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Non-domination and the State: A Response to the  
Subaltern Critique

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## **Abstract**

The aim of this paper is to create some positive conceptual space for the relevance of the instrumentalities of the state when it comes to the politics of religious and multicultural accommodation. The challenge is to steer a cautious middle course between two views about the role of the agencies of the state in enabling a regime of non-domination: One of these views decries any relevance of the agencies of the state in establishing accommodative schemes - owing to the negative consequences of the disciplinary power of statist institutions - whilst the other relies on state power without adequately accounting for the dangers attached to the employment of such power in schemes for addressing the justice-based claims advanced by non-hegemonic minorities.

## **Keywords**

State, Non-Domination, Postcolonial, Subaltern, Non-hegemonic Groups, Minorities, Freedom, Law, Democracy



*Non-domination and the State: A Response to the Subaltern Critique*<sup>1</sup>

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This paper is part of a broader inquiry into the role of the state as an actor in institutional arrangements for the political accommodation of claims advanced by members of non-hegemonic minorities.

Increasingly, liberal-democratic states find themselves engaging with non-hegemonic religious groups making justice-based claims for the institution of legal pluralism that would allow them to administer themselves according to their particular religious laws (in matters of family law, for instance).<sup>2</sup> Although the accommodation of religious groups by the liberal democratic state is a response to justice arguments,<sup>3</sup> it is vulnerable to two lines of critique. First, that it can reinforce unjust power hierarchies within groups: that is, attempts to counter intergroup domination as a relationship between states and non-hegemonic minorities – a form of domination that could be enacted as a result of the policies of the putatively neutral liberal-democratic state vis-à-vis cultural and religious minorities – by permitting group-differentiated policies may result in entrenching a structure of domination as a relationship between power-holders within religious groups and vulnerable members (especially women) within those groups. Attempts to respond to intergroup domination can thus engender intragroup domination, which exacerbates inequalities within religious minorities.<sup>4</sup>

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<sup>1</sup>The discussion in this paper has gained significantly from constructive and thought-provoking comments provided by Melissa Williams. As well, I am thankful to Rainer Baubock, Ritu Birla, Ayelet Shachar, Jennifer Nedelsky and Monique Deveaux for their helpful feedback on my engagement with the subaltern critique of the state. In Fiona Barker I found a lively interlocutor on questions pertaining to the state; I want to thank her for thoughtful comments on an earlier version of this paper.

<sup>2</sup> I use the term “non-hegemonic groups” to refer to groups that are marginalized and non-dominant in the broader society. Generally, mere membership in these groups attracts a pejorative gaze from the dominant culture. For persons who belong to these groups, membership is experienced as neither “voluntary” nor “mutable.” See Melissa Williams, *Voice, Trust and Memory: Marginalized Groups and the Failings of Liberal Representation* (Princeton University Press, 1998).

<sup>3</sup> Will Kymlicka, *Multicultural Citizenship* (Oxford University Press, 1995).

<sup>4</sup> Susan Okin, “Is Multiculturalism Bad for Women?” in *Is Multiculturalism Bad for Women?* edited by Joshua Cohen, Martha Nussbaum, and Matthew Howard (Princeton University Press, 1999). Ayelet Shachar, *Multicultural Jurisdictions* (Cambridge University Press, 2001).

Liberal egalitarian responses both to counter intragroup domination and to attend to the justice-based claims of members of religious and cultural groups typically involve reliance on the agencies of the liberal-democratic state.<sup>5</sup> It is the state that is held responsible for protecting minorities within minorities and for conducting interactions with religious and cultural groups. It is this very reliance on the agencies of the state that generates the second line of critique applicable to the political accommodation of religious and cultural groups: that attempts to counter both intragroup and inter-group domination through a reliance on the instrumentalities of the state can reinforce the power of the state to regulate and discipline marginalized group identities in a manner that echoes the civilizational logic of colonialism.

By treating the state as an agent that can act upon non-hegemonic religious groups and set the limits of their permissible beliefs and practices, such attempts to politically accommodate claims of non-hegemonic groups can generate a form of governmentality grounded in unequal power relations. Furthermore, the state's efforts to transform group doctrines in the direction of liberalization can involve falling back on assertions about the ethical superiority of liberal constructions of autonomy and equality. Such processes can come to appear as a "civilizing mission" and can refuel the discourse of the cultural and racial superiority of liberal (western) over non-liberal (non-western) culture, thereby producing the basis for a new form of colonialism.

Arguably, then, reliance upon the state for accommodating claims of minorities can be a vexatious matter, for attempts to encounter inter-group and intragroup domination can lead to statist domination as neocolonial governmentality.<sup>6</sup> Elsewhere, I have demonstrated how the specters of governmentality and neocolonialism haunt even the best institutional arrangements on which liberal democratic states can rely for engaging the claims of non-hegemonic religious minorities. I do this by illustrating how the state-centred model of transformative accommodation endorsed by Ayelet Shachar can stimulate domination as neocolonial governmentality.

Shachar's twofold aim is to allow faithful persons the opportunity to have their religion-based legal codes politically accommodated without sacrificing the autonomy/agency of vulnerable members of the concerned religious groups (including, appropriately, provisions for exiting the jurisdiction of religious authorities should that be necessary to protect the equality interests of vulnerable persons). In other words, Shachar's project seeks to address both *cultural* and *intragroup* domination.

However, the top-down approach of the state-centred model of legal pluralism envisaged by Shachar can entrench statist domination, especially when the groups involved are marginalized or oppressed. The unequal power relations that can obtain in exchanges between the state (which often represents the dominant values in a society) and non-hegemonic groups can allow statist domination to manifest in two (not necessarily unrelated) ways: first, by means of practices of government and administration that can simplify complex social processes to the point of assimilating difference; and second, as a civilizing mission that can go hand in hand with the cultural imperialism imposed by a dominant majority. In this latter, the values/norms of the

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<sup>5</sup> Ayelet Shachar, *Multicultural Jurisdictions*.

<sup>6</sup> By the term neocolonial governmentality I refer to those practices of government whereby a dominant institution such as the liberal state – whose practices might well embody a bias in favour of the dominant culture's values – administers and acts upon the recognition- and accommodation-related claims of non-liberal groups in ways that resemble and cultivate a colonial state's assimilative and dominating disposition vis-à-vis non-hegemonic ("native," "indigenous") cultures and religions.

dominant majority are invoked as superior to the ones held by members of non-hegemonic groups.<sup>7</sup> Arrangements that pressure non-hegemonic groups to transform their practices in accordance with the wider democratic norms that obtain in the culture of liberal modernity, so as to protect vulnerable members in those groups from their groups' oppressive practices, can result in the re-enactment of a civilizing mission and thus engender relations of (neo)colonial domination between liberal and non-liberal groups.

Postcolonial critics of the instrumentalities of the state such as Partha Chatterjee<sup>8</sup> and Dipesh Chakrabarty<sup>9</sup> – who belong to the “subaltern studies” group and whose scholarship I focus upon because it has influenced heavily the study of the colonial and postcolonial state – would be unsurprised by the conclusions of the critical examination of state-centred models such as joint governance and transformative accommodation. They would be unsurprised because they perceive state power and colonial power to be intimately intertwined such that the liberal state's attempts to accommodate the claims of non-hegemonic religious groups will be saddled with an apparently overwhelming tendency to engender state domination in the form of neocolonial governmentality.

My aim in this paper is to evaluate subaltern theorists' critique of the state.<sup>10</sup> The boldest thesis proposed by these theorists is that *any* state will of necessity be implicated in imposing relations of colonial domination during its interactions with “subaltern” religious and cultural minorities. A certain kind of colonizing drive is deemed inherent to the enterprise of ruling over and accommodating difference, owing to which accommodative schemes involving the state will inevitably place non-hegemonic groups in a subordinate position. To safeguard subaltern groups from statist domination, to uphold the agency of members of subaltern groups, and to democratize the process of making the subaltern more democratic, Chatterjee and Chakrabarty advocate a move away from the state and endorse the alternative of radically democratic

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<sup>7</sup> I use the term “cultural imperialism” to refer to the sense in which Iris Young used it: Iris Young, *Justice and the Politics of Difference* (Princeton University Press, 1990).

<sup>8</sup> Chatterjee, *The Nation and Its Fragments* (1993) and “Secularism and Toleration” in Bhargava (ed.).

<sup>9</sup> Chakrabarty, *Habitations of Modernity*.

<sup>10</sup> I would like to provide a brief explanation for my use of the terms “subaltern” and “postcolonial” in this paper. Scholars belonging to the subaltern studies group highlighted the agency of the masses in resisting domination and exploitation. In so doing they distinguished themselves both from that group of scholars such as the Cambridge historians who “conflated the political domain with the formal side of governmental and institutional processes” (Dipesh Chakrabarty, *Habitations of Modernity*, p8) and from the one that sought to analyze socio-historical processes by drawing on the perspective of “history-from-below” (exemplified in the work of scholars such as Eric Hobsbawm, for example). Like those who highlighted the importance of history from below, subaltern theorists considered the activities of non-elite masses as the subject of politics. The point was that subaltern populations were also to be considered as subjects of history. But what moves subaltern scholars beyond the history from below approach was their rejection of peasant-based movements – organized across lines of kinship or caste – as pre-political and as representing “backward consciousness.” Scholars such as Chakrabarty and Chatterjee who belong to the subaltern studies collective have also contributed significantly to studies in postcolonial theory. [For a good discussion of some of the features of postcolonial theory see Duncan Ivison, *Postcolonial Liberalism*, (Cambridge University Press: 2002), 39-48] Many of the theoretical insights advanced by these scholars, especially with regard to the modern state both in its colonial and postcolonial incarnations, are grounded in the analyses of socio-political phenomena in colonial India from the perspective of subaltern populations. Because of such a convergence of subaltern and postcolonial perspectives in the work of Chakrabarty and Chatterjee, I tend in this paper to use the terms “subaltern theorists” and “postcolonial theorists” as well as “postcolonial critique” and “subaltern critique” somewhat interchangeably.

non-statist politics. Sections I to IV of this paper outline the subaltern critique of the state and the democratic alternatives to statist politics.

While I am sympathetic to postcolonial theorists' critique of statist domination, I disagree with the alternatives they suggest. The radically open democratic modes of politics they endorse cannot be sustained without particular institutional arrangements that facilitate openness *and* closure. Postcolonial critics' commitment to empowering the agency of the subaltern via a pursuit of the politics of non-domination itself requires particular institutions. Thus, I argue in section V that the sustenance of a democratic disposition itself requires the presence of background institutional arrangements which can place necessary closures on particular practices of domination that, if left unchecked, can lead to a corruption of the principles of freedom and equality that constitute a democratic commitment.

In sections VI and VII, I advance the claim that the instrumentalities of the state offer themselves as good candidates as institutions that can provide a framework for ushering in a regime of non-domination. In so arguing, I further distinguish my position from the postcolonial critics of the state. The latter view the state only as a perpetrator of domination. What they crucially ignore, however, is that the state "is the vexed institution that is the ground of both our freedoms and our unfreedoms."<sup>11</sup> My argument in support of the instrumentalities of the state gains from Philip Pettit's rendition of republicanism, which emphasizes the positive connection between law and the state on one hand and the pursuit of non-domination on the other. Of particular interest is the distinction between arbitrary and non-arbitrary forms of intervention that can be undertaken by the state.

In sections VIII and IX, I point out two shortcomings in the republican account of the state's role in securing non-domination. First, it does not provide a fruitful strategy for encountering what I term as the *web of domination* that emerges when a state's interventions to secure at-risk members from intragroup domination results in foisting new forms of domination on the group itself. Pettit recommends that in such cases the state must withdraw from the group. Like Shachar, I argue against the retreat of the state that accompanies the granting of external protections to particular religious and cultural groups. In fact, I argue against the retreat of the state for the same reasons as Shachar. These reasons include, first, a recognition of the "complex and multi-layered nature of multicultural identity."<sup>12</sup> Members of religious groups share particular relations with one another, but they also share attributes and interests that overlap with persons outside their groups – gender and citizenship interests, for example. The protection of many of the interests that are shared by *all* citizens, such as an interest in leading a life secure from domination, are best provided by the agencies of the state. Membership in a group that enjoys external protections within the larger polity is an arbitrary ground for depriving some persons of their citizenship rights. A second reason against retreating from the state stems relates to the concern about the plight of vulnerable members of groups from whose affairs the state seeks to withdraw itself so as to avoid the infliction of statist domination.

However, unlike Shachar, my response to the paradox of multicultural vulnerability is grounded in the overall constraints imposed by the principle of non-domination. These constraints apply not only to relations between members within groups but also to the interactions between an emancipatory state and the group, some

<sup>11</sup> James Scott, *Seeing Like a State*, 7.

<sup>12</sup> Shachar, *Multicultural Jurisdictions*, 15; see also Young, *Inclusion and Democracy*, 89.

of whose members are at risk. Consequently, I argue for the relevance of the instrumentalities of the state even when it comes to the affairs of marginalized minorities. I suggest that in cases where the fear of statist domination of the group is high, the state must pursue the least harmful path of guaranteeing to all citizens, including vulnerable members of groups, basic citizenship rights to serve as legal protections to empower vulnerable persons' agency. Beyond this, however, any initiatives for the reform of minorities' practices must stem from a highly interactive process between the state and groups. In fact, as I point out in section IX, an awareness of the negative consequences of statecraft provides grounds for extremely cautious steps on the part of the state in its bid to assist in the process of addressing the paradox of multicultural vulnerability. And this is the second shortcoming in Pettit's view: he does not address seriously the negative consequences of statecraft. Here I find it helpful to draw on James Scott's suggestions for the nature of state activity given the dangers of statecraft.

Finally, in section X I note that even postcolonial theorists' account of an alternative to statist politics actually tacitly retains a role for the instrumentalities of the state.

Altogether, the aim of this paper is to create some positive conceptual space for the relevance of the much maligned instrumentalities of the state when it comes to the politics of multicultural accommodation. The challenge, as I see it, is to steer a cautious middle course between two extreme paths, one of which decries any relevance of the state while the other relies on it without accounting for the dangers attached to state power.

By way of an ultimate prefatory note, I would like to say the following. Although I am not able fully to develop the point in this paper, an appraisal of the subaltern critique paves the way for making an analytical distinction between what can be termed as the *administrative* and *emancipatory* aspects of state power. One way of perceiving state power, then, is to view it as constituted by two potentially opposing dimensions: the bid to govern well can result in the adoption of disciplinary tactics, which in turn can diminish the freedom of persons subject to that power. The state's mandate to coordinate social and political life – and this is the state's *emancipatory* facet – can itself result in the generation of new forms of domination owing to the *administrative* compulsions that attach to the exercise of state power. Different strands of scholarship – grounded in distinctive normative and methodological orientations – tend primarily to focus upon one or other of these two dimensions of state power. While Pettit's conception of state power needs more fully to account for the administrative compulsions of the state, the subaltern critique of the instrumentalities of the state misses an appropriate acknowledgement of what I have labeled the emancipatory aspects of state power.<sup>13</sup> Any invocation or admonition of state power properly must account for these two dimensions of state power.<sup>14</sup>

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<sup>13</sup> While showing the importance of the institutions of the state in sustaining a co-ordinated and law governed order, Robert Goodin's discussion of the state also focuses more on the emancipatory aspect of state power. See Robert Goodin, "The State as a Moral Agent," in Pettit and Hamlin (eds.) *The Good Polity*, Basil Blackwell, 1989. Jacob Levy warns against the tendency to employ state power in ways that prioritize the majority's norms and cultural practices. He also notes the manner in which the administrative apparatus of the modern state can result in the "brutal mistreatment" of certain populations (such as the Roma) within the jurisdiction of that state. But Levy's discussion does not go far enough in acknowledging the twin dimensions of state power – administrative and emancipatory – even though he

## I. COLONIAL DOMINATION AND THE STATE

The postcolonial critique of the state, as expressed in the work of Chakrabarty and Chatterjee, is grounded in the civilizing-modernizing aspects of state power – the aspect through which “human societies can humanize themselves.”<sup>15</sup> Postcolonial critics assert that a “certain kind of colonizing drive is inherent to the civilizing-modernizing project.”<sup>16</sup> Such a drive expresses itself through the “rule of colonial difference” whereby the colonizer/civilizer represents “the ‘other’ as inferior and radically different, and hence incorrigibly inferior.”<sup>17</sup> The practices of the colonized are depicted as barbaric and backward; many of them involved women’s roles and sexuality thereby rendering the plight of the colonized woman an important site of the struggles between the colonizers and the colonized. “The figure of the colonized woman became a representation of the oppressiveness of the entire ‘cultural tradition’ of the colony.”<sup>18</sup> Such putative inferiority then becomes the basis on which the colonizers justify their dominance and rule over the other, who is not yet civilized/modernized.<sup>19</sup>

A further claim is that the colonizing drive inherent in the civilizing-modernizing project is a feature of state power even in situations that are not, in the strict terms of political history, colonial.<sup>20</sup> The claim here is that the rule of colonial difference is more generally speaking a feature of the modern state. The modern discourse of power, which works through the institutions of the modern state, “always has available a position for the colonizer.”<sup>21</sup> The rule of colonial difference operates not only in relations among nations but also “within populations that the modern institutions of power presume to have normalized into a body of citizens endowed with equal and nonarbitrary rights.”<sup>22</sup>

The invocation of such difference is not unusual in attempts to accommodate contemporary struggles for the recognition of religious and cultural particularity. In Chatterjee’s words:

the insistence on difference ... has continued, especially in the matter of claiming agency in history. Rival conceptions of collective identity have become implicated in rival claims to autonomous subjectivity. Many of these are a part of contemporary postcolonial politics and have to do with the fact that the consolidation of the power of the national state has meant the

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provides very creative resources for thinking about the coexistence of different legal orders within a given jurisdiction. See Jacob Levy, *The Multiculturalism of Fear*, Oxford University Press, 2000

<sup>14</sup> In this context, it is important to note the work of Markus Dubber whose analysis of state power highlights the challenge of rendering compatible police power of the state with the general project of bringing into being “a system of government based on the autonomy of all persons as such.” See Markus Dirk Dubber, “‘The Power to Govern Men and Things’: Patriarchal Origins of the Police Power in American Law,” *Buffalo Law Review*

<sup>15</sup> Chakrabarty, *Habitations of Modernity*, 32.

<sup>16</sup> *Ibid.*

<sup>17</sup> Chatterjee, *Nation and Its Fragments*, 26; In the case of colonialism in India, race was most often the marker of inferiority. Indians were branded as “ignorant to the last degree” and “steeped in idolatrous superstition” (19); the British carried the burden of civilizing them, and of gradually preparing them for self-government.

<sup>18</sup> Uma Narayan, 17.

<sup>19</sup> This is a recurrent trope of contemporary debates on the question whether multiculturalism is bad for women. See especially Okin, “Is Multiculturalism Bad for Women?” See also the responses of Azizah Al-Hibri, Homi Bhabha, and Bonnie Honig in that volume.

<sup>20</sup> Chatterjee, *The Nation and Its Fragments*, 33.

<sup>21</sup> *Ibid.*, 26.

<sup>22</sup> *Ibid.*, 33.

marking of a new set of differences within postcolonial society. But the origin of the project of modernity in the workings of the colonial state has meant that every such historical claim has had to negotiate its relationship with the history of colonialism.<sup>23</sup>

In contemporary struggles for identity, the case for a history of subordinated groups often has to be made by referring to the “continuities between the colonial and the postcolonial phases of the imposition of the institutions of the modern state and by asserting the autonomous subjectivity of the oppressed.” The historical claims of contending groups have to negotiate with the history of colonialism because the project of modernity has its origins in the workings of the colonial state.<sup>24</sup>

It is along these lines that Chatterjee explains the difficulties involved in endorsing the Indian state’s intervention in the reform of practices observed by Indian Muslims. To the extent that the Indian state does not effectively represent the whole of the demographic mass it claims to represent, it will be viewed as signifying a hegemonic national culture grounded in a notion of exclusion of some others. In such a context, it is held that “reforms that touch upon what is considered the inner essence of the identity of the community can be legitimately carried out only by the community itself, not by the state.”<sup>25</sup> Thus, Chatterjee contends that to the extent that the rule of colonial difference is “part of a common strategy for the development of the modern forms of disciplinary power, ... the history of the colonial state, far from being incidental, is of crucial interest to the study of the past, present, and future of the modern state.”<sup>26</sup> On his view, to the extent that the “dominant cultural formation” among Indian Muslims considers itself to be excluded from the state, “a new colonial relation is brought into being.”<sup>27</sup>

## II. THE IMPERIALISM OF LAW

Another claim about the modern state is that it “has always operated, whether inside or outside Europe, by producing its own colonized subjects whose consent to its rule is never won by pure persuasion; violence or coercion always has a role to play.” To put it differently, “The law-state combine has a history, and it is the history of imperialism, of the arrogant invasion of the other.” The “imperialistic” aspect of the modern state stems from the fact that both law and theories of citizenship work by “abstracting and synthesizing identities and do not allow for the radical alterity of the other.”<sup>28</sup>

Part of the process of humanization has involved the use of law to tackle cruelty in the domain of the family. Says Chakrabarty, “I am modern in thinking that the answer to cruelty in family life is in rights, in law, and therefore, eventually, in the legitimate violence of the state.”<sup>29</sup> This turn to law has a “pro-citizenly character” for it involves addressing cruelty through mechanisms that built “civil-political spheres on theories that view the social in terms of abstract, homogenous units.”<sup>30</sup> The inability of law to pay attention to particular features of the victims of suffering rendered the turn to

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<sup>23</sup> *Ibid.*, 26.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.* 134; Chatterjee observes the minimal institutional change in the civil life of Indian Muslims since independence in comparison with the degree of change in Muslim countries where nationalist cultural reform was a part of the successful formation of the independent nation-state.

<sup>26</sup> *Ibid.* 18.

<sup>27</sup> *Ibid.* 134

<sup>28</sup> Chakrabarty, 112; 114.

<sup>29</sup> *Ibid.*, 102.

<sup>30</sup> *Ibid.*, 114.

law inadequate in properly addressing the plight of these persons. The point here is that the bestowal of citizenship – a legal status, accompanied by legal protections, that the modern state grants to its members – imposes a certain homogeneity on persons by extracting their citizenship from the particularities of their identity (hence abstraction). The worry is that the creation of a law-governed order occurs via a process whereby the modern state extracts and synthesizes identities by force and not by persuasion; this is what lends the exercise an imperialist character. All historical attempts to fulfill the Enlightenment thinkers' promise of "happiness and justice for all" are grounded in the "violence of the modern state."<sup>31</sup>

The violence that characterizes the humanization of society cannot be overlooked, for that would imply condoning imperial and colonial domination. "If a certain kind of colonizing drive is inherent to the civilizing-modernizing project, and if one were, in one's point of view, to side uncritically with this project, how would one erect a critique of imperialism?"<sup>32</sup> The point here is that it is important to take critical notice of the techniques of governance, and their negative impact on the agency of members of subaltern groups. From the perspective of subaltern groups, statist domination as colonial or neocolonial governmentality imposes an undemocratic framework of politics and law.

Statist domination produces a situation wherein the dominant values of the state (related to concerns about law and order, security, and liberal notions of personhood) prescribe the criteria for how things ought to be done, such that the dominated (subalterns) are unable to explore their own relations to the norms and values embodied in their practices. On a statist understanding of politics, the subalterns are portrayed as "such telling figures of misery and privation that the violence and undemocracy of the state looks like a small price to pay for the attainment, ultimately, of a more just social order."<sup>33</sup> By "violence" of the state, Chakrabarty is referring to the violence involved in establishing, consolidating and maintaining a polity structured by a state. The violence obtains in the process by which the law-state combine abstracts or synthesizes various subaltern identities in the bid to fit persons into the procrustean bed of citizenship. And by "undemocracy," he is referring to the imposition on the subaltern of an a priori presupposition about the virtues entailed in participating in the "political imagination" of the state.

### **III. STATISM AND THE "PEDAGOGICAL-DIALOGIC" MODEL OF POLITICS**

In contrast, a democratic option with reference to the state would obtain "if, through their own agency, the subaltern discovered the pleasures of the modern: of the autonomous self ... of post-Enlightenment rationalism ... In such historical recall, the coming of Enlightenment rationalism would not be a story of domination." The task of ushering in this democratic option does not entail a rejection of the ideas of "democracy, development, or justice." Rather, "the task is to think of forms and philosophies of history that will contribute to struggles that aim to make the very process of achieving these outcomes as democratic as possible." Such democratization

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<sup>31</sup> Ibid., 112.

<sup>32</sup> Ibid., 32.

<sup>33</sup> Ibid., 35.

alone can fulfill the hope of making “the subalterns genuinely the subjects of their history” and render “the politics of politicizing the subaltern more democratic.”<sup>34</sup>

Such democratization, however, cannot occur as long as a statist model underpins politics. The imperialistic aspect of the law-state combine is accompanied by a “pedagogical-dialogic” mode of politics that smacks of a civilizing mission on the part of the dominant. This is a mode of politics in which the aspiration is “to help teach the oppressed of today how to be the democratic subject of tomorrow.”<sup>35</sup> Such a mode of engagement with the subaltern (the subordinated/marginalized) is suspect because by its very structure it is grounded in an a priori presupposition about the kinds of outcome that are desirable: it is “not democratic” because it is not open. “To be open-ended, ... a dialogue must be genuinely non-teleological; that is, one must not presume, on any a priori basis, that whatever position our political philosophy/ideology suggests as correct will be necessarily vindicated as a result of this dialogue.”<sup>36</sup> Further, a genuinely open and democratic conversation requires ensuring “that no party puts itself in a position where it can unilaterally decide the final outcomes of the conversation.”<sup>37</sup>

Such genuine openness does not obtain in politics with a pedagogical bias because the dialogue therein between the dominant party and the subaltern “takes place within a field of possibilities that is already structured from the very beginning in favor of certain outcomes.” If the ideal nature and shape of modernity were to be decided from the very beginning by “historians or philosophers as intellectuals,” then the situation would be akin to “inviting the subaltern to a dialogue in which his position was secondary from the very beginning.”<sup>38</sup>

The worry is that just as colonial governmentality introduced an idea of political emancipation whereby the subaltern entity’s well-being would be measured in accordance with the yardstick provided by particular social and political formations that evolved in modern Europe, so too a statist understanding of emancipatory politics (charged with liberal ideas) could place the non-liberal subaltern in deliberative engagements that occur in a framework that has pre-established what the good is.

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<sup>34</sup> Chakrabarty, 30;33;33;35; The concern here is that political processes that operate on the basis of one party’s knowing what is good for the other can lead to a re-enactment of techniques of politics that are reminiscent of colonial relations of domination. The subalterns are moulded in ways that are supposed to enhance their well-being, and the dominant partner in the political conversation knows what these ways are and will initiate the subaltern into them.

<sup>35</sup> Chakrabarty, 33.

<sup>36</sup> *Ibid.*, 33-34.

<sup>37</sup> *Ibid.*, 34

<sup>38</sup> Chakrabarty, 34; 33; Chakrabarty discusses the case of secularism in India to illustrate the lack of synch involved in the imposition of an ideal on a particular reality. Chakrabarty claims that political emancipation for Indians has often been assumed to imply the universalization of the experience and skills of a “particular group in modern European history” (96). Such an assumption is evident in the claim of some secular historians that modernity in India is “grievously incomplete” owing to the presence of religion in the public-political sphere. Against such an assumption, Chakrabarty pleads for a consideration of Indian modernity as a process in which the implantation of European categories in the Indian context has resulted in “incomplete” translations. These incomplete translations must not be viewed in terms of a “betrayal” of a hoped-for telos. What Chakrabarty wants us to do, instead, is to view phenomenon like the interspersion of religion and politics in India in such a way that Indian history will open up to “other possibilities” rather than just viewing it as an incomplete or unsatisfactory poor cousin of some pure original. What is necessary is to pay attention to the “process of translation and the resultant hybridities” therein. It is precisely this aspiration that motivates Chakrabarty’s critique of what he classifies as histories written in the “pedagogical-dialogic” mode (28-29).

#### IV. “DEMOCRATIC” ALTERNATIVES TO STATIST POLITICS AND THEIR SHORTCOMINGS

Both Chatterjee and Chakrabarty outline democratic alternatives to respond to domination as neocolonial governmentality that results from statist arrangements for accommodating particular religious and cultural minorities. These alternatives eschew reliance on the state as a relevant agency for responding to the specificities of religious and cultural minorities. Let me briefly outline the alternatives before proceeding to highlight the problems in them.

Chatterjee outlines his position in the context of the Indian practice of religion-based legal pluralism in matters of family law, and the involvement of the state agencies there in the affairs of religious institutions (e.g., the state’s involvement in the reformulation of Hindu personal law in the 1950s). He seeks to shift the focus of the politics of identity and difference away from the “rigid framework laid out by the concepts of sovereignty and right”<sup>39</sup> because this framework conceals the power relations that characterize interaction between the state and minority group. He supports a group’s assertion of sovereignty – expressed in the statement, “We will not give reasons for not being like you” – and resistance to “entering that deliberative or discursive space where the technologies of governmentality operate.”<sup>40</sup>

Chatterjee presents his view through the voice of “someone who is prepared to defend the cultural rights of minority religious groups in India.” He says it is perfectly reasonable for this defender (belonging to a minority group) to demand from the wider society a certain toleration for the beliefs of the group while also demanding from the group that it “publicly seek and obtain from its members consent for its practices, in so far as those practices have regulative power over the members.” The group has to satisfy this condition of representativeness if it expects its demand for toleration to be met by the general body of citizens. This advocate will demand “open and democratic debate within her community.” This politics of collective rights will not eschew the criteria of “publicity and representativeness” demanded of all public institutions with regulatory functions. Furthermore, such a politics of cultural rights will stoutly resist “any attempt by the state to legislate into existence representative bodies for minority groups as prerequisites for the protection of minority rights.”<sup>41</sup> All the required political processes will have to be carried out within the group.

Altogether, a mode for “strategic politics” is endorsed whereby two kinds of struggle will be launched, both on the grounds of “autonomy and self-representation.” The first is a struggle against the state – against the “normalizing attempt of the national state to define, classify and fix the identity of minorities on their behalf (the minorities, while constituting a legally distinct category of citizens, can only be acted upon by the general body of citizens) and against the assimilationist powers of governmental technology represented in the “universalist idea of citizenship.”<sup>42</sup> The problem with the universalist idea of citizenship is that it disables people from negotiating, “through a continuous and democratic process of self-representation, the actual content of those

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<sup>39</sup> Chatterjee, “Secularism and Tolerance,” in Bhargava (ed.) 1998, 370.

<sup>40</sup> *Ibid.*, 372.

<sup>41</sup> *Ibid.*, 375;376;376.

<sup>42</sup> Chatterjee’s disenchantment with universalist citizenship relates to its tendency to normalize the reproduction of differences by pretending that everyone is the same (377).

categories. That is the new politics that one must try to initiate within the old forms of the modern state.”<sup>43</sup>

The second struggle is for the materialization of more representative public institutions and practices *within* the concerned community. This is the demand that “regulative powers within the community be established on a more democratic and internally representative basis.” On the whole, this is a struggle to “resist homogenization from the outside, and push for democratization inside.”<sup>44</sup>

What is the role of the state in all this? Doesn’t the discounting of universal citizenship spell trouble, especially in light of the potential of the notion of equal rights for fighting against unjust and tyrannical practices within religious communities? Chatterjee’s answer to this question is that matters will not be such as would impose a “choice of one or the other.”<sup>45</sup> In his words,

To pursue a strategic politics of demanding toleration, one would not need to oppose the liberal-secular principles of the modern state. One would, however, need to rearrange one’s strategic priorities. One would be rather more skeptical of the promise that an interventionist secular state would, by legislation or judicial decisions, bring about progressive reform within minority religious groups. Instead, one would tend to favour the harder option, which rests on the belief that if the struggle is for progressive change in social practices sanctioned by religion, then that struggle must be launched and won within the religious communities themselves. There are no historical shortcuts here.<sup>46</sup>

Here Chatterjee rejects relying on the state as an agent to bring about reform; the struggle for change must be launched and carried out within communities. Although he hints at non-opposition to the modern state – inasmuch as he says that there is no need to oppose the principles of the state – he is firmly committed to erring on the side of democracy.<sup>47</sup> He places a great deal of faith in the possibility for internal democracy within minority religious groups, and seeks to accord them a robust role in regulating the lives and activities of their members – robust enough for him to observe that his proposals would well attract criticism from those who would view such arrangements as a threat to the sovereign powers of the state.<sup>48</sup> But he mentions neither the institutional framework for internal democracy nor the importance of legal protections required to secure at-risk agents from intragroup domination.

Chakrabarty’s advocacy of “radically fragmentary” modes of politics resembles Chatterjee’s move away from statist politics. Chakrabarty’s claim is that one way to make the politics of politicizing the subaltern more democratic is to abandon a totalizing mode of thinking – a state-centred view of thinking – and with it the notion that the telos of the subaltern is to become a citizen. “The subaltern here is the *ideal* figure of the person who survives actively, even joyously, on the assumption that the statist instruments of domination will always belong to somebody else and never aspires to them.”<sup>49</sup> Chakrabarty claims that being “radically fragmentary” implies moving away “from the certitudes that operate within the gesture that the knowing, judging, willing subject always already knows what is good for everybody, ahead of any investigation.”

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<sup>43</sup> Ibid.

<sup>44</sup> Ibid., 376; 378

<sup>45</sup> Ibid., 377

<sup>46</sup> Ibid., 377

<sup>47</sup> Ibid., 379

<sup>48</sup> Ibid., 378-379.

<sup>49</sup> Chakrabarty, 36.

The plea is to generate “knowledge forms that are not tied to the will that produces the state.” Instead, he argues for the possibility of a radically open investigation of historical evidence. Here, in the fragment, would lie an alternative to the statist idea that demarcates the mainstream of political thought: it would be an idea of the political that did not require an imagination of totalities.<sup>50</sup>

#### V. THE INSTITUTIONAL REQUIREMENTS FOR DEMOCRATIC OPENNESS AND CLOSURE

The alternatives offered by Chatterjee and Chakrabarty focus on democratizing the politics of religious and social change when it comes to religious and cultural minorities. In their bid to honour alterity and to prevent alternative democratic modes of politics from being overwhelmed by a totalizing and homogenizing state, both describe a preferred alternative without providing an account of *how* that alternative can uphold democratic politics. Both expect democratic politics to thrive without any reliance on the state, and the state is viewed predominantly as an agency imposing domination via its practices of neocolonial governmentality. Neocolonial governmentality assimilates difference and arbitrarily constrains some citizens from exercising their democratic freedom to engage freely in the practices of deliberation and negotiation of the rules by which they are governed.

However, important questions arise here in connection with the sustainability of a democratic politics that eschews reliance on state structures. The endorsement of non-statist understandings of politics does not automatically address issues of agency and vulnerability to subordination – themes that even Chakrabarty and Chatterjee justly care about. As Alan Keenan appositely emphasizes, “a politics of questioning and openness is burdened by the necessity of making contingent, often risky political decisions about its specific forms of openness *and* closure.”<sup>51</sup> What Chakrabarty and Chatterjee fail to clarify is the manner in which a non-statist understanding of democratic politics can avoid the pitfalls of the anarchy that might accompany decentred visions of socio-political life. Indeed, it is “at the point of contingent political practice ... that the theoretical affirmation of contingency finds its greatest challenge.”<sup>52</sup>

Maintaining the democratic credentials of politics in the fragment requires more time and resources than can be provided by participants in such politics. Hence, reliance on particular institutional arrangements – such as the state – is vitally important to enable effective political involvement of the agents concerned. These institutions can serve to disable the negative consequences of the inevitably present strategies of domination that can subvert the agency of less powerful political actors. Their role in ensuring democratic politics will depend on the degree to which they respond to situations at hand without falling prey to popular pressures. The very achievement of a politics that creates the space for freedom and uncertainty depends upon the “existence of other ‘spaces’ (beliefs, practices, institutions) that remain more or less stable, even taken for granted.”<sup>53</sup> Thus, it becomes necessary for postcolonial theorists to provide an account of which agents and institutions can be relied upon for enabling the pursuit of genuinely open-ended dialogue. It would be very risky to expect episodic and fragmentary modes of politics to automatically generate the standards for what is

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<sup>50</sup> Ibid., 36; 35; 36.

<sup>51</sup> Alan Keenan, *Democracy in Question*, (Palo Alto, Stanford University Press, 2003), 107.

<sup>52</sup> Ibid., 107.

<sup>53</sup> Ibid., 136.

permissible and what is not. As Keenan indicates, democracy cannot be “*equated with*” the affirmation of openness for

the political practice of remaining open to difference, to otherness, and to competing conceptions of the “common bond” is itself a *particular* one, with its practice requiring a significant degree of equality and sense of commonality. And given that such an attitude is only one possible response to the conditions of contingency and conflict ... (resentment, cynicism, and the demand for “security” being other likely possibilities), it requires particular forms of closure, or institutionalization, in order to be more than just an idiosyncratic accomplishment of unusually generous individuals.<sup>54</sup>

If democratic openness requires disagreement, reconsideration and questioning to the “right degree,” if it rests on a proper assessment of *which* established modes are questioned and in the name of what sort of alternative, and if the assertion of contingency is accompanied by specific practices to sustain openness, then it is imperative to invest some thought in the necessity of institutional arrangements to ensure that the experience of “radically fragmentary” politics does not result in antidemocratic forms of politics. Absent such arrangements, contingent politics can fall prey to “disappointment and cynicism about the very possibility of community and public life.”<sup>55</sup>

Sadly, however, Keenan’s account does not outline which institutions can come to the rescue of a truly democratic politics. He claims that the affirmation of democratic politics must be more than theoretical and should be accompanied by “specific strategies that are needed to navigate the difficulties and dangers posed by the contingency of democratic politics.” He urges us to unearth such strategies from “within the contingency of democratic politics – not as it is ‘affirmed’ in principle or theory, but rather as it is experience and practiced.”<sup>56</sup> His suggestion for sustaining democratic politics is the cultivation of a “nonmoralistic language of critique and responsibility” whereby citizens are disposed toward the “recognition of the *shared suffering* we all experience as fluid, open, internally complex beings inevitably trapped (although in different degrees) in more less fixed identity ‘scripts’ or self-images.”<sup>57</sup> The adoption of such a language would facilitate the establishment of a “*common ground* with one’s fellow citizens without threatening the kinds of reified, unduly closed, practices of the ‘we’” that perpetrate relations of domination between majorities and minorities.<sup>58</sup>

While the aforementioned outlines the kind of disposition that citizens must bear in their interactions with one another so as to avoid “closed” politics, we do not learn

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<sup>54</sup> Ibid., 106.

<sup>55</sup> Ibid., 139.

<sup>56</sup> Ibid., 143.

<sup>57</sup> Keenan, 188; This would be a language which “recognizes that suffering comes both from the constraints of identity *and* from our being radically open and indebted to each other even in our mutual otherness. We depend on each other, both materially and for the stories that tell us who we are – even as we don’t naturally fit together and are constantly called into question by each other’s differences. A democratic, nonmoralistic, language and practice of civic virtue, then, recognize that we all share both a desire for strong personal identities, grounded, when available, in clear collective identities, as well as the experience of the burdensome nature of such desire, especially given the ultimately unattainable nature of its object. Such recognition, and the compassion built into it, then, offers the possibility of negotiating at least somewhere more easily the essential – and irresolvable – democratic vision between the ‘we’ understood as a set of common needs, rights, and duties, and the ‘we’ understood as perpetually uncertain and open to reformulation” (188-189).

<sup>58</sup> Keenan, 189.

much about the institutions that can endorse and consolidate the establishment of the kind of “common ground” espoused above. Even as Keenan highlights the importance of institutional bases to sustain democratic politics, he expresses skepticism about the prospects for achieving any meaningful “democratic control over the state, the market, or disciplinary powers of other sorts” as ways of upholding democratic politics by addressing the “entrenched injustice, inequality and unaccountable power” that characterizes public spaces.<sup>59</sup>

I argue, however, that expressions of skepticism about the effectiveness of democratic control of institutions that wield power and authority over persons unhelpfully deflect attention away from the positive potential involved in a careful employment of agencies such as the state. Postcolonial theorists resist the state because it perpetrates domination as neocolonial governmentality, which in turn has the consequence of impeding the freedom and agency of members of subaltern groups. The problem with most pleas for democratizing politics is that their criticism of the domination imposed by the state neglects to note that the state “is the vexed institution that is the ground of both our freedoms and our unfreedoms.”<sup>60</sup> What is missed in critiques of the state is that the state is the institution that can also enable freedom for persons. In what follows, I argue that a concern for the agency of all persons, including at-risk members of vulnerable groups, necessitates some, albeit qualified, reliance on state power for securing legal protections for all persons. This argument comes in two stages, the first of which follows in this paper. I have presented the second stage elsewhere; there I analyze events in late nineteenth-century colonial to show that vulnerable persons have sought the protection of state power even in situations when that power lay unambiguously in the hands of a colonial regime.

## VI. THE STATE AS AN INSTITUTION FOR SECURING NON-DOMINATION

What positive potential does the state have in terms of securing freedom as non-domination? To answer such a question it seems natural to turn toward Philip Pettit’s conception of republicanism for an account of the role of state power in establishing and maintaining a regime of non-domination.<sup>61</sup>

On the republican account, domination obtains when agent A is subordinated to the arbitrary, but intentional or quasi-intentional, “governing will” of another agent or set of agents. Dominating interference is such that it worsens agent A’s choice situation – not merely by affecting the range of options available, but by rendering A’s ability to act on particular options difficult. An interference is arbitrary if the dominating agent does not track “the avowed interests of the victim but ... can interfere more or less as his or her own will or judgement dictates.”<sup>62</sup> Even when an act of interference may be committed for the “good of the victim, and may be successful in achieving *that* good,” it will still be termed arbitrary if it does not track the avowed interests of the victim.<sup>63</sup> These interests can be tracked along a notion of the “common good” and/or as expressed in adequately designed deliberative procedures.

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<sup>59</sup> Ibid., 190.

<sup>60</sup> James Scott, 7.

<sup>61</sup> Philip Pettit, *Republicanism* (Oxford, Oxford University Press, 1997); and Philip Pettit, “The Domination Complaint,” in *Political Exclusion and Domination, NOMOS XLVI*, edited by Melissa S. Williams and Stephen Macedo (New York University Press, 2005).

<sup>62</sup> Pettit, “Domination Complaint,” 93.

<sup>63</sup> Ibid., (emphasis added).

Interference in an agent's life in a manner that does not track that agent's interests can have the consequence of treating that person as less than equal. The experience of exposure and vulnerability to the arbitrary governing will of another can undercut the victim's capacity or power to act and lead her life in accordance with what she considers to be meaningful. Anyone vulnerable to such an imposition of power is deprived of the basic respect owed to moral agents. The victims are denied the opportunity to participate in negotiations and deliberations about the kinds of structures they will come to be governed by.

Ordinary persons are subject to various forms of domination: for instance, employees can be subject to the whims of their employers, within the household women might be subjected to men, or international travellers can be victims of the arbitrary power of immigration officers in airports. In these and many other contexts, some agents are subject to the arbitrary power of others. Even if the weaker party is not actually subjected to the power of the dominant agent/s, these are situations where the threat of domination by the powerful over the powerless looms large. Freedom as non-domination follows an approach of classifying these contexts of unequal power as ones about which there must be some concern, for domination can occur without interference "because it requires only that someone have the capacity to interfere arbitrarily in your affairs; no one need actually interfere."<sup>64</sup>

## VII. LAW AS NON-ARBITRARY INTERVENTION

But why rely on the state to mitigate domination? The main reason is that relying on the private and decentralized efforts of individuals does not offer a sustainable strategy to encounter domination, for such efforts impose extraordinary burdens on ordinary persons. For example, unequal prowess could place some at the mercy of the stronger and we may "expect a society in which petty despotisms are rampant: where men lord it over women, the richer lord it over the poorer, insiders lord it over outsiders, and so on."<sup>65</sup> In ethnically diverse polities, the risk of intragroup warfare would be constant and majorities could easily impose their will on minorities. And even if persons were able to achieve non-domination by making arrangements to resist interference by another, the "range and ease of undominated choice" would likely be narrow and tenuous –civil war would constantly be impending. Further, private efforts to secure non-domination also run the risk of persons' arbitrary interference with one another; this could result from having to rely on threatening and/or coercing others (and "thereby interfering with them in a manner that does not track their interests and ideas") to deter them interfering arbitrarily in one's own activities.<sup>66</sup>

Given the risks and incommensurabilities of relying on private and decentralized efforts for staving off domination, the reliance on the state for a "constitutional provision" of non-domination by non-dominating means presents a more fruitful avenue for consideration.<sup>67</sup> Because the state enjoys a monopoly of legitimate force within its community and has access to the use of coercion or the threat of coercion, it is in a position to mitigate the degree to which persons suffer some forms of domination. Its effectiveness in this, compared to strategies that rely on private efforts, makes the state

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<sup>64</sup> Pettit, *Republicanism*, 24.

<sup>65</sup> *Ibid.*, 93.

<sup>66</sup> *Ibid.*

<sup>67</sup> Here is where the account of the importance of the state diverges from a Hobbesian notion of the sovereign power.

the “most efficient instrumentality available” for acting against domination.<sup>68</sup> Building on the infrastructural wherewithal provided by the state, republicans tend to favour this instrumentality because of a positive connection between liberty and law. This connection, in turn, supplies the basis for making a helpful distinction between different types of intervention.

The republican view holds that the relationship between law and liberty is best understood as mutually constitutive. It eschews the notions that law coerces people and reduces their liberty and that it compensates for the damage done by preventing more interference than it embodies. If freedom consists in non-domination, then talking in terms of compensation misses the point because the security of non-domination generated by law is such as may not be comprehensible without law. Rather, the view is that a law-governed order brings freedom into being in a way that would not be available to persons without that order. As Locke pointed out, “*the end of law* is not to abolish or restrain, but to *preserve and enlarge freedom*.”<sup>69</sup> Laws established and promulgated by government secure persons from arbitrary interference both from other people and from their rulers.

Freedom is “a status that exists only under a suitable legal regime. As the laws create the authority that rulers enjoy, so the laws create the freedom that citizens share.”<sup>70</sup> Any system of law and government will limit some of the options available to agents, and in this sense the state and law represent an intervention in persons’ freedom. But every kind of interference need not be dominating. When an intervention is in keeping with the discursively discoverable “ready-to-be-avowed” interests and opinions of those affected by it, and is viewed as one that is required to uphold those interests, then it does not constitute dominating interference. Properly constituted law, “the law that answers systematically to people’s general interests and ideas,” represents a form of interference that “does not compromise people’s liberty; it constitutes a non-mastering interferer.”<sup>71</sup> The republican view that is being discussed here is that there is a constitutive relationship between law and liberty: law enables persons to enjoy their freedom. And the

laws only do this, of course, so long as they respect people’s common interests and ideas and conform to the image of an ideal law: so long as they are not the instruments of any one individual’s, or of any one group’s, arbitrary will. When the laws become the instruments of will ... then we have a regime ... in which the citizens become slaves and are entirely deprived of their freedom. Each of them lives ... “at the will of his lord;” each of them is wholly dominated by the unconstrained power of the individual or group in command.<sup>72</sup>

Again, recall that the coercion of law may not be characterized as “arbitrary” intervention because it is grounded in a process that has ascertained the interests and ideas of the persons subject to that interference. Although it may not be possible to track all of the interests and ideas of the person involved – for these may make “inconsistent demands” – it is necessary to track at least the “relevant ones.”<sup>73</sup> For the exercise of state power to be non-arbitrary, it is important that power be exercised in a way

<sup>68</sup> Pettit, “Domination Complaint,” 100.

<sup>69</sup> John Locke, *Second Treatise of Government*, (VI:57 1690), edited by C. B. Macpherson (Indiana: Hackett Publishers, 1980), 32.

<sup>70</sup> Pettit, *Republicanism*, 36.

<sup>71</sup> *Ibid.*, 35.

<sup>72</sup> *Ibid.*, 36.

<sup>73</sup> *Ibid.*, 55.

identifiable not with “the power-holder’s personal welfare or worldview, but rather the welfare and world-view of the public.”<sup>74</sup>

The point here is that “acts of interference perpetrated by the state must be triggered by the shared interests of those affected under an interpretation of what those interests require that is shared, at least at the procedural level, by those affected.”<sup>75</sup> The idea of a common good is being invoked here; law’s jurisdiction includes those arenas in which, it can be ascertained, all persons within a political community have a common interest. The ascertainment of which interests are shared will require recourse to deliberative engagement with affected parties so that persons may voice their own and their groups’ interests. Judgement on whether some state action is arbitrary will depend upon an examination of the context at hand:

What has to be established is whether people really are dominated, not whether domination is visible from within some privileged evaluative standpoint. As the facts of the matter, including facts about local culture and context, determine whether a certain act counts as interference, so the facts of the matter determine whether a certain act of interference counts as arbitrary.<sup>76</sup>

An important implication of the contextual nature of the judgment on whether a particular intervention is arbitrary or non-arbitrary is the relinquishment of *a priori* grounds for determining the merits or demerits of state intervention. On the view being discussed here, whether or not state intervention in a particular case is warranted will depend upon a contextual understanding of the situation at hand, and will be guided by the broader commitment to non-domination. Such an account of the government’s role in securing a regime of non-domination is alert to the possibility that the state itself might come to represent a dominating presence. Thus, state power should be restrained via the imposition of constitutional (rule of law, separation of powers and anti-majoritarianism) and democratic (clearly established channels for resisting and contesting state power, emphasis on inclusive deliberative engagement, and stressing the importance of civil society engagement) constraints to ensure that republican instrumentalities remain “maximally non-manipulable.”

## VIII. THE STATE, RELIGIOUS AND CULTURAL MINORITIES AND NON-DOMINATION

Republicans assume that normally

when the state reduces or removes domination in one area that will not make it more difficult – indeed, it may even make it easier – to remove it in others. .... More generally, an investment of state resources that enables people to avoid one sort of danger is likely to help them at the same time to avoid others. Thus the attempt to reduce domination in a given area of choice, the attempt to intensify the non-domination enjoyed by an agent or group in that area, will not typically raise obstacles to the project of reducing domination in other areas.<sup>77</sup>

However, as the experience of multicultural accommodation has revealed, the effort to secure non-domination in one arena often results in the emergence of domination in another. As can be demonstrated via an analysis of Shachar’s conception of transformative accommodation, attempts to address intragroup domination via reliance on the instrumentalities of the state run the risk of generating domination as

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<sup>74</sup> Ibid., 56.

<sup>75</sup> Ibid., 56.

<sup>76</sup> Ibid., 57.

<sup>77</sup> Pettit, *Republicanism*, 104.

neocolonial governmentality, especially when the minority groups under consideration are already oppressed and marginalized. In this last form of domination, the problem is that “as a state gains the powers necessary to be a more and more effective protector ... it becomes itself a greater threat to freedom as non-domination than any threat it seeks to remove.”<sup>78</sup>

What approach does the republican view of non-domination prescribe for addressing the *web of domination* encountered in attempts to accommodate religious and cultural minorities? One suggestion is that in cases where state intervention is likely to be counterproductive and engender “on novel fronts precisely the sort of complaint it is designed to relieve” and thus “perpetrate more interference or domination than it prevents,” it would be preferable to eschew reliance upon state-sponsored remedies.<sup>79</sup> The proposition here is that when a minority group contests statist interference because it is offensive to their religious or cultural convictions and does not properly track their group-specific interests, then the group must be allowed to secede from the state and establish a separate territory or jurisdiction.<sup>80</sup> Such a response to a group’s contestation of statist interference resembles Kymlicka’s suggestion that the state must back off when intervention with non-liberal groups can result in a replay of colonial relations of domination between the state and groups.

However, shutting out the state in contexts where its intervention is perceived as dominating is an undeveloped and ill-suited option for properly addressing the domination-conundrum that plagues the politics of multicultural accommodation. Members of minority groups are not always concentrated within a particular territory, and so establishing a separate territory may not be an option. While the alternative of setting up a separate jurisdiction for a group within an existing state, say via legal pluralism, offers food for thought, it cannot be grounded in the state’s adoption of a hands-off approach. Why? Because the retreat of the state can spell doom for vulnerable members of non-liberal groups – members who are also citizens of the state within which these groups obtain and who also require the protections afforded by the state. The concern is that there are hierarchies everywhere and “every hierarchy, public and private, encourages ... despotic dispositions.”<sup>81</sup> The point here is that there is always some need for “institutions of correction.”<sup>82</sup> One of the most compelling aspects of freedom as non-domination, and the notion of the rule of law that accompanies it, is the provision by the state of protection from vulnerability by guaranteeing persons certain rights, which are conceived as legal protections necessary for achieving such freedom.<sup>83</sup> As I have argued elsewhere, such protections to shield the most vulnerable from abuse were sought from the state even when state power was unambiguously in the hands of a colonial administration: anti-colonialism did not entail anti-statism.

As such, contrary to Pettit’s option of a retreat of the state and law when the *web of domination* is encountered, a more promising option would be to accord the state a limited and cautious role in issues that have implications for the particular perspectives of marginalized groups within the polity. Non-arbitrary interference by the state can

<sup>78</sup> Ibid., 105.

<sup>79</sup> Pettit, “Domination Complaint,” 89.

<sup>80</sup> Pettit, *Republicanism*, 199.

<sup>81</sup> Judith Shklar, “Injustice, Injury, and Inequality: An Introduction,” in *Justice and Equality Here and Now*, edited by Frank S. Lucash (Ithaca: Cornell University Press, 1986), 31.

<sup>82</sup> Shklar, “Injustice, Injury, and Inequality,” 25.

<sup>83</sup> These legal protections could be the subject of state interference, but they will not be subject to arbitrary intervention. (Pettit, *Republicanism*, 101).

take place in many different ways. The most basic form of such interference for the sake of non-domination is through the provision of citizenship rights. Such rights empower individuals to resist different kinds of domination and to exercise their agency as members both of their religious groups and of the broader political communities to which they belong. They present an example of the state putting “defenses in place for those who might otherwise be dominated.”<sup>84</sup> In the context of religion-based personal laws and of the bias in some of these codes against women, there are alternatives to a blanket rejection of legal pluralism (as witnessed in the 2005 decision of the Ontario government to ban all religious arbitration in the province<sup>85</sup>) and to the strategy of reform via external pressure on marginalized and oppressed minority communities (as proposed by the scheme of transformative accommodation). One alternative is to provide citizens with the option of being governed by a secular family law code. In India, for example, all citizens are entitled to marry under the Special Marriages Act (1954), which stipulates secular procedures for marriage, divorce and succession (Indian Succession Act, 1925). Individuals who desire to accede to the jurisdiction of this Act are not required to relinquish their religious membership. Such a scheme does not de-recognize religion-based legal pluralism in matters of family law. Rather, it provides all citizens with a secular option should they seek to be governed by it rather than by religion-based personal laws.

Arguably, the ban on both religious arbitration in Ontario and the wearing of headscarves in French public schools involves the state in making decisions wherein the will of the majority was imposed on the minority in ways that precluded considering more viable alternatives. Considering alternatives could have permitted the state to make some non-arbitrary interventions in the former case and prevented arbitrary-intervention in the latter case. (And in both instances, the decisions relied on the rhetoric of protecting vulnerable members of Muslim communities.) The point I wish to emphasize is that when it comes to engaging with religious communities on matters where the state’s involvement could involve the imposition of arbitrary forms of interference, the strategy of protection via the guarantee of citizenship rights seems to be the least harmful one.

## IX. STATECRAFT AND NON-DOMINATION

In addition to endorsing minimal non-arbitrary intervention on the part of the state – to secure at-risk members of groups from intragroup domination – I would also argue that non-arbitrariness in a state’s involvement in matters affecting minorities can be enhanced by embarking on schemes of accommodation designed to thwart the seemingly inevitable dominating aspects of statecraft.

Indeed, apart from an inadequate account of the role of the state when faced with domination as neocolonial governmentality, Pettit’s treatment of the problematic aspects of statecraft itself is far from satisfactory. More work needs to be done in terms of arguing for the kinds of non-dominating interference the state might undertake in its efforts to accommodate distinctive religious and cultural groups within the polity. Pettit’s quick response to a critique of statecraft grounded in a governmentality-based view of power is the following:

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<sup>84</sup> Pettit, “Domination Complaint,” 95.

<sup>85</sup> Here, the ostensible aim of the government was to prevent vulnerable members of particular religious groups from being dominated by the more powerful elements within the groups. The ruling de-recognized the binding force of decisions resulting from religion-based arbitration processes.

“In railing against the capillary power that runs through the smallest veins of the system, Foucault does sometimes direct attention to phenomena that we might hope to be able to rectify. But often he seems to be castigating a sort of influence that is as inescapable in the social world as gravity is in the natural.”<sup>86</sup>

This response to the negative aspects of statecraft is inadequate because it dismisses the tremendous power that the state exercises in the course of ushering in an administrative ordering of social and political life – a process through which a state can “get a handle on its subjects and their environment.”<sup>87</sup> Through administrative processes, the state arranges the population to simplify the performance of its classic functions, such as taxation and the maintenance of order within society. The administrative state is usually “devoted to rationalizing and standardizing what [is] a social hieroglyph into a legible and administratively more convenient format.”<sup>88</sup>

Administrative systems can represent any existing social community only through “a heroic and greatly schematized process of abstraction and simplification.”<sup>89</sup> This is not simply because states lack the capacity to represent a social community fully, but also because the interest of state agents in these communities is disciplined by a small number of objectives. While the conventional objectives have included taxation and political control, contemporary multiply diverse states’ interest in distinctive social groups and communities is additionally motivated by concerns relating to security and integration (especially in an environment increasingly characterized by a fear of Islam). Often, because of the operation of the aforementioned state interests, particular practices of certain groups cannot be “assimilated into an administrative grid without being either transformed or reduced to a convenient, if partly fictional, shorthand.”<sup>90</sup> The interest of promoting the well-being of members of non-liberal minorities might itself generate practices of government that seek to bring about progress under the watchful eye of the state. And an intense faith and hope in the positive potential of schemes to emancipate vulnerable persons belonging to distinctive minorities can discount the uncertainties involved in the process. Further, a planned system of change imposed from above can result in arresting change on the basis of the multiple sources of invention and change that inhere in the “plasticity and autonomy of existing social life.”<sup>91</sup> Finally, such practices of “developing” certain populations are often strategies for control. They contribute to the proliferation as well as consolidation of control exercised by the state.

This results in simplified representations of the actual activities of the community under consideration: the representations depict only that slice of reality that interest the “official observer.” When such simplified descriptions of reality become allied with state power – especially its capacity to give the force of law to categories grounded in such descriptions – much of the social life related to the narrow representations can be “remade,” “refashioned,” and “transformed” according to the descriptions. In James Scott’s words,

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<sup>86</sup> Pettit, “Domination Complaint,” 89-90.

<sup>87</sup> James Scott, 2.

<sup>88</sup> *Ibid.*, 3.

<sup>89</sup> *Ibid.*, 22.

<sup>90</sup> *Ibid.*, 24; The French state’s rationale for banning the wearing of headscarves in French public schools – maintaining law and order, promoting integration in French society and emancipation of Muslim women from their traditional practices (and making them full citizens of the republic) – is a good example of the curious intermix of the representations of religion/culture that are spawned by the state’s interests.

<sup>91</sup> James Scott, 93.

Certain forms of knowledge and control require a narrowing of vision. The great advantage of such tunnel vision is that it brings into sharp focus certain limited aspects of an otherwise far more complex and unwieldy reality. This very simplification, in turn, makes the phenomenon at the center of the field of vision more legible and hence more susceptible to more careful management and calculation. Combined with similar observations, an overall, aggregate, synoptic view of a selective reality is achieved, making possible a high degree of schematic knowledge, control, and manipulation.<sup>92</sup>

When such practices of statecraft attach to liberal states' exchanges with marginalized non-liberal minorities, the state is placed in the position of a dominant actor. The inability of group members to participate co-equally in formal negotiations can only further entrench the state's power to fulfill its aspirations for social engineering. Consequently, it is imperative that a revised conception of the role of the state in engendering a regime of non-domination include a specific account of measures to suitably constrain the processes of rendering simple, comprehensible, legible – and manipulable – complex social, religious and cultural practices.

Some of these measures are spelled out by Scott in his analysis and critique of the “imperialism” of state-led schemes for human improvement. They include an emphasis on process, complexity, mutuality and open-endedness so as to resist “hierarchical coordination in the creation of social order.” I share Scott's view that the challenge is not to do away with the state, but rather to be aware that statist politics grounded in “an authoritarian disregard for the values, desires, and objections of their subjects, are indeed a mortal threat to human well-being. Short of that draconian but all too common situation, we are left to weigh judiciously the benefits of certain state interventions against their costs.”<sup>93</sup>

#### **X. TACIT ACCEPTANCE OF THE INSTRUMENTALITIES OF THE STATE EVEN IN CHAKRABARTY'S AND CHATTERJEE'S ALTERNATIVES**

In fact, even Chakrabarty's rendition of an alternative democratic politics to one governed by statist understandings is mindful of the importance of institutional arrangements in fragmentary modes of politics. For instance, he ponders the “kind of (modern) social justice” that one would “envisage as one embraced the fragment”<sup>94</sup> – the commitment to fragmentary politics cannot sidestep the importance of securing vulnerable persons from domination. Evidently, a close reading of Chakrabarty's

<sup>92</sup> Ibid., 11.

<sup>93</sup> Ibid., 7; 7. One way to combat the dangers of the administrative working of the state would be to lessen the scale of activity. Indeed, as Scott points out, it would be prudent and desirable for the state to be involved in making small interventions. See also, Monique Deveaux, *Gender and Justice in Multicultural Liberal States* (Oxford University Press, 2006). I see a positive connection between James Scott's suggestion for small steps and Deveaux's emphasis on the notion of “revisability” as a feature of democratically wrought social change. “Revisability” refers to revisiting decisions and compromises at a later point when warranted. Deveaux holds that “the main advantage of an assumption of revisability in the context of deliberation about cultural conflicts is that it acknowledges the gradual character of real change and the ways in which a range of processes *outside* legislation ... contribute to the transformation of customs and cultural arrangements. A revisable deliberative process for evaluating disputed customs and initiating reforms can be responsive to the fluid character of many social practices.” (116) An emphasis on the gradual character of social change, coupled with the concern to include different sections of a community that want to be heard, makes it important to revisit decisions from time to time. Revisability can be facilitated by lowering the scale of interventions that contribute to (gradual) social change. Small steps can respond more favourably to reversing any harm that the interventions may cause; they also make it easier to encounter unforeseen events.

<sup>94</sup> Chakrabarty, 36.

discussion of the state demonstrates a line of thought in his view that acknowledges the importance of the instrumentalities of the state.

On the one hand, he hopes that radically fragmentary politics will highlight that the procedures “embodying” enlightenment rationality provide only a “partial hold on our lives – and that too through necessary, much-needed, yet inevitably poor translations.”<sup>95</sup> However, on the other hand, the languages of the “state, of citizenship, of wholes and totalities, the legacy of Enlightenment Rationalism” will cut across even radical and open investigation of historical evidence for the generation of new forms of politics.<sup>96</sup> And, in spite of his observations about the invasiveness of law, Chakrabarty agrees that there could be contexts in which “such invasion may, indeed, seem justified:” although he does not elaborate this point he claims that sometimes the law and state can aid “human struggles for dignity.”<sup>97</sup>

Further, aside from his exploration of an alternative fragmentary approach to politics, Chakrabarty stipulates that “one way toward subaltern forms of democracy” would be to foster both the subalterns’ efforts to bolster their agency and their aspiration toward the kind of dominance and authority enjoyed by the “state.” An alternative to a “statist” mode of politics, then, would be to *ground the modern state* in these self-affirming activities of subaltern groups.<sup>98</sup> This undeveloped insight in Chakrabarty’s discussion shows an openness to considering another kind of state – one in which state power empowers rather than dominates subaltern groups. My point here is that Chakrabarty’s misgivings about statist domination can be interpreted as related to a particular type of state, not all kinds of state.

Such an interpretation is bolstered by his considerations about the kind of political imagination and institutions that would be required to sustain a politics conducted “on the basis of a thought that joyously embraced the idea of the fragment.” Chakrabarty recognizes that the state is “often idealized as an instrument for enforcing equality and that” “most social thought entails the idea of equality in one form or another.”<sup>99</sup> The question, however, is about the “kind of (modern) social justice” that follows from embracing the fragment, and it has two aspects – a “legitimate” and a “not legitimate” one. The legitimate aspect of the question arises from a perspective committed to notions of equality (as the absence of domination, subordination and/or oppression). If one is committed to equality, then it matters how the politics of the fragment will uphold the commitment to equality.

However, says Chakrabarty, the question can be deemed “not legitimate” from the point of view of a “radical” for whom the endorsement of the “fragment as political-philosophical starting point would mean that we would not answer such questions in an a priori and systematic manner.”<sup>100</sup> Here, asking certain questions, such as the one about the way in which the value of equality would be pursued or embodied in fragmentary politics, is deemed illegitimate because they might hinge on an endorsement of the view that normative principles must be applied in an a priori and systematic fashion, rather than in a way that attends to the contingent specificities of the issue at hand.

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<sup>95</sup> Ibid., 37.

<sup>96</sup> Ibid., 36.

<sup>97</sup> Ibid., 114

<sup>98</sup> Chakrabarty, 35; emphasis mine.

<sup>99</sup> Ibid., 35-36; 36.

<sup>100</sup> Ibid., 36.

I would argue, however, that even in the face of a commitment to the latter perspective (where it is not legitimate to ask the question of what *kind* of social justice follows from the embrace of fragmentary politics *because* the answer to that cannot be decided in an a priori and fixed manner), the refusal to supply the content of the principle of equality is different from an abjurement of the very pursuit of equality. Indeed, Chakrabarty's position would be incoherent if he maintained on the one hand a commitment to democratizing the politics of the subaltern/fragment but on the other eschewed any strict commitment to equality itself, for equality is a constitutive value of the democratic principle.

Thus, here too the reader gets an inkling of Chakrabarty's sympathetic disposition toward envisioning alternative institutional arrangements that could better serve to respect the agency of actors belonging in the subaltern domain. Arguably, the strong commitment to non-domination (democracy and agency) that motivates the search for this alternative approach can provide the benchmarks for grounding the modern state so as to encourage subaltern forms of democracy. The euphoric delineation of a "fragment-respecting approach" to reading history and conducting politics reflects an inclination toward radically open modes of politics. All the same, Chakrabarty is acutely sensitive to the normative bearings of this alternative approach to politics, and expresses concern about a non-dominating framework for conducting an alternative mode of politics.

Chatterjee's robust faith in intragroup democracy, too, requires statist structures to safeguard the agency of vulnerable members against domination so as to consolidate their ability to participate in the production and reproduction of their religious, cultural and social lives. Intragroup politics can be quite intense and the negotiations will involve a reformulation of what it means to belong to a particular group. This could entail negotiations involving overlapping identities. For example, one's membership in a religious community may impose requirements whose fulfillment may clash with one's equality interests as a citizen or subject in a state, or with one's equality interests as a member of the disadvantaged sex, or with one's identity as a feminist, say, in matters of family law. And all of these may clash with one's equality interests as a member of a marginalized group. Such clashes generate the need for negotiating between the competing demands, and this process could transform one's identity. How can political agents negotiate identity-based conflicts in ways that neither mitigate their agency nor render them vulnerable to domination? Concern for agency and non-subordination requires addressing these issues too. Social and political life in a world characterized by diversity is very complex. Any blanket condemnation of the state – grounded in the rejection of domination as neocolonial governmentality, for example – must adequately deal with the question of protecting the equality interests of vulnerable persons.

If even radically democratic politics require certain institutional arrangements to secure political actors from intragroup domination, then it seems that we cannot ignore the importance of the instrumentalities of the state. The task is to advance a conception of the state that can accommodate religious and cultural difference in ways that protect vulnerable persons (*qua* individuals, *qua* members of religious groups) from domination without engendering new relations of domination (between the state and religious or cultural groups in a political community).