the good life, it is a specific political value. Furthermore, constitutions and laws embody different traditions and expressions of values; unlike for some liberals, this is not problematic, as long as these expressions are not themselves dominating.<sup>21</sup>

Non-domination may give a greater role to government than many liberals would countenance, because states do not necessarily or always represent the most serious threat to freedom. Serious threats come from the arbitrary exercise of private power by, for example, individual men over women or by established elites in/over cultural and religious communities. This broader view of the ways in which freedom is threatened requires the state to assume more responsibility than the minimal government entailed in non-interference. ‘Since domination can be social as well as political, the state may intervene between employer and employee, husband and wife, and more widely within communities and groups in civil society’ (Pettit 1997:148-149). Yet it is also essential to ensure that the state itself does not dominate. This leads to the second key provision of non-domination.

### **(b) The accountability of institutions and the contestability of decisions**

If the principle of non-domination is taken to be the core of republican politics, it suggests that ensuring the *contestability* of all decisions is the most important guideline for designing democratic/deliberative institutions. This supports the dispersal of power between different branches of government, a strong judiciary, and many kinds of appellate procedures with respect to acts of government, as well as favouring broad public debate and active social movements. These are required to give voice to all. Pettit suggests that ‘[b]eing a person is intimately tied up with enjoying a certain status in communion with others, and perhaps the best marker of the required status is that your voice is authorized by those others’ (1999: 52). Such institutional safeguards aim to control for the possibility that the state itself may become dominating. But laws and institutions alone cannot secure non-domination. This gives rise to the third dimension – civility, or the internalization of the value of non-domination by citizens.

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<sup>21</sup> Thus the argument that toleration is not relevant as the state does not express values, and thus cannot disapprove, does not apply. (Heyd 2008)

### (c) Civility

Another aspect of the quasi-perfectionism of non-domination theory is the fact that it requires the development of appropriate attitudes and dispositions and social norms among citizens (Pettit, 1997). The rule of law itself requires that law is seen as ‘clear, predictable, and legitimate. This in turn is possible only when there is a generally high level of compliance and when legal rules are embedded in a shared network of informal social norms’ (Lovett, 2010a: 216). This means that citizens need to internalize the value of non-domination. Pettit terms this civility; it draws on the longstanding republican emphasis on civic virtue and the commitment of citizens to the common good. This envisages a close relationship between law and the attitudes and dispositions of citizens in maintaining a ‘civil society’. As Rousseau put it, ‘the most important laws are those engraved in the hearts of the citizens’ (Rousseau 1968: 2 12). By contrast, there has been a historical tendency in the liberal tradition to focus primarily on institutional constraints, and to recoil from any promotion of particular attitudes or dispositions among citizens. Civility here requires a certain level of recognition among citizens, even beyond respect for human beings in general: ‘Instead of the liberal contractarian agreement on procedures and institutions, or a pragmatic *modus vivendi*: ‘the norms of civility that are required for fostering freedom as non-domination are norms of solidarity with others, not norms of compromise’ (Pettit, 1997: 259).

Following this conception, toleration would have to be compatible with the kind of civility and even solidarity among citizens that non-domination requires. In this frame the relationship between institutional toleration and personal attitudes of tolerance may thus be clearer than in perspectives which emphasise either the institutional or the personal aspects of tolerance, or see these as independent. In this perspective the institutional and the attitudinal requirements of toleration are intrinsically connected.

Domination is a matter of degree, as people may be more or less dependent on a social relationship and may be subject to have more or less arbitrary power. To the extent that constitutional democratic regimes provide a secure status of equality for citizens today, domination is reduced. But domination remains a threat to the extent that domination is tempered but not eliminated by liberal democratic institutions.

#### **4. Implications for toleration**

Since non-interference is not enough to realise freedom, which requires also that we are not dominated, this account implies a stronger form of toleration. Toleration always involves restraint from interfering with a person's beliefs or practices. But in the broader conception of unfreedom as domination not only interference, but also the threat of interference, is a harm and a risk. This harm is broader than any single act of interference, as an unequal status of being subject to the threat of interference by an arbitrary power. It would seem to require a more stringent standard of protection. This is still within the frame of the circumstances of toleration – the presence of conflicting beliefs and practices among people who live together in a society. Such 'secure toleration' takes place within the frame of the rule of law, the accountability of government and contestability of decisions, and widely dispersed norms of non-domination. The principle of non-domination itself requires, as we have seen, promoting a secure equal status of all individuals.

The position of cultural minorities with respect to domination has been given only brief mention by Pettit, but has been developed further by others, including Frank Lovett and Cecile Laborde. For members of minorities specific risks of domination arise. They are vulnerable to domination by the majority society in virtue of their difference from that majority, and they may be vulnerable to domination within their groups. The focus here is specifically on whether and how diverse minority practices may be tolerated without these minorities being dominated, on the limits of this conception of toleration, and on whether and where concern for non-domination means that this treatment must go 'beyond' toleration (see introduction and Bader's chapter in this volume).<sup>22</sup> The first point to be emphasised is that the structures promoting non-domination must apply to all citizens, including members of minority groups, so that they are treated equally. The three requirements of non-domination suggest that minorities are equally protected by the rule of law, have access to institutional expression through which to voice their views and interests, and finally that other citizens develop attitudes of acceptance towards the presence of diverse minorities and do not seek to dominate them.

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<sup>22</sup> Thus I do not consider here all aspects and dimensions of minority domination, such as the imposition of stereotypes, which may be dominating, but not as a consequence of toleration.

It should be noted that the term ‘citizen’ is used here and in other non-domination arguments in the sense contrasted to ‘subject’. The sense concerns the status with respect to political authority, rather than the sense of membership of a bounded community, sometimes contrasted to ‘alien’. The non-domination account has been developed initially in terms of the problem of domination experienced by citizens within a state. But the value of non-domination and the concern to reduce domination is not restricted to citizens. Without adopting an explicitly cosmopolitan starting point, this account does not dismiss the problem of domination of non-citizens within or outside the state, and the need to address this.<sup>23</sup> While significant issues of tolerance of cultural and religious practices concern minorities of whom substantial numbers are citizens rather than non-citizen immigrants or temporary residents, a commitment to non-domination implies that the state should seek to avoid dominating, and protect from domination, all those subject to its rule. None should have a status that subjects them to the threat of arbitrary interference by another; rather the status of citizen should protect them from such arbitrary interference, so that they can look others in the eye. This means that persons themselves are accepted, respected or even recognised.<sup>24</sup>

The second point to be considered is the toleration of minority practices.<sup>25</sup> When minority practices diverge from mainstream social norms, this may not lead to conflict and toleration will then not be an issue. But in many cases, as we see in contemporary society, these differences do give rise to conflict at various levels, which has made toleration itself such a live issue.

### **a) Mere toleration**

Practices of minority groups can be literally or ‘merely’ tolerated in a way that is consistent with domination. Even if not immediately interfered with, they may be subject to domination as long as they remain subject to the threat of arbitrary

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<sup>23</sup> It is however the case that the implications of domination for the treatment of non-citizens, whose status is generally by definition insecure, are only now being systematically analysed by theorists of non-domination (See, for example, Benton, Hovdahl Moan (forthcoming) . This is an area in which domination and its reduction is a very significant issue. As with liberalism, republicanism has emerged from a concern about freedom within states; hence the initial focus on citizens.

<sup>24</sup> Thus this view, in identifying a non-oppressive toleration and a more complex inter-relationship between toleration and recognition (rather than a dichotomy), in many ways parallels Laegaard’s argument (Laegaard, 2010 and this volume), though from a perspective of freedom rather than equality.

<sup>25</sup> It is more useful to consider practices rather than individuals and groups as what is really at issue when toleration is in question, and to see respect as the appropriate response to individuals and groups. (See also Bader, Laegaard, this volume)

interference. Toleration could take the form, for example, of turning a pragmatic blind eye to certain religious or cultural practices that would be prohibited by laws of more general application, or by not treating them as, for example, specifically religious practices. Merely being able on a de facto basis to practice religion does not stop one from being dominated. Even where practices are not subject to blanket legal prohibition, toleration may take the form of selective permissions. It might count in a literal sense as tolerance, but this will be a highly conditional kind of tolerance.<sup>26</sup>

In contemporary western societies, domination of religious and cultural minorities includes the prohibition or restriction of certain practices that may be central to their ways of life, but also the selective consideration of, for example, permission to build mosques, compared with other places of religion, or the conditionality of tolerance on the presence of small numbers of the minority, on practices taking place in private, on these practices not being considered ostentatious, or not being considered as a threat to public order for whatever reason (see Mouritsen and Olsen, this volume). This arises also in the ways in which boundaries are drawn to limit what merits toleration and where (see Dobbernack and Moodod, this volume). In this way, when continuing tolerance is a matter of goodwill, it is not only unstable, as others have pointed out, but also dominating. It may fulfil the letter of toleration, but is not secure. Any form of non-secure tolerance risks being dominating – the conditional permission granted by those in a superior position that allows others to carry on practices of which they disapprove.

In such cases, minorities will be inclined to adopt steps to prevent any change in their conditions in a way that requires them to be vigilant, perhaps attempting to be relatively invisible, or to assimilate in public, so as to prevent arbitrary interference in their lives.<sup>27</sup> It may also lead them to identify as superior the values and practices of the dominant majority. All these reactions reflect the fact that they cannot look others

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<sup>26</sup> Bader (this volume) suggests that this is not toleration at all. But it conforms to the strict definition of allowing what one disapproves of. It is not just an admission of what one cannot practically control, but a normative position in which the limits of tolerance are set differently (see Tan 2011 for the distinction between practical and normative tolerance). Hence there is a need for establishing secure tolerance, which republican non-domination provides for in a specific manner. This includes educating citizens to develop attitudes of tolerance, rather than just providing legal permissions.

<sup>27</sup> This invisibility is quite different from the invisibility that coincides with being treated as normal (see Schiffauer, this volume)



in the eye as equal in status. While these situations may be reprehensible, they can nonetheless be considered as instances of toleration strictly speaking.

If we were simply to tolerate minority practices without providing for the structures that promote non-domination, toleration would threaten to be dominating, as in instances where members of a minority lack a political voice through not having the right to vote, or are excluded indefinitely from access to citizenship, and where the majority population have not internalized attitudes of non-domination towards minorities.

### **b) Secure toleration**

Secure toleration requires that members of minorities are treated as full members of society with equal status, capable of exercising their political voice, and pursuing their lives in their own way. It does not require that all cultural or religious practices are given public recognition. Yet issues of toleration arise only where the practices of such minorities are not only different from, but run counter to widely held values. This is the point at which the *limits* of toleration become highly contested, and this may especially result from the possibility of domination *within* groups. One of the current concerns of feminists about special accommodation for groups, for example, is the risk of the domination that this may support. Domination within groups is something about which we may be concerned as much as about domination by the state or by others outside the group. Whether more extensive toleration of group practices is liable to support or exacerbate domination has to be addressed.

Lovett has provided one of the most explicit accounts thus far of the scope for development of the theory of non-domination to apply to diverse practices and minorities (Lovett, 2010b). He argues that promoting non-domination will allow and sometimes require the accommodation of minority practices. Here, while focusing more specifically on toleration than he does, I draw substantially on the implications of his argument.<sup>28</sup>

### **c) Domination and limits to tolerance**

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<sup>28</sup> While I draw from Lovett's argument, I do not claim that this represents his position with respect to toleration. Non-domination is briefly mentioned in the context of toleration by Knight (2008), but it is not the central focus of his argument there.

First, the possibility of in-group domination suggests certain limits to tolerance. From a non-domination perspective, there are some things that will not be tolerated: if these practices are dominating, if they systematically subject some members of the minority to the threat of interference by other members, and expose them to the pressures that domination entails, it is clear that they should not be tolerated, even if there appears to be consent among participants. What constitutes in-group domination is fairly clear. The question is ‘whether and to what extent the practice creates or maintains relationships of dependency, imbalances of power, opportunities for wielding power arbitrarily, and so forth’ (Lovett, 2010b: 248). (It may, of course, be more complicated to determine what is and what is not dominating in practice. The interpretation of the headscarf is notoriously contested in this regard. For some, especially French republicans, the wearing of headscarves is a dominating practice, in which girls or women are subject to domination by their families or male members of their community. But for others this is not clear, as it may also be seen as an autonomous expression of a distinct identity or as a political gesture.<sup>29</sup> That it is not possible to assume automatically that wearing a headscarf is a sign of domination should guide how it is treated. The aim here, however, is to lay out the basic principles that govern whether toleration may be possible or required, rather than attempting to make determinations in specific instances, which depend on empirical facts about which practices are and are not dominating. In addition, as we have seen, domination will always be a matter of degree, and regulating social domination has to be balanced against the threat of state domination.)

It may be argued that practices that do not dominate should be accepted rather than tolerated (that is, they should not be seen negatively, as they do not run counter to the value of non-domination).<sup>30</sup> This might not initially seem problematical. However there are further issues that concern minority practices that are not dominating in the sense above, but run counter to other values widely held in society and particular interpretations of which may be embodied in the state. How, for example, gender equality or religious freedom is to be realised and its priority vis a vis other policies varies even among liberal democratic states.

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<sup>29</sup> See the account of alternative perspectives analysed in Laborde 2008.

<sup>30</sup> To what extent this requires additional accommodation is not for discussion here. In fact much acceptance in contemporary society of necessity involves some degree of accommodation, not just allowing practices to continue, but allowing them to be publicly expressed or to grant exemptions from requirements otherwise universally required.

In a society that gives priority to the principle of non-domination, it may be argued with Lovett that there are reasons to tolerate such practices, on the basis of their value to individuals, and as a result of the assumption that they should not be arbitrarily obstructed in pursuing their values (rather than for reasons of the intrinsic value of culture or religion). Such practices can be tolerated even if they diverge from other values of gender equality or justice, or the way in which these are interpreted in our society. We risk dominating their exponents if we do not allow these practices, even if we have reasons to disagree with them. Thus Lovett sees this as an argument for accommodation or tolerance different from those that might be supported by accounts that focus on equality, fairness, or liberal secularity (Lovett, 2010b: 260-61 ).<sup>31</sup> Under these conditions, when, for example, arranged (rather than forced) marriages, or gender-segregated education are permitted, this is an instance of toleration, strictly speaking.<sup>32</sup>

Yet this type of toleration is not justified because of the value of diversity or any absolute right of cultural and religious groups to live as they like. Following this view government can intervene and constrain in the interests of reducing domination. This is put most succinctly by John Maynor: ‘Individuals and groups within a republican state [committed to non-domination] can be non-liberals, but they cannot be dominators’ (Maynor 2003: 134).

A concern with non-domination provides a critical tool for examining the sorts of practices which should or should not be tolerated, permitting tolerance for those which depart from common norms or specific conceptions of justice in society, but scrutinising the potential for domination in cultural or religious group practices. Non-domination will

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<sup>31</sup> In the light of the fact that compliance with state policies can impose differential costs on minorities, Lovett concludes: ‘The argument I have presented ...takes domination reduction (not equality or fairness) as its starting point. This entails sorting social practices into two groups: those that do, and those that do not involve domination. Certainly, no accommodation of those social practices that permit or encourage domination would be acceptable. Concerning the rest, on my view, one might permissibly choose to accommodate some on fairness or equality grounds, but accommodation would be required only where the burdening of a particular social practice would create new opportunities for domination’ (Lovett; 2010b: 261).

<sup>32</sup> Lovett further argues that there are cases in which accommodation may be *required* in order to reduce domination: either when practices are linked in a cultural context, and where prohibiting one practice could reinforce other more dominating practices. For example (assuming for now that the headscarf can be dominating), if banning the headscarf in schools would lead to the removal of girls from education, and make them more vulnerable to potential domination within the family, toleration would be required – albeit on pragmatic grounds. Equally on pragmatic grounds he argues that toleration is required where a thoroughgoing ban on traditional practices might cause a conservative backlash among the minority. (Lovett,2010b: 258-9).

sometimes constitute a more stringent test of what is to be allowed, because it excludes practices that make people vulnerable to domination even if they are not currently being interfered with. However, it will sometimes be more permissive than approaches based on more substantially egalitarian premises because it can accept non-dominating, if not wholly egalitarian, practices. Thus it may lean towards extending tolerance to practices that may seem ‘hard to accept’ to contemporary ‘muscular liberalism’ or civic integrationism, which invoke autonomy and cultural cohesion as justifications for non-tolerance. Where the idea of freedom has come to be used in support of intolerance, this conception of freedom provides a new reason for toleration (see Mouritsen and Olsen, this volume).

We may thus conclude that non-domination precludes toleration for dominating practices, but at least permits, without endorsing, other minority practices even when they run counter to other socially held values, and are not thus approved of. But secure toleration requires that the status of members of minority groups is established by provisions for the rule of law, the accountability of institutions and contestability of decisions, and the widespread dispersal of the social norm of non-domination, not just of non-interference. This would constitute secure toleration – toleration that does not dominate – where the permission is not subject to the whim of the tolerator on account of their superior status. Non-domination also requires a degree of respect and recognition for members of minorities. That they should have opportunities for contestation means also that toleration and its limits can become a matter of public discussion in which all have a voice.

Toleration is the appropriate term to describe government institutions and policy as well as individual behaviour and attitudes in this context. Most importantly, in drawing on the republican theory of non-domination we can distinguish between merely tolerating, which does not exclude the threat of the arbitrary exercise of power, and the secure tolerance that is entailed in non-domination. Secure toleration requires a level of institutional support for citizens often associated with recognition.

Strict toleration, when secure, is not inherently an expression of arbitrary power. Such toleration does not dominate insofar as it is accompanied by a secure status for people as citizens, provides for the rule of law, the accountability and contestability of political institutions and political decisions, and encourages the development of civility –

in this case attitudes of respect for fellow citizens, reluctance to dominate, and tolerance of their non-dominating practices. In this perspective there is a close connection between institutional arrangements and personal attitudes of toleration.<sup>33</sup> But this is not the same as recognition in the sense that the state publicly endorses group values, recognises alternative legal systems, or supports restrictions on members to preserve their culture or religion.

### **Beyond toleration**

While the main point of this chapter has been to establish that toleration is not necessarily dominating, and therefore has a place in contemporary policies with respect to difference, it should be noticed briefly that, if we embrace the value of freedom as non-domination, it may require, in addition to securing the status of members of minorities and toleration of non-dominating practices, going 'beyond' toleration and towards more substantial types of accommodation or recognition of some practices. This is because some groups may require special treatment to enable them to have an equal civil and political status.

Thus Lovett argues that in addition to tolerance more substantial accommodation is allowed and even required if one adopts a non-domination perspective. While he focuses on the distinction between permissible and required accommodation, what I want to draw attention to here is rather the distinction between accommodation that requires toleration and more substantial accommodation that goes beyond toleration.

Arguments for more substantial accommodation arise where the state, rather than directly forbidding practices, makes it more costly for people to carry them on. What is at stake is not toleration but support for those practices in the interest of non-domination. This arises in cases where, for example, those who wear certain kinds of dress associated with religious beliefs may be excluded from some kinds of employment (in the case of Sikhs, wearing turbans has made employment in construction or police forces or the army problematical). It may also arise in cases where religious practices require absence from work at certain times. Such exclusions, Lovett argues, make such people vulnerable

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<sup>33</sup> This offers some kind of response to what has come to be called the 'paradox of the tolerant racist' (see Horton 1996), which seems to imply that the more hostile one is to a person or practice, the more tolerant one is in not obstructing it; non-dominating tolerance requires both refraining from interference and also respecting those whose practices are thus tolerated- it thus excludes the possibility of being simultaneously tolerant of other races and a racist..

to domination, either internally, if they are confined to employment within their community, or externally, if their range of employment is significantly restricted. A somewhat different case concerns those who speak only a minority language, which may reduce their employment options and render them vulnerable to domination. In that case, to avoid domination of that minority, minority language supports, which can be understood as a form of recognition, may be at least temporarily required (Lovett, 2010b: 259-60).

Accommodation is thus required 'where the burdening of a particular social practice would create new opportunities for domination' (Lovett: 2010 b: 261). Here, again, accommodation that goes beyond toleration, whether it requires exemptions or positive support, arises from the risk of domination to individuals, rather than any intrinsic values of groups, and is justified on the basis of promoting non-domination, rather than on grounds of equality or fairness *per se*. Where the lines should be drawn between non-tolerance, tolerance and more positive endorsement will be determined by a range of values and depend on the nature of the practice, the relevant values, and the context of vulnerability to domination. Strict toleration is neither required nor desirable in every case. Sometimes more and sometimes less is required.

## **Conclusion**

This chapter has argued that the paradox of toleration cannot simply be dissolved, and that circumstances prevail that make toleration *relevant* for diversity of, and conflict among, beliefs and practices. But how we are to understand toleration requires further examination. If we understand domination as a significant harm that is to be avoided or minimised, and non-domination as an important value, then toleration in the *strict sense* remains an appropriate policy in cases where fuller recognition of practices is not possible or desirable.

Rather than dismissing tolerance as an appropriate approach to diversity, we have seen that freedom as non-domination provides a ground for and suggests a *refined account of tolerance* that *avoids some of the criticisms* levelled against mere toleration. This type of toleration is non-dominating, in being neither essentially hierarchical nor arbitrary, and a necessary element of promoting freedom in conditions of diversity.

Furthermore, it does not constitute a capitulation, and is based neither on weakness nor on confusion.

From a non-domination perspective, *minority practices*, even when they run *counter to other values* to which the state is otherwise committed, may be tolerated. But this approach remains within the domain of tolerance. It does *not introduce a new class* of acceptance to be added to non-tolerance, tolerance and recognition; rather it distinguishes between secure toleration and ‘mere’ toleration. Yet secure toleration also involves an interdependency between toleration and recognition insofar as it entails the recognition as persons of equal status of those who carry the cultural and religious practices that are the subject of toleration, the internalisation of attitudes of non-domination among the majority, and an awareness of their equal status among the minority.

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