Non-domination and the Accommodation of Minority Social Practice

by

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Abstract

This thesis develops an account of non-domination as a principle of legitimacy that ought to govern both inter-group and intra-group relations in multicultural states. It applies this principle to the question of how political institutions should respond to claims for the accommodation of controversial minority practices, using the example of the polygamous community in Bountiful, British Columbia. In developing this account, the thesis engages with three bodies of theoretical literature – of multiculturalism, of political legitimacy, and of autonomy.

In the dominant normative theories of multiculturalism, answers are centered on what the limits of toleration are, what it means to recognize a collective identity, or what group rights can be claimed and how group rights are balanced with individual rights. While not rejecting the importance of these issues in a pluralistic state, my approach de-centers them by subsuming them under the broader problem of what makes a political authority morally legitimate vis-à-vis particular collective - as well as abstract individual - subjects. I argue that the most promising response to this problem lies with the concept of non-domination, conceived as a foundational principle of political legitimacy for multicultural states. This principle both demands and checks a democratic method for determining specific forms of accommodation.

In some cases the advancement of non-domination between groups conflicts with the advancement of non-domination within groups. In political theory this question is often taken up by feminist scholars concerned with the ‘paradox of multicultural vulnerability’ and, more generally, with the dilemma of how to identify and critique internalized oppression while promoting full respect for individual moral agency. Borrowing from these debates, I outline a conception of the relational moral autonomy of the person and argue that it forms a necessary
component of a non-domination-based analysis. The conclusion of the thesis with respect to minority social practices is that specific claims should be determined on the basis of a democratic process aimed at uncovering whether and when, all things considered, the accommodation of that particular practice is consistent with non-domination both between and within groups.
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Chapter 1

Introduction

Research question

In January 2009 the BC Attorney General arrested two men from Bountiful, BC on charges of polygamy – Winston Blackmore, who is reported to have between 19 and 26 wives, and James Oler, who is reported to have at least 3. This drew media attention to the practice of polygamy in this small community, which has existed in Canada for nearly sixty years without state interference or prosecution. This continues to be the case, since both men were released in September 2009 and the charges against them were quashed, as prosecutors feared losing a likely freedom of religion challenge under the Charter of Rights and Freedoms. Polygamous marriage is a central part of the religious doctrine of the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS) – a group which has had an antagonistic relationship with the institutions of liberal North American states for the past century and a half. In October 2009 the Attorney General of British Columbia asked the Supreme Court of the province to address two reference questions regarding the status of polygamy under Canadian law: first, whether its prohibition is constitutional, and second, what the scope of the criminal ban is.¹

1 Section 293 of the Criminal Code of Canada (1985) which criminalizes polygamy reads: (1) Every one who
(a) practices or enters into or in any manner agrees or consents to practice or enter into
(i) any form of polygamy, or
(ii) any kind of conjugal union with more than one person at the same time,
whether or not it is by law recognized as a binding form of marriage, or
(b) celebrates, assists or is a party to a rite, ceremony, contract or consent that purports to sanction a relationship mentioned in subparagraph (a)(i) or (ii),
The outcome of this reference case will be of interest not only to students of the law and Canadian politics, but to political theorists as well. The central question addressed in this dissertation is what kinds of principles ought to inform the accommodation of groups like the FLDS – groups that, following Ayelet Schachar, I term “nomoi communities” i.e. communities distinguished by group-specific rules where the authority of custom is tied to a cultural or religious narrative about a unique collective history and/or set of beliefs. This question stems from a very familiar problem in political theory: the problem of articulating the political principles or rules that ought to guide modern societies characterized by value pluralism. This problem is especially complex where there is deep moral disagreement, and the cultural and religious practices of minority social groups conflict with the norms, social values and conceptions of the good of the majority in the state.

Thus, in addition to raising a legal challenge, the FLDS practice of polygamy calls into consideration fundamental questions about the legitimacy of state authority over diverse socio-historic groups and over the subject of dispute. These questions are framed by the imperative to serve both subjects of justice – the religious group, in light of pursuing just relations between distinctive groups, and the individual members of the group, who are owed equal respect and dignity qua individual moral subjects. I argue that the normative framework which best serves this type of case is one which proceeds from the minimalist moral principle of non-domination; that reasoning within such a framework allows considerable philosophical depth for a critical examination of existing social practices, while also serving the normative and practical objective

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.
of yielding specific guiding principles for institutional action; and, finally, that non-domination vis. individuals requires at a minimum to foster social conditions in which they have relational moral autonomy.

In some ways, the argument of the dissertation can be seen as a specific version of one of the three possible justificatory strategies in dealing with cultural and moral disagreement in this sort of case. The first is what David Miller has termed a practice-based strategy. On this view, we do not need to look for, or articulate, deep philosophical foundations to justify the rules and regulations that characterize the state, but should instead go directly to the practices adopted in the state, which in many cases reflect forms of accommodation or policies that make functional sense. One dominant example of a practice based strategy in dealing with deep moral disagreement is the list of international human rights that has been agreed to, or taken as legitimate, in international documents and covenants. We might not have a philosophically coherent understanding of why these rights are conceived of as human rights, but we do not need to, as long as we agree on the practice. Obviously, this strategy has its limits: one problem is that it only works if the practice is in good order and we all share a basic interpretation of the practice, and this does not apply in many cases. Indeed, in the case with which this dissertation is concerned, the rules, policies and rights which make up ‘the practice’ are precisely what is in contention. A second strategy for arriving at a set of principles to regulate social life is an overlapping consensus strategy, which is often adopted in comparative ethics. Here the idea is to articulate basic principles or basic rules that underlie the different traditions, even if these principles or rules have multiple justifications. The method here is often to examine each of the world’s religions, or ethical traditions, each of which has different authoritative texts and
different foundational arguments, and show that these multiple foundations converge on very similar principles or rules. These points of convergence, or areas of overlapping consensus, are then viewed as legitimate in the sense that different ethical perspectives can accept them for different reasons. One of the difficulties faced by theorists that adopt this strategy is a methodological one: they often look for points of convergence in different ethical traditions, rather than trying to faithfully follow the interpretive logic of these various traditions. Finally, the third possible strategy in dealing with this problem is that of moral minimalism. This is famously associated with the work of Michael Walzer, who argued that there is a core of common rules and moral injunctions which all cultural or ethical traditions accepted (Walzer 1994). Walzer did not articulate these core principles as grounded in different foundational arguments: he saw them mainly as a set of prohibitions on actions which all societies accept.

In this dissertation, I do not discuss these various strategies, and the many differences between different versions of them. However, in broad terms, this thesis articulates what some might call a version of moral minimalism. Yet, unlike Walzer, I do not try to identify a ‘thin’ set of moral propositions on which all ethical traditions agree: rather, I identify the principle of non-domination both within and between groups as a core guiding principle of legitimate political authority, and argue that this principle both demands and checks a democratic method of determining specific forms of accommodation. The arguments for this principle are both conceptual and normative: the principle underlies many of the most persuasive moral arguments employed by other theories, and it is normative, in the sense that it is expressive of a fairly fundamental commitment to the modern idea that no one has any natural basis of
authority over another, and that the exercise of power has to be justified if it is not to be oppressive.

Since the argument of this dissertation is primarily focused on articulating a principle of legitimacy to govern cases of deep moral disagreement between different cultural groups, rooted in different ethical and religious beliefs, it is worth spending some time fleshing out the kind of case that I am interested in, and which I use as a touchstone for thinking through the most difficult issues of the thesis.

**The case of polygamous marriages in Bountiful, B.C.**

Although widely referred to as ‘polygamy’, the social practice of plural marriages in the FLDS church in fact entails only one form of polygamy known as polygyny – the marriage of one man to multiple women at the same time. This distinction is often set aside as a technical clarification, but it is very central to my analysis of the case. Bountiful came into public attention in the mid 1990s, largely because of complaints of abuse made by women who had left polygynous marriages. Since then there have been few first-hand accounts of life in this relatively closed and secluded community. Despite increased media attention and academic interest in Bountiful access to its residents is very limited, and so knowledge of their experiences has only recently started to emerge, partly in relation to the investigations done for the reference case in BC.

The community has an estimated population of around 1,000 members of the Fundamentalist Church of Jesus Christ of Latter-day Saints (FLDS). There are roughly 38,000 FLDS adherents in North America, the vast majority located near the border of Arizona and Utah, as
well as Texas and Colorado (Anderson 2010). Bountiful is the only Canadian chapter of FLDS and is located very close to the Canada-US border, in the Creston valley of BC.

The FLDS began as an offshoot of the Mormon Church (LDS) in the 1920s, a split which was caused specifically by the issue of polygamy. The principle of plural marriage was revealed to Mormon prophet Joseph Smith in the 1840s. As part of the covenant with god, “plural wives were to be taken so that the faithful might “multiply and replenish the earth” (Anderson 2010, 50). In the next several decades the Mormon Church suffered significant political fallout from Smith’s adoption of ‘the Principle’, until eventually it was forced to publicly renounce and dissociate itself with the practice of polygamy. This caused a rupture in the group and the founding of the FLDS. Part of this group moved to Canada after the end of the Second World War, and maintained close connection with its US counterparts until recent years when the arrest and eventual sentencing of Utah leader Warren Jeffs for the sexual assault of a 12 and a 14 year old girl attracted much negative publicity. The fallout of these events also caused tension and, as recently reported, a split within Bountiful between the supporters of Blackmore for prophet and those loyal to the Jeffs line.

Those accounts of life in Bountiful which do come through are diverse and conflicting, as can be expected. The media often portrays a very sensationalized view of a lecherous and abusive environment where women are held captive through ignorance and religious fervor by a handful of elders, and where young men are driven off to make polygamy more practicable. This does not quite match all the accounts emerging from FLDS members, but the accounts that have been communicated do not fully serve to erase all concerns about the high number of very vulnerable women and children in the community.
Partly due to demographic constraints, only half of the married residents of Bountiful live in polygyny. The marriages which are polygamous are ‘celestial’, where husband and wives are ‘sealed’ into a covenant. Normally only the first wife is a legal wife. According to the revelations of Joseph Smith, it is only through plural marriage that husband and wives can become part of the ‘celestial kingdom’ – in this sense, marriages are seen as ‘eternal’ and serving a spiritual purpose. The vast majority of marriages are performed by the bishop or by male priesthood holders, and many are arranged. Though geographically remote, it is clear that the community does not constrain any members’ movement, nor does it deprive anyone of modern life conveniences and forms of communication. Since Bountiful is a purely residential community, members also travel frequently within their region to shop and receive health care. Thus freedom of exit is not a concern in the sense in which most of the multiculturalism literature discusses it.

While the legal question in front of the courts is limited strictly to the criminalization of polygamy in s.293, the forms of accommodation of this social practice through public policy are much wider. Decriminalization, which protects from prosecution, is different from legalization which entails a change in the civil marriage act to make the legal union of more than two persons possible. The latter would entail a much more far reaching reform of family law and its related policies.²

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² In the case of polygyny I understand the possible forms of accommodation to include some combination of the following: at a minimum, the decriminalization of polygamy; further, the inclusion of polygamous marriage into the legal definition of marriage, with its corresponding legal rights and responsibilities on par with monogamous marriage; the recognition of marriages conducted in the LDS church tradition specifically (where this entails the “assigning of wives” by the Prophet) as legally valid, as exists for other religious marriages in North America; reforming legal guidelines for dispute resolution pertaining to
The Supreme Court of Canada has already established an interpretation of religious freedom which includes “the right to manifest religious belief by worship and practice or by teaching and dissemination” (Chief Justice Dickson in Big M Drug Mart, 1985). Thus the criminalization of religious polygamy may violate s.7 of the Charter. Still, to effectively repeal current legislation it would also have to be shown that it violates s.1 as well (i.e. that it does not constitute a reasonable restriction on rights and freedoms that “can be found demonstrably justifiable in a free and democratic society”). It is here that most uncertainty lies (Baines 2007) as it entails an inquiry into the justifications for the limiting of the definition of marriage to two persons. In his submission to the reference case the Attorney General of BC argued that the practice of polygamy harms the equality of women (and sometimes the welfare of children), both within the practicing community and more generally.

From a theory perspective, the issue is not whether the state should become involved – the state already is involved in that it criminalizes polygamy, but also in that human rights complaints have been made which need to addressed by the law. Given that the legal wheels have been set in motion by members and former members of the group, provincial institutions are in effect obliged and expected to develop public policy measures to address the needs of this growing community. Ideally, through policy and judicial or legislative means the institutions divorce and inheritance, including the possibility of religious law arbitration for polygamous families, at least to the same extent as exists for other religious communities; the affirmation of the validity of polygamous marriages in the immigration system and other such related policies; reforming different aspects of social programmes and social work to reflect the needs of polygamous families; reforming the taxation provisions for families to reflect the status of polygamous partners and their children; if necessary, reforming anti-discrimination rules and other forms of regulation which states exercise in market economies for the benefit and protection of families in areas such as insurance, housing, urban planning, etc.
of the state should serve justice to all the parties involved. Inevitably, determining how to serve justice in this case (as in many others that fall under the ‘multiculturalism’ umbrella) will be guided by what is comprehensible within the familiar structures and broadly construed values of the liberal democratic state. However, working out what justice requires is clearly not a matter of working out what the current law requires, as it is the law that is in question.

**The argument of the thesis**

The questions raised by the practice of polygamy, and the ineluctable involvement of the state in its regulation or non-regulation thus forms the practical backdrop to the thesis. This dissertation is specifically interested in theorizing cases where the advancement of non-domination between groups appears to conflict with the advancement of non-domination within groups, thus making the accommodation of a social practice contentious.

The bulk of the dissertation is devoted to a defence of the concept of non-domination in dealing with inter-cultural justice issues, of the kind typified by Bountiful. The concept of non-domination is typically associated with two influential contemporary theorists. Non-domination featured in the later work of Iris Marion Young as a means of reconceiving the self-determination of peoples within a larger theory of global democracy. The most prominent account of non-domination is perhaps that developed by Philip Pettit in his political philosophy of republicanism. In his work non-domination is advanced as a full-fledged theory of freedom and a political ideal, contrasted with liberal emphasis on non-interference. In this project I borrow some insights from these thinkers, but the conceptual definition of non-domination that I adopt is that developed by Clarissa Hayward. On her account non-domination obtains when
“all participants in a power relation are free from rule by other agents who have disproportionate power to set the terms of the relation and when the participants in the power relation, considered together, achieve collective agency vis-à-vis those terms” (Hayward 2011, 449). Hayward’s account of non-domination is similar to Pettit’s in that for her the notion of non-domination expresses the meaning of political freedom. However, instead of developing this notion by contrasting it to other conceptions of freedom, Hayward develops it in the course of differentiating forms of social relations within a theory of power. In her distinct contribution to power debates, Hayward offers an understanding of power “not as an instrument some agents use to alter the independent action of others, but rather as a network of boundaries that delimit, for all, the field of what is socially possible” (Hayward 2000, 3). On the basis of this ‘de-faced’ conception of power Hayward suggests that normative assessments of power relations should unfold along three dimensions of domination: inter-group, intra-group and systemic domination. This sets the analytical framework for non-domination.

This link to power is what makes Hayward’s conception most suitable to my project, as I argue that non-domination should be conceived not as one among many ideals of freedom, but as a foundational principle of political legitimacy in diverse states. That is, a principle whereby a political authority derives legitimacy from the degree to which its political institutions are configured to and work to promote relations of non-domination among its individual and collective subjects. This principle departs in significant ways from standard liberal theories of political legitimacy, which identify as legitimate a state which is reasonably just (or just and democratic) and which reason from the problem of grounding the prima facie duty to obey the law. Because of this starting point, standard theories of legitimacy are committed to two
features of resulting accounts: 1) they define legitimacy as a threshold notion, where a political authority either has or lacks legitimacy; and 2) they conceive the moral justification of coercive political power with respect to abstract individual subjects (frequently, though not necessarily as part of a contractarian theory).

My object is not to develop a radically new approach to legitimacy, or to displace the obvious importance of a state being reasonably just and democratic in order to be legitimate. Rather, I suggest that the non-domination principle is an equally fundamental component of legitimacy that complements classical definitions, and also helps us overcome some of the limitations of the above two features. I offer two kinds of reasons in defense of this view. The first are political reasons. Most challenges to the legitimacy of the authority of the state come from socio-historic groups (such as Indigenous peoples in Canada for example) rather than from lone anarchists. The grievances of such groups are not fully captured by the requirement that the state be on the whole reasonably just, because what is at issue is not the aggregate of instances of injustice with respect to individual lives, but the structural and systemic nature of continuing injustices which designate a subordinate status for these groups, or as Pettit says, which leave them constantly vulnerable to the arbitrary interference of others. These issues are intuitively better captured by the appeal to non-domination. In addition to this, if a theory of political legitimacy is to serve our evaluative judgments about existing states, then it is advantageous to be able to speak about legitimacy in relative normative terms, rather than being restricted to choosing relative sociological terms or absolute normative terms. The second set of reasons is conceptual. In the normative sense, political legitimacy refers to the moral justification of political authority, defined as an authority with the moral right to yield coercive
power in enforcing law, such as that of the state. The bulk of the philosophical effort in explicating this notion has gone to locating the most compelling moral justifications in the great social benefits of the rule of law and in the mutual moral obligations that persons have to each other to govern their affairs by principle instead of by force. Yet, at the heart of these justifications themselves, as well as the heart of what makes legitimacy conceptually distinct from justice, is the notion that we have to distinguish between morally appropriate and inappropriate relations of power. The moral intuition that the political condition of subordination - where some people have vastly disproportionate power to set the terms of their relation to others - is wrong (even if these terms were benevolently just) is rooted in the basic precept that might does not make right, and is also in fact embedded in the liberal approach, in that the reason any justification for coercion is so important in the first place is that certain exercises of power derogate the moral status of the person. As I suggest, to recognize this is to recognize that the structure of power relations is *par excellence* the proper object of theorizing political legitimacy. If we are willing to say that the political power of institutions is morally necessary in order to protect individuals from the violation of their basic rights and dignity by powerful agents, then we are acknowledging political power’s mandate to promote non-domination.

Liberal-democratic states, I suggest, ought to consider how to exercise their political authority in a legitimate way vis-à-vis both individual and collective subjects. To do so means to act in the way that is most consistent with non-domination along the intra-group, inter-group and systemic dimensions. In many cases such as Bountiful, the social practices to be accommodated are contested from within and from outside the group. The central difficulty in
the case of polygamy has been that the practice to be accommodated is itself seen as instantiating domination – specifically, male oppression – even though most members of the group support it and wish to see it respected. This points towards one of the most vexed problems in political theory – what feminist theorists have called the problem of internalized oppression, the situation in which through socialization within a nomoi community a person comes to endorse beliefs and norms that assign her a subordinated position. The nature of the problem is that it pits against each other two powerful lines of moral reasoning – e.g. one that suggests that to respect the moral agency of persons means to respect the roles they authentically embrace even if those roles are subservient and appear from the outside to be exploitative, and the other that suggests that to respect the moral agency of persons means to resist the conditions which disempower them even when they themselves are not resisting them.

I look at this tension in some depth in Chapters Four, Five and Six. My argument is that this tension has origins in long-lasting debates about the nature of power, and as such goes to the heart of the problem of how to define what domination consists in, and by extension, how to conceptualize legitimate vs illegitimate relations of power. Relatedly, debates about the nature of power are steeped in the fundamental yet irresolvable structure vs. agency debate in social and political thought. Structural and agentive approaches to power express equally valid perspectives which privilege different analytical objectives. Following Mark Haugaard I identify these broadly as the objectives of normative and sociological theories (Haugaard 2008). This normative-sociological tension, however, creeps into normative political theory and into theories of multiculturalism and theories of individual autonomy specifically. Here it takes the
form of competing methodological concerns about the superiority of substantive vs procedural approaches to normative principles for pluralistic societies. I explain these tensions in order to point out the limitations of what we can expect the non-domination principle to resolve. In the course of this I argue that the divergence between a priori and dialogical approaches within the multiculturalism literature and between substantive and procedural theories of individual autonomy are in fact based on a false dichotomy, since the procedural approaches are in fact weakly substantive, and the substantive approaches are in fact preoccupied with posing restrictions on procedural outcomes more than defending highly subjective perspectives.

This line of reasoning is important in understand the relationship between democracy and non-domination. One of the under-developed aspects of Hayward’s theory of non-domination is that it does not specify explicitly how the account of political freedom as non-domination differs from equating non-domination with radical democratization of social norms. An important distinction I make, however, is that non-domination, posed as a legitimacy principle, is not simply an effect of democracy. Rather, we have every reason to think that promoting non-domination is part of the justification of democratic norms, and not vice versa. As I explain, non-domination requires that the claims for accommodation of social groups be addressed through democratic means, but it also demands that certain minimal conditions necessary for these processes to be effective be promoted by the state, and that this promotion be seen as part of the legitimacy of the democratic process itself. One of these minimal conditions that I explore is the relational moral autonomy of persons. The concept of relational autonomy tracks the same types of concerns as non-domination, and is especially salient to the internalized oppression problem. Following Catriona Mackenzie’s weakly substantive account, I adopt a definition of
relational autonomy which states that a person is autonomous when, in addition to expressing her practical identity, her actions also express her normative authority – an attitude towards oneself sustained through relations of inter-subjective recognition.

The questions I address in this project are usually taken up in political theories of multiculturalism, where answers are centered on what it means to recognize a collective identity, and/or what group rights can be claimed and how group rights are squared with individual rights. My approach does not negate the importance of identity or group rights in a pluralistic state, but it de-centers them by subsuming them under the broader analysis of what non-domination requires. The most important determinant of accommodation should be the nature of the practice itself, and whether all things considered the accommodation of that particular practice is consistent with non-domination both between and within groups. Non-domination within groups should be a legitimate concern for the same type of reason as that which makes non-domination between groups a serious concern. However, this does not collapse into an argument where non-domination runs all the way down the analytical ladder and ends up with assigning a ‘trumping’ priority to individual rights. Certainly, the experience of domination has to matter regardless of scale – after all, oppression may be charted on group lines but is lived by individual human beings. However, the non-domination model which I borrow from Hayward is not strictly about levels, so much as about dimensions of domination, and all three dimensions can be applicable at a given scale. Thus, caring about how individuals fare on this model does not automatically presume privileging any one of the dimensions since we cannot preemptively know which dimension is of most immediate concern (even if, as I argue, it requires privileging certain agent capacities). As many authors have observed,
sometimes domination at the group level is the root cause of the vulnerability of certain members within, by reinforcing the authority of group factions, the rigidity of distinctive norms and the need to maintain wide compliance. In this sense, it is not a foregone conclusion exactly what non-domination requires – this can only be determined contextually. Even more importantly perhaps, the non-domination principle suggests that the form of accommodation does not have to conceived in zero-sum terms. States should take whatever actions advance non-domination in all dimensions, which can mean both accommodating a practice and enabling its contestation by instituting social policies that mitigate the vulnerabilities it creates. (In this my approach parallels Monique Deveaux’s, but unlike her theory mine is not rooted in a particular vision of the ever-increasing internal democratization of social groups, but on promoting the relational autonomy of persons as a minimal requirement of both non-domination and democratization.) This line will be harder to walk in some cases than in others, but the non-domination approach in principle permits mixed institutional responses, unlike group rights approaches that require us to fulfill or deny the content of a right-entitlement, or identity approaches that privilege what best expresses and serves the authentic collective identity.

A central theme in the thesis is the conceptual connection between non-domination and relational autonomy. As Iris Young observed, relational autonomy and non-domination are kin concepts, which appear to express very similar notions. Both are, by definition, relational concepts – they refer to things in conjunction (as opposed to describing in absolute terms). The two concepts emerged and have been typically deployed within theories of freedom, and so in that sense they are developed from the perspective of the status of individual agents. Yet, they
could also be thought of as structural concepts, because they map out a particular social ordering and ascribe a certain dynamic between agents that resides in it. This quality of the two concepts arguably makes them more nuanced than their rivals, and is what makes them attractive to many theorists. This has been the case for the various permutations of relational autonomy originating from feminist critiques of standard individual autonomy accounts, as well as for the version of non-domination advanced by republicanism and the more recent version presented by Clarissa Hayward.

Intuitively it may seem that, given two similar concepts, one of them should be superfluous, and that a clearer analysis could be achieved by expanding one of them instead of working with parallel notions. In this thesis I suggest that non-domination and relational autonomy are terms that try to capture the same idea from two different angles, both of which are analytically significant. One way of looking at this is to say that non-domination is an essentially structural concept that applies to various social actors including individual agents, and relational autonomy is an agentive concept which aims to incorporate the significance of structure. More concretely, the specific use I make use of these terms is this: non-domination is a structural term, referring to the mitigation or absence of patterned asymmetries in/of social power, which is why it is a concept suitable to theorizing the legitimacy of political institutions. Relational autonomy, on the other hand, is an agentive term referring to individually exercised capacities, which is why it is indispensible to the analysis of specific social practices.

It is, of course, possible to extend the application of each of these concepts to a wider scale – in my view, however, doing so would jettison part of the meaning and analytical focus vested in them. In Pettit’s theory, for example, non-domination is coterminous with individual
freedom. However, in some significant ways his theory already presumes a level of autonomy amongst agents. Furthermore, non-domination is insufficient to get at the full range of ways in which moral agency can be comprised/compromised (as in the oppressive socialization case). Knowing that an individual is not being dominated still does not inform us in quite the same way about her capacities for self-government as autonomy does. Respectively, the concept of relational autonomy could be reconfigured in a way that extends it to groups (Macdonald 2010). However, the relational autonomy of groups does not express quite what the relationship of non-domination between groups captures. For one thing, the development and exercise of relational autonomy would imply some level of identifiable collective agency. This would certainly cover a lot of cases. However, domination can obtain/remain between groups who are not mobilized in this way, and it can also obtain/remain beyond the domain of collective public action.

**Structure of the thesis**

From the perspective of an exercise in normative political theory, this project has the following structure.

There are three threads in the main argument of the thesis that run through all of the individual chapters. The first thread is methodological: it is concerned with what makes a given principle, such as non-domination, an appropriate regulative principle in a pluralist society (with an ostensibly liberal-democratic political system), as well with what makes a non-domination framework advantageous analytically and what we can expect it to achieve normatively. This thread is elaborated throughout the thesis but is at the foreground in Chapter Two and Chapter
Four, with important substantive support in Chapter Five. The second thread in the thesis is the re-thinking of non-domination as a legitimacy principle within the objectives of the thesis question (thus showing its value outside of the context of the theories of freedom that it is commonly associated with). Different steps towards this reconceptualization are taken in all the chapters, but it is anchored in Chapter Three and fleshed out in Chapter Five. The third thread in the project is the theorizing of the relationship between non-domination and relational individual autonomy. This relationship is held up as a reference point throughout the thesis, but it is gradually set up in Chapter Four and Chapter Five and crystallizes in Chapter 6. Finally, all of these threads come together to set the mold for a normative analysis of the accommodation of the social practice of religious polygyny. The challenge posed by this case is that the normative framework proposed here must be responsive to the difficult issue of internalized oppressive norms. This criterion has a presence in all chapters since it pertains to all three threads, but it is finally fully tested in Chapter Seven.

**Chapter outline**

In Chapter Two I situate my argument in relation to theories of multicultural justice, and in relation to some of the critiques they’ve sustained. I also outline in more detail what is meant by nomoi groups, and why the focus on nomoi communities is appropriate. In doing so I elaborate on some of the limitations on what sort of cases can be addressed with the kind of analysis I defend. I look at how issues of minority accommodation are taken up in theories of multiculturalism and the preeminence of two main types of normative approaches. I discuss at more length Monique Deveaux’s dialogical approach to the same kind of question that Bountiful
poses, and I highlight that while her practical recommendations align with my understanding of what a non-domination driven approach would yield pragmatically, theoretically they are derived in a different way. As part of this discussion I defend the importance of keeping the political authority of the state at the center of debates about such practices.

In Chapter Three I discuss how non-domination can be grounded as a legitimacy principle, in light of the problem of doing justice to both groups and individuals. First I draw out some inexplicit but strong connections between non-domination and legitimacy in the influential theories of Philip Pettit and Iris Marion Young. Then I turn to traditional debates on the philosophical foundations of political authority and obligation in the normative literature on political legitimacy. I argue that as a minimalist principle non-domination is already at work in the moral intuitions which underpin some of these theories, and that there is ample room for this principle to come to the foreground. Though I designate the principle as foundational, I do not attempt to develop a separate full theory of legitimacy. Rather I suggest that the political features of modern societies are such that, whatever other specific moral arguments for (or even against) political authority we find compelling, this is the ‘thin’ principle that underlies any theory that wants to be responsive to both the individual and collective subjects of this authority. To reinforce this point I also outline some differences between non-domination and the democratic grounding of political authority. This is an important step as the two are very closely related and, as I argue in various sections, non-domination requires democratic solutions to the accommodations question. I conclude the chapter by outlining the gap in traditional theories of political obligation when it comes to considering state legitimacy with respect to groups, and highlighting how non-domination can be helpful in closing this gap.
Chapter Four begins with the theme of legitimacy as a matter of differentiating between power relations and the difficulties that attend such differentiation. I look at structural and agentive approaches to power, the way the oppressive socialization problem links into those approaches, and the divide between sociological and normative perspectives on power and domination. Here I bridge the argument back to the methodological considerations laid out in Chapter Two and suggest that one way we could look at some of the main cleavages in multiculturalism theory and in autonomy theory is to see them as expressing concerns deeply rooted in these debates. Attending to social power is an important advantage of the principle of non-domination. Of course, power in social relations cannot be escaped and there are various forms that domination can take; these features make it difficult to capture analytically in a single multi-purpose definition. At the same time, not all structures and not all power relations are the same from any evaluative perspective that would be concerned with the differential status of agents. Thus, instead of continuing the impasse between the divergent theories in these areas, or expecting any alternative approaches (like the non-domination approach) to solve the insolvable, we should aim for functional principles which try to make as much room as possible for both structural and agentive analytical angles.

In Chapter Five I elaborate on Hayward’s theory of power and non-domination, and its limitations for the purposes of the main question of the thesis. Though Hayward’s theory is about the crux of power, freedom, and democracy she is only tangentially concerned with legitimacy and the state, and so I offer a reconstructed account of her formulation of non-domination that is better suited to my project, via the question of democracy. In addition, Hayward recommends a three-dimensional analytical model for assessing domination along
inter-group, intra-group and systemic lines. I suggest that within her structure-focused account of non-domination there is both need and room for an account of individual autonomy in order to better inform our ideas about what non-domination requires with respect to agent capacities. This is especially true if we want to put her analytical model of non-domination to use in hard cases such as Bountiful.

In Chapter Six I turn to examining standard conceptions of individual autonomy. In the course of this I pay special attention to the richness and variation in these conceptions, partly in light of assuaging critiques which see in autonomy a uniform concept biased in favour of male and western subjects. My focus is instead on the important emancipatory potential in appeals to individual autonomy. I examine the internalized oppression problem from within the feminist autonomy literature, and comment on the genesis of the relational autonomy conception that emerges from that area. Neither non-domination nor relational autonomy alone can fully account for this problem. Importantly, while both are constrained, they are constrained in different ways that make them suitable complements to each other. I give a more detailed account of the conception of relational autonomy developed by Catriona Mackenzie, as well as the centerpiece of her account, which is the notion of normative authority established through intersubjective recognition. I suggest that this conception should be more accurately viewed as a ‘relational moral autonomy’ conception, which importantly, is as normatively ‘thin’ as the non-domination legitimacy principle and equally uncontroversial for any value system committed to the moral equality of persons.

In Chapter Seven, I illustrate the superiority of the non-domination perspective by applying the idea of non-domination to the case of Bountiful. To this end I spend some time
describing salient features of the social practice based on reported first-person accounts and court evidence. I go through the kinds of arguments which currently dominate the treatment of the case within Canada’s legal and political system. This allows me to highlight once more how the concepts of non-domination and relational moral autonomy function differently from the (actual legal and political incarnation of the) concepts of ‘harm’ and ‘consent’. I briefly survey some types of responses available through multiculturalism theory and once again use Deveaux’s account of democratic deliberation to contrast with my approach in the analysis of the case. Ultimately, I argue that the non-domination approach yields something different, richer and more useful than what any of the discussed theories have to say about such a case, and something more helpful to social policy than what the existing political system generates.
Chapter 2

Methodological Considerations and Alternative Theories

Prior to 1989, most liberal theories were focused on issues of justice, understood as issues of fair distribution of benefits and burdens in a society. Although liberals presupposed that the societies were diverse, this was mainly diversity in conceptions of the good, where different individuals held different philosophical convictions about the good life. This pluralism about the good life posed a challenge for the regulation of social life, because in many cases decisions on public questions turned on philosophically controversial ideas about moral value. By the 1990s, political practice was challenged not only by philosophical diversity but by a range of cultural and identity politics movements – some claiming sovereignty (such as some ethnic groups in the previously Soviet-dominated Central and Eastern Europe), some claiming increased jurisdictional authority or special representation (in areas as diverse as Quebec, Scotland and Catalonia), and many different cultural and religious groups within liberal societies claiming that the vaunted universality of the liberal state masked a particular ideology and particular identity, and that the practices of these states disadvantaged them unfairly.

In this chapter I defend the limited scope of this dissertation in two ways. In part one I offer an interpretation of the multicultural justice literature and the emergence of two different kinds of analytical approaches. In this I follow Melissa Williams, who terms them ‘juridical’ or ‘a priori’ and ‘political’ or ‘dialogical’ approaches to multiculturalism. I also discuss at some length Monique Deveaux’s recently developed democratic approach because it bears some similarity to the approach I adopt in this thesis, so it is particularly important to see where we part company.
Part two of the chapter elaborates and defends my focus on the accommodation of minority social practices as a question about the authority of state institutions. This thesis does not examine the various different kinds of claims that could be described under the rubric ‘identity politics’ or ‘multiculturalism’, but focuses on the specific claims and challenges posed by ‘nomoi’ groups.

The argument of this chapter is thus both methodological and substantive. Part one situates the methodological commitments of this thesis within the broader multicultural justice literature, all the while arguing that some of the central tensions of this literature are misconceived and setting up a defense of the approach taken in the rest of the dissertation. Part two defends the focus on nomoi groups specifically, but does so in part by offering a substantive argument, which explains the particular social ontology with which I work.

**Part I: Approaches to multicultural justice**

Multicultural justice theory developed from the rejection of the traditional liberal commitment to difference-blindness. Liberals were committed to difference-blindness largely on the grounds that ascriptive characteristics should not affect the status of persons as moral equals. It was assumed that the best way to ensure this is to deny such characteristics any justificatory role in theorizing the fairness of differential treatments and distributions (See Barry 2001, Squires 2006). Thus, liberals such as Rawls and Dworkin were concerned to establish a philosophical standard of impartiality, whereby the principles of justice would be derived on the basis of reasoning that abstracts from particular identities and interests.
However, despite their analytical rigor, these philosophical attempts to insulate the subject of justice from the political biases of the day in effect insulated the objects of justice (goods, rights and power relations) from the kinds of social facts that are most relevant to identifying injustice, as well as to understanding what justice requires in non-ideal theory. Work driven by the impartiality ideal has contributed very refined accounts of procedural justice, but also made hidden assumptions of homogeneity that make the universalism of these accounts false. When cashed out, their principles have often worked to perpetuate injustices along lines of cultural and social differences, rather than to foster equal consideration of all social positions (Young 1989). These principles were also framed within a political conception of justice as concerning a society of individual moral agents, a conception that is either an extension of, or a particular species of, interpersonal moral relationships. Because of these features, standard liberal accounts did not provide a satisfactory model for how to theorize justice between groups who share a political community (Kymlicka 2001).

In a 1995 paper, Melissa Williams draws attention to the emergence of two approaches in the normative theorizing of justice towards groups in liberal-democratic states – a ‘juridical’ and a ‘political’ model (Williams 1995, 67-81). According to Williams, ‘juridical’ and ‘political’ approaches were formed out of a critique of difference-blindness, as two different accounts of what is required in order to reach a normative account of justice that recognizes difference. The fundamental point of divergence for the models is whether justice can (and should) be defined in the abstract and prior to politics (ibid. 68). The first model is a descendent of orthodox liberal views and accepts the ideal of impartiality. It is ‘juridical’ in that it assumes that “justice should be defined through a process of reasoning that is shielded from the tug and pull of particularist
political interests,” and that once principles of justice are derived analytically they “should be interpreted and enforced by judges and other agents of a neutral and impartial state in specific circumstances” (ibid). However, unlike orthodox views, this model seeks to integrate knowledge about difference and marginalization into the philosophical reasoning that leads to a conception of justice, thus putting a premium on including (rather than isolating) concrete social perspectives (ibid. 74). Williams locates the scholarship of Susan Okin and Will Kymlicka in this vein. Their approaches to addressing inequalities related to gender and ethnicity are juridical in the sense that they supply analytically-derived principles that must be interpreted and applied impartially (between genders and between cultural groups) in specific cases where the justness of a given policy or institutional arrangement is in question. In some instances these juridical approaches might determine that justice requires differential (rather than uniform) treatment to address a form of inequality (as in Kymlicka’s theory’s case). But, ideally, such differentiation would be principled, and thus consistent with the kind of ‘impartiality as impersonality’ that the rule of law mandates, without coming near the morally arbitrary differentiation feared by liberals who support difference-blindness.

The ‘political’ approach to justice towards groups denies the claim that justice can be defined prior to politics. Proponents of this approach, such as Iris Young, argue that analytically derived standards are inherently biased, and that systemic inequalities are bound to be reproduced unless those affected are fully included in the very process of deriving principles of justice (ibid. 69). From this perspective working within a juridical model constitutes a kind of epistemic error. Since no individual can truly anticipate or appreciate the standpoints of all others, abstract philosophical reasoning is always partial in some way. Moreover, normative
analytic theory, often seen as coextensive with liberal theory, is embedded in the Western intellectual tradition, and by extension thought to be partial to a Western worldview when constructing basic concepts (ibid. 78). Aside from these epistemic objections, perhaps the most important observation made on the difficulties of procedural accounts of justice is that the moral substance of claims related to difference is often only understandable in their historical and political context (Young 1990). This has driven many to the idea that justice simply cannot be a primarily intellectual project.

Relatively, political approaches to justice towards groups tend to demand the self-representation of those groups in political deliberations. Since an impartial perspective is impossible, the problem of partiality is counter-balanced by emphasis on inclusivity instead. Ideally, the process of factoring in all relevant standpoints will ensure that none is singularly privileged. Inclusion, however, is not purely instrumental – it is part of justice itself. The voicing of difference and the recognition of difference are part of what justice towards groups requires. In this sense inclusion has inherent value, separately from the value of the principles that the political process might culminate in. Thus “the definition itself [of justice] must be politicized, because viewing justice from the standpoint of these groups can mean radically reconceiving some of the fundamental principles of justice” (ibid. 81). The political model also assumes a baseline of rights, and focuses on constructing democratic space where groups can advance their concerns on equal footing (ibid. 83).

Both of the approaches carry a risk of producing flawed principles. The juridical approach contends with conflicting ideas, indeterminate conclusions and partiality (the latter concerning the issue that even procedural principles cannot be value-neutral in the strict sense).
The political approach bears the risks associated with political process, where the claims that
groups are able and elect to advance in political discourse may not reflect the full range of
strong moral arguments available to them. Furthermore, whether conceptions of justice are
derived analytically or politically, both will concern *generalizable principles* defended in ideal
terms, and thus will inevitably play out more fairly in some actual cases than others.

In the years since Williams’ essay, the divergence between the two approaches has
remained relevant, and sometimes highlighted in various works, especially as a launching point
for critique. The juridical approach has come to be identified broadly as the ‘liberal approach’ or
the ‘tolerance approach’, and the political approach has been more specifically identified as a
‘democratic’ or ‘dialogical approach’. Most recently Monique Deveaux has employed the
distinction, as a thesis about orientations to conflicts of culture (Deveaux 2006). Since I am very
sympathetic to the substance of her proposals and her vision for how debates over cultural
practices should unfold, I will briefly examine how she frames her theory vis-à-vis the
juridical/political distinction. In the course of this, I will situate my own approach and where I
understand the concept of non-domination to operate. Taking up Deveaux’s defense of the
dialogical approach as the only legitimate approach in a pluralist community, I question the
perception that this approach is free-standing, and then question the fruitfulness of the effort to
maintain distance between the approaches.

**The Juridical/Dialogical False Dichotomy**

A central tenet of Deveaux’s work on gender and cultural justice is that “cultural conflicts
involving cultural minorities are primarily political in character, and do not necessarily entail
deep disputes of moral value” (Deveaux 2006, 6). This distinguishes her perspective from other
dialogical approaches (where she places Benhabib, Carens, Parekh, Tully, Young). She argues eloquently that the task of reframing the problem of cultural conflicts is urgent, because it has implications for efforts to resolve them. In her view, this entails moving away from the “liberal toleration view” to a deliberative democratic one, which would emphasize strategically focused deliberation to achieve compromise, but which should also expand to include informal democratic activity.

Within the liberal approach (of which Deveaux cites Kymlicka, Brian Barry, Jeff Spinner-Halev and Kukathas as examples), the driving question is ‘what can the state tolerate’, or ‘what it should accommodate’ (ibid. 3). According to Deveaux, this framing is currently predominant, but highly problematic for several reasons – it is too state-centric, concerned primarily with political authority and less with justice; it adopts troublesome accounts of culture; it does not factor in the contestation of practices within the group in question; and zooms in on the power relationships between the group and individual members, without also looking at the power relationship between the group and the state (ibid. 3-5, 26-27). Also quite significantly, where minorities within minorities are concerned liberals have “tended to leverage liberal norms as a litmus test for assessing the claims of cultural minorities, without good justification (or results)” (ibid. 4).

Deveaux’s critique of the liberal toleration approach is standard, but there are two notable aspects of how it features in her work. First, it goes a considerable way to conflating the distinction which Williams had made between standard liberal full theories of justice and the theories that sought to amend them out of concern specifically with justice between groups (i.e. Okin’s and Kymlicka’s). The criticisms developed by Deveaux (and others) against the latter are
reminiscent of the ‘false universality’ criticisms which the latter had grounded against the former. This makes the critique of liberal multiculturalism theories less clear, as it moves between finding fault with the juridical approach as a methodological premise, and finding fault with the specific content of liberal norms and values – such as toleration – and the unsatisfactory ways in which they are deployed. In addition, since liberal theory encompasses more than theories of justice (like theories of freedom, equality, utility, harm, self-determination, pluralism), the conflation of ‘liberality’ or liberalism with the specific thread of juridical approaches related to justice is awkward and arguably too simplistic. Second, and more interestingly, by positing liberal theories as essentially juridical, an important question arises about the status of democratic theories, whose principles are also typically arrived at in an a priori analytical fashion. If cultural conflict is to be reframed away from the juridical model, what is the point of entry for deliberative democratic principles? In other words, when the thesis about the necessary politicization of justice is uncovered as a democratization thesis, by what process is the specific content of democratic principles established? If they are a precursor to deliberation itself, how are they initially established as compelling?

In what follows I will outline the difficulties which Deveaux’s own theory sustains in trying to operate on the basis of a distinction between a priori and dialogical approaches. I do this in order to illustrate how a priori theorizing is inevitable and important even if we agree (or more precisely, especially because we agree) that democratic resolution is the only politically legitimate route for addressing specific cases. Furthermore, I also aim to suggest that a priori principles are wrongly framed as inherently assimilative; in fact, the critical force of claims for inclusion flows directly from a priori postulates about the moral illegitimacy of some forms of
institutional power and the structural arrangements which sustain it politically. In doing this I am also making the case that the starting point of my own approach is appropriate. Namely, my starting point is that while the dialogical turn in multiculturalism theories should be embraced, the foundations of an approach to minority group practices still needs to be conceived in terms of political authority.

**Deveaux’s democratic model**

Monique Deveaux situates her own theory as a departure from, or at the minimum, a correction of liberalism. She is careful therefore to differentiate her view of democratic deliberation from the way intercultural dialogue is envisioned within the liberal toleration tradition. In the latter, according to Deveaux, the function of intercultural dialogue is a.) to bring majority and minority communities together; and b.) to serve as a mechanism for discovering universal moral minimums, or at least shared regulative principles (ibid. 89, 95). In both of these functions, the form and outcome of dialogue is restricted to what is compatible with liberal principles (ibid. 89).

In Deveaux’s model, democratic deliberation is seen primarily as a vehicle for cultural groups to work through the contestation of customs and norms independently. The focus of theorizing in this case shifts away from questioning what justice requires vis-à-vis cultural conflicts and limitations on cultural practice to “*what just procedures* for mediating cultural conflict in plural liberal societies might consist in” [emphasis in original] (ibid. 90). Posing the question this way, for Deveaux already presupposes an answer in which the criterion of democratic legitimacy takes central stage.
I suggest that just procedures for resolving disputes about cultural practices are ones that affected citizens on the whole endorse as fair and politically legitimate, within the broad constraints of democratic legitimacy. This claim is predicated on the assertion that individuals should be permitted to shape or contest their social and cultural arrangements through democratic means – and indeed, that this is fundamental to democratic legitimacy (ibid.91).

Deveaux acknowledges that justice and democratic legitimacy are generally not to be conflated. However, she suggests that at least in the case of reforming cultural group practices “there is good reason to link the two concepts closely” (ibid. 91). Deveaux is clearly concerned to distinguish her understanding of democracy from any instrumental account of procedural justice, which would view democracy as just in as much as it produces morally just outcomes (examples of such accounts are discussed in Christiano 2006). She wants to reject such views, especially if they identify just outcomes with liberal principles. However, it seems that so long as this concern is met, the overlap between justice and democratic legitimacy is not something that troubles Deveaux. Though not directly stated, this reflects the confidence of many deliberative democrats that (once we shed liberal expectations) a truly democratic setting is highly unlikely to produce unjust outcomes - that is, outcomes understood by the affected parties themselves to be unjust. There are many reasons to think that this is true, and the lessons from specific cases drawn in her book suggest that democratic forums are a much more fruitful direction politically than other approaches to cultural conflict. Yet, this notion alone does not suffice to displace further concern with justice. If it did, it would make deliberation ‘instrumental’ in the sense which Deveaux wants to reject. There is a second reason for why the overlap between democratic legitimacy and justice is not troublesome, which supplements the
moral quality of deliberation – and that is the notion that justice is being done through
democratic inclusion, regardless of the content of decision-making.

The democratic approach to cultural conflicts constructed by Deveaux is based on
‘politically focused deliberation’. ‘Politically focused’ here implies that deliberation should
engage the specific interests and needs of stakeholders, instead of addressing exclusively moral
differences and normative claims, as is the case in many deliberative democratic theories and in
other dialogical approaches to intercultural conflict (arguably in Benhabib 1992, Parekh 2006)
(ibid. 96). A distinctive strength of her approach is that strategic concerns can come to the
surface and be accepted in deliberation along with abstract moral justifications, as the two are
integrated in practice (ibid. 101). This reflects Deveaux’s understanding that cultural differences
become distorted if they are treated as deep moral differences in theoretical approaches,
because they are, in her assessment, rarely such in practice. Instead, they are entangled with
concerns that might not be centrally about cultural identity (ibid. 102-106). Thus the political
goal of deliberation should be to achieve transparency and inclusion, rather than a particular
kind of normative reasoning. In other words, a political approach entails “moving the emphasis
in deliberation from reasoned consensus to concrete problem solving and compromise” (ibid.
113).

Importantly, Deveaux insists, political negotiation and bargaining need not open the
door to power play (ibid.113). First, Deveaux indicates that such a democratic setting
presupposes at a minimum the background existence of a liberal democratic state which
upholds human rights and protects individuals from physical harm and cruelty (ibid. 92). Second,
given such conditions, politically focused deliberation about cultural practice must embody
three principles – non-domination, political inclusion, and revisability. These principles are devised as safeguards against the silencing or exclusion of some group members. They serve to equalize power within the democratic process by equalizing voice, understood as equal access and equal consideration for stakeholders, rather than by defining what kinds of reasons can be advanced by them (ibid. 114-115).

As a procedural requirement, non-domination takes on a rather minimal meaning in this approach. Drawing on Young, Deveaux states that “the principle of non-domination is intended to prevent participants (especially those with greater social or economic power) from coercing other participants in a dialogue situation (ibid. 114).” Domination in this context encompasses manipulations of the order of threats and pressure tactics, i.e., intimidation. As such it is mainly a support pillar for the much more robust principle of political inclusion, which for Deveaux denotes invoking the ideal of political equality in decision-making. This means that all participants must be ensured equal opportunity to access formal deliberation and that the process guarantees as much as possible “that their contributions count [original emphasis]” (ibid.115). The notion of inclusion thus encompasses equal consideration in balancing stakeholders’ interests. Finally, because the latter balance is determined to a great extent circumstantially, and because social practices have a fluid character, Deveaux admits one substantive restriction to what counts as a just outcome of political deliberation: outcomes are “not legitimate or tenable if they undercut the future ability of citizens to deliberate on these or other issues (ibid. 116)”. This is captured by the principle of revisability. This principle posits an ideal of ongoing structures of deliberation, including those of civil society (ibid.118).
Though the three principles are devised to function as minimal constraints, derived from a standard of democratic legitimacy, Deaveaux’s justification of these principles leads us to wonder why the standard of democratic legitimacy should be invoked only in situations of conflict. Indeed, Deaveaux’s very convincing argument for expanding our view of democratic activity suggests that even subtle expressions of resistance outside public channels should give occasion for ‘politically focused deliberation’, as they are part of the sphere in which the legitimacy of social practice is determined. Taken together with the recognition that ‘ongoing structures of deliberation are best’ (ibid. 118) this begs the question: does democratic legitimacy not require that the structures of cultural life be themselves democratized? If the fundamental premise of democratic legitimacy is “that individuals should be permitted to shape or contest their social and cultural arrangements through democratic means” (ibid. 91), and if we agree with Deaveaux that contestation is a constant feature of cultural life, it seems to follow that the democratic means to re-examine arrangements should also be constant. Given that ‘democratic means’ implies equality at least at the level of political inclusion, it further seems that democratic legitimacy has much more radical implications about distributions of power between community members, far beyond signposting the requirements of just procedure for resolving conflict. The ideal of democratic revisability of the meaning and status of social practices, which guides Deaveaux, does much work in her account of just procedure, while it is at heart much more than a purely procedural ideal.

A different way in which the strong principle of political inclusion appears more than procedural is when the issue of group membership is itself politicized. In some instances, what is being contested is precisely who counts as a member, and which members should have a say in
different aspects of group life. This may be especially the case where group rights and exemptions have been granted or there is some other degree of local autonomy. Deveaux’s response to this concern further reveals the reach of the democratic legitimacy thesis:

the political enfranchisement of marginalized and vulnerable members of communities can be fostered through the deliberate expansion of informal sites of social and political debate and contestation. ... sometimes this involves state initiatives, such as economic reforms empowering women, or legislation and court decisions overturning sex discrimination in inheritance and divorce. Government funding for social and community services, local media sources with a broadly democratic outlook, and community groups that foster debate about the changing face of cultural practices, are a few more examples of ways in which the liberal democratic state can directly facilitate the expansion of spaces of democratic activity (ibid. 115-116).

Prescribing such a role for the state, Deaveaux seems to take it as given that the state would not be overstepping the bounds of its own legitimate authority by taking on such a democratizing project for minority communities. To be sure, there is a significant difference conceptually between state initiatives aimed at creating opportunities for more equal democratic participation and state adjudication of disputes on the basis of liberal principles. This difference, however, may wear thin in practice. It is difficult to imagine that democratizing and equalizing measures of the sort mentioned above would not have liberalizing effects, and this may be viewed with great suspicion given the background assumption of a liberal democratic state. (This might be amplified by the fact that such measures would be far more substantive than what many liberal approaches call for). Keeping in mind that the democratic norms of such states are justified and understood in terms of individual equality and self-determination, which are broadly understood to be liberal ideals, it would be especially awkward to insist that efforts to enable democratic participation within minority communities are void of liberal content. This awkwardness is further compounded by the fact that liberal democratic states do very little to
bring about the democratization of majority cultural practices (many of which are also quite ‘illiberal’).

Setting these pragmatic considerations aside, however, there is still a significant theoretical challenge for Deveaux’s approach in the cases of individual rights and sexual equality provisions. A great deal of internal debates about property, family law and customs revolve precisely around the question of how far the standards of the liberal majority should be accepted (if at all) and whether the state has any legitimate presence in such affairs. Viewing equality concerns narrowly through the lens of democratic participation and limiting them to a matter of enfranchisement does not circumvent the difficulty of this challenge (even if it may go a long way in some specific cases). The principle of political inclusion works to posit one kind of equality as indisputable, and bracket it off from more complex issues of equality so as to make it inviolable. Extending the scope of political inclusion to cultural practice and civic life, as Deveaux does, is a radical and exciting move, yet it does away with this safety bracket and invites the complex links between equal political and equal social status back in. Court decisions overturning sex discrimination in inheritance and divorce, to use her own example, might preempt the outcome of deliberation about custom laws on these issues. Judgments by public institutions about which subgroups are not sufficiently enfranchised, as well as about what sites for debate need to be strengthened, will generate a list of inequalities that these communities should address. This possibility sits at odds with a theory that treats the process of political deliberation as indispensable to justice and puts a premium on averting juridical solutions. It could be of course that such an outcome of enforced democratization should not be seen as troublesome. After all, one could say that political inclusion necessitates certain changes, and
that less democratic communities will just have to accept them because they are not infused
with substantive liberal values but are a matter of procedural justice. Deveaux says as much in
response to the ‘cultural autonomy’ objection against the social changes that her democratic
model would trigger in traditional communities. She states: “it is hard to see why protecting
cultural autonomy is necessarily more important than endorsing the right of all cultural group
members to have a say in contesting, shaping, and if necessary reforming the practices and
arrangements under dispute (ibid.123).” But the promotion of the democratizing mandate of
the state in this way already assumes a certain kind of relationship between the state and the
individual, and between the majority and minority communities of the state. My concern in
pointing this out is not with her position on cultural autonomy, but with her initial claims about
how such positions should be developed. In her response above, Deveaux resorts to an a priori
judgment about the status of the democratic legitimacy principle. As it becomes clear this
principle cannot be conceived independently of a theory of political authority. Thus, Deveaux
leaves us with a well thought out vision of how the democratic legitimacy criterion could be
deployed in the case of cultural conflict, but does not make the case for her initial claim that this
deployment can of itself reframe the hard debates about group practices, or displace the state
and authority from the theorizing of cultural conflict.

Regardless, Deveaux’s primary concern is to advance applied theory, and in this sense it
could said that the reframing of the debates need not run all the way down to their
philosophical roots. Deaveaux’s contribution in developing a ‘politically focused deliberation’
model for multicultural societies stands, even without addressing these deeper issues. However,
her stringent effort to bracket off a priori principles does end up limiting and in some ways
undermining her pragmatic account. Particularly, Deveaux does not address fully two difficulties (which she acknowledges) with her deliberative setting. First is its reliance on already existing contestation of norms within every community, where this contestation is taken for granted, without account of what minimal conditions other than lack of physical coercion may be necessary for any substantive contestation to come about and to be openly deliberated, nor an account of how subtle forms of contestation can be distinguished and how they can come to be expressed in a public intercultural setting. Second, and more significant, is the difficulty addressing why robust deliberative and inclusive negotiations of norms can come to be not only accepted but internalized by all variety of groups, including patriarchal and generally hierarchal ones. The presumption that group elites will be convinced by the prospect of retaining modified control over the long run by strategically admitting democratization is not sufficiently plausible and convincing (ibid. 222). This is especially so in the case of younger religious groups such as those practicing polygyny in North America, or simply due to a simple failure of leaders to be so forward-looking and ennobled in their strategic thinking.

So, in what sense is the dichotomy between juridical and dialogical approaches to conflicts of culture false? According to Deveaux, a key constraint of the liberal/juridical approaches is that they treat minority practices as a matter for “license or prohibition” by the state (ibid. 90). Theories in that vein then yield principles for identifying permissible and impermissible aspects of culture. At first it seems that this objection focuses on the notion of ‘regulating’ minorities in this way, and on the conceptualization of their cultural practices as something that can be accepted or rejected wholesale (presumably in contrast to the culture of the majority). However, the democratic process which she proposes as an alternative certainly
does not preclude calls for ‘permission’ or ‘prohibition’ from the range of possible outcomes of deliberation; moreover, Deveaux’s approach admittedly aims for the reform of contested practices through the process of public deliberation and democratization itself. Thus it is not the element of intervention or the public rejection of certain norms that is deeply troubling for her, but the authority of institutions to determine such outcomes unilaterally and preemptively, and to do so in the language of liberal principles. Though it may appear as a separate and additional criticism, the objection against the toleration framing of a priori/liberal approaches is in fact a different expression of one fundamental objection, namely the objection regarding legitimate authority.

However, there are two other important issues with the effort to disambiguate a priori and political/democratic approaches. The first is that this effort rests in a contradiction, whereby a priori theorizing about the requirements of justice is rejected on the basis of a set of critical ideals about standards of justice which are themselves derived a priori. At the same time, where the impossibility of impartiality is maintained, the implication is that only the existence of multiple a priori substantive views is possible. Second, the critique rests on a problematic inference – namely, that from 1.) the obvious injustice of imposing a single a priori substantive view regarding cultural practice, it follows that 2.) no a priori view regarding the substantive requirements of justice vis. that practice can be developed without inviting injustice. A different expression of this problematic move is to infer 3.) from the fact that the subjects of theorizing (states, groups and sub-groups) are inappropriately framed in relation to each other 4.) the notion that the objects of theorizing (principles of authority and principles of justice) themselves are inappropriate.
However, the elaborations on this critique in the literature reveal that the real issue is about the arbitrariness and domination entailed in the imposition of one view of justice.

Deveaux, and many others, observe quite rightly that there is a troubling power dynamic where liberal public institutions determine the permissibility of minority practices unilaterally and in sectarian terms; and that this has the effect of further marginalizing the groups involved (Parekh 1997, Arneil 2007, Dhamoon 2007, Song 2007). But they infer from the fact that the authority of institutions to do this is questionable, the idea that theorizing the authority of institutions is already prejudicial; and from the fact that requiring groups to internalize and conform to liberal principles is clearly unjustifiable, they infer that the a priori derivation of principles is itself also unjustifiable in any theory that deals with cultural pluralism. Though it is important to reject a certain set of presumptions about the authority of the state, it is not possible to scrap the issue of political authority altogether, precisely because there is no other way to lend force to the rejection of these problematic presumptions. And although it is highly important that the actual resolution of cultural practice issues in public policy and public discourse does not become ‘about shoring up the security and authority of the state, and only secondarily about delivering justice to minorities’ (Deveaux 2006, 7), it seems that only a strong account of the appropriate role of the state can furnish a strong critique of such distortions in political practice.

The a priori of the dialogical

As mentioned earlier, critiques of juridical approaches to contentious cultural and religious practices have been directed at ‘liberal’/‘toleration’ approaches, and have centered on concerns with structural injustice and exclusion. To the extent that alternative normative accounts have emerged these have been largely conceived as dialogical and centered on political inclusion.
Some of these dialogical approaches have lineage in deliberative democratic theory, and have recently been criticized for being too normatively ‘thick’, i.e for appealing to substantive democratic ideals, strong egalitarian ideals, or ‘thin’ principles posited problematically as culturally transcendental. In this vein, theorists like Monique Deveaux have sought to reframe the theoretical problem in a way that escapes appeal to universal moral minimums and focuses on inclusion as a matter of procedural fairness. Appeals to universal moral minimums are troublesome in this view, even when deployed in the construction of democratic dialogue, in so much as they limit the range of admissible claims and consequently, the range of participants and outcomes as well. This in turn is problematic because of the various ways in which articulations of ‘universals’ are problematic – epistemologically questionable, sociologically unverifiable and politically vulnerable to abuse. However, as I indicated, ‘inclusive but thin’ approaches such as Deveaux’s, are also rooted in the rejection of certain outcomes as unacceptable, namely a rejection of some forms of exclusion and domination. Though they invoke procedural principles, their justification does not lie in the instrumental value of these principles. Those principles are rather morally compelling in their own right, and reliant on a view of democratic legitimacy, even when that view remains ‘a ghost in the theory’.

Drawing from the lessons of this false dichotomy, the more important and also more difficult question is what are the a priori political commitments that must be in place in order for a dialogical model to take hold. This is where my ‘framing’ of the internal minorities problem is situated in relation to existing scholarship.

In my view the political problem with juridical approaches has been identified correctly by contemporary critics, but the focus on bracketing foundational questions has been counter-
productive. Imposing substantive \textit{a priori} conclusions about the requirements of justice without
democratic deliberation is generally recognized as illegitimate. However, it cannot follow that
democratic decision-making absolves us of the need to spell out what \textit{a priori} philosophical
commitments govern a legitimate political process. Recourse to a democratic \textit{method} does not
in itself shed meta-values or meta-principles and thus it is disingenuous to pose the democratic
method as freestanding, i.e. as analogous to an Archimedean point of view. (It also does not
necessarily shed liberal values, as even though there is a distinction between liberal and
democratic theories, it is contestable how fundamental this distinction is, given that they share
moral axioms (moral equality, reciprocity, right to justification) and usually social ontologies,
rights frameworks, etc. Moral consensus and cultural neutrality are impossibilities, and this is of
itself neither a good nor a bad thing – it is a matter of epistemological complexity, which creates
a variety of opportunities and complications for moral philosophy. These in turn reverberate in
our understanding of normative political claims. The democratic method, however, does not
simply manage the epistemic difficulties of diversity while sitting outside the realm of moral
values. By attaching significance to the existence of disagreement between persons, and by
drawing from this notion that all voices should be heard and taken seriously, we are already
making a moral judgment. Even where democracy is justified instrumentally – as increasing the
likelihood of good laws, or as building social cohesion, or as reducing unrest – this is already in
the form of a series of value judgments.

The fact of disagreement does not mean that all expressed views are equally valid, or
that it is impossible to find near-universal agreement on some things. Some \textit{a priori} principles
are more defensible than others. Moral reasoning necessitates that some precepts (like
reciprocity) be taken as axiomatic, even though they are inextricable from social contingencies. Norms which have political content, such as fairness norms, also have to be grounded in some such way. Thinkers who posit such norms as ‘universal’, ‘transcendental’, or ‘moral minimums’, rarely make a truth claim; rather, they invoke a short-hand to imply that the values and moral premises which underpin such norms (like having right to life, the Golden Rule, etc) are near-universally intelligible, recognized and seen as in some way justified. Of course, establishing this in the way of political norms is not an easy task. For one thing, they have to be at least conceived a priori, and in some connection to each other. For another, the interpretation of even the most basic political norms is affected by our awareness of power, and by our notions of how it might operate. And third, to be defensible such norms have to balance considerations about both their normative and their sociological grounding. One the one hand, a norm might be very widely held; but the fact of it being held does not suffice for its moral character because this could reflect the success of processes that are not in themselves moral. On the other hand, a norm could be philosophically defensible as a moral norm; but this would be of very limited critical use if it cannot be shown that there is widespread appeal to it. Assessing this sort of grounding can create a tension between normative and sociological concerns, and this tension is often at the heart of many theoretical debates over higher order principles.

I believe the perceived dichotomy between two types of approaches to conflicts of culture stems to a significant degree from these foundational difficulties, and especially from the latter tension. Both juridical and political approaches rest on certain suppositions about how domination operates. They both strive to disrupt domination, and are rooted in different but closely related fears. Specifically, the ‘juridical’ paradigm is related to a concern with the
sociological sense of legitimacy - i.e. a concern that the public acceptance of certain norms, including democratically derived and affirmed ones, does not make those norms morally correct. The ‘political’ paradigm is related to a concern that normative assessments of legitimacy are never actually impartial, and that they accord themselves a privileged position as invulnerable to ‘false consciousness’ - a position which has no basis - and thus they can be harnessed for the purposes of reproducing domination. (I elaborate on this tension further in Chapters Four and Five).

The theorizing of justice towards socio-historic groups is difficult precisely because it is directly linked to the foundational problem of the justification of norms in conditions of dissensus and subjectivity. Yet it tends to proceed as second-order theorizing about the issue - as derivative from theorizing democracy or theorizing justice generally, or as one issue within it. Not surprisingly, this has been inherently limited, because it inherits the problems that these sets of theories have related to pluralism, and which are not resolved by theorizing from democracy despite the advantages and intuitive appeal of such theorizing. My approach starts with trying to imagine what a first-order theorizing of justice towards groups would require, and specifically, what it might require if it is to be commensurable with justice towards individuals. What I have tried to show so far is that such an approach would have to situate its premises within an account of legitimate political authority.

When Deveaux and others ground their theories of cultural justice in democratic legitimacy, they are in effect grounding it in the normative force of procedural fairness. This is politically and philosophically pragmatic, and is thus a fruitful avenue to pursue in its own right. However, it is a mistake to attach most of the strength of these theories to the sense that they
can deliver a measured account of procedural fairness that is ‘just right’ for this context of justice. When it comes to cultural justice, these sorts of accounts have two weaknesses. First, they invest too much in the intercultural appeal of procedural justice, and thus overstate the sociological footing of procedural fairness premises by skewing the significance of the normative underpinning of such premises. Second, as Tom Christiano has pointed out, the effort to perfect proceduralism ignores the problem of the normative force of outcomes. As he states: “[pure proceduralism] embodies an arbitrary distinction between the normative force of procedures and the normative force of outcomes of procedures. There is no good reason for thinking that matters of distributive justice, individual rights and the common good are less normatively important than democratic principles” (Christiano 2004a, 269). It seems that this is likely to be the case especially between cultural groups, for example where traditional forms of decision-making tend to privilege one over the other in different ways.

My own contention is that a principle of non-domination operates in moral justifications of political power, and that as such it also underwrites the principles of democratic legitimacy. In this sense non-domination appears as an a priori type of moral position (which becomes a ‘principle’ proper when invoked as political norm vis-a-vis power). But it is also inherently a relational concept, i.e. its moral content is hollowed out unless specific actors are implicated in a specific relation. The assessment of types of relations as ‘fitting’ non-domination is a process which cannot be a purely ‘juridical’ exercise because determining what is an instance of domination is contingent on actual lived experiences of groups; in this sense, the process of assessing domination can only be dialogical. However, non-domination also has normative implications regarding the status of moral subjects, which must be pre-dialogical – for example,
as I will argue, non-domination necessitates the promotion of the relational moral autonomy of persons, and relational forms which obstruct such autonomy are inconsistent with non-domination. Non-domination permits the extension of the moral notion of the *equal moral dignity* of moral subjects to plural subjects (in a way that the equal moral dignity of persons is usually invoked only vis-à-vis moral agents, which are singular subjects). In this way non-domination is indispensable to understanding the legitimacy of democratic authority over groups. *Inclusion* can be understood as inherently valuable vis-à-vis groups as much as vis-à-vis individuals because excluding affected moral subjects is a form of dominating them, and though individual moral agents suffer domination, they suffer it on account of the subordinating power relations which affect classes of persons or groups of persons. Finally, an important analytical aspect of non-domination is that both democratic *procedures* and their *outcomes* can be assessed in terms of it. This may be helpful in the intercultural context, given the normative force problem (i.e. that people value procedural fairness vs. ‘good’ substantive outcomes differently), and to the extent that non-domination is much less contested than the latter.

In the context of cultural conflict and groups, there are two paths taken by dialogical approach adherents to explain the authority of democracy (i.e. why the procedural requirements and outcomes of the democratic method should be seen as binding without substantive commitment to democracy). In my view both of these paths can be shown to originate from non-domination premises, as specified above.

On the first path, some posit the existence of moral consensus regarding the minimal components of the democratic method. For example, Parekh does this with his concept of ‘operative public values’, which bear no claim to universality, but which he thinks in fact must
take hold in pluralist societies, even if for strategic reasons (Parekh 1996, 2006). Benhabib, on the other hand posits transcendental moral universals (Benhabib 2002). Both of these scholars articulate values which readily concede or are at least compatible with non-domination. On the other path is the attempt at a thin deliberation model such as Deaveaux’s. But the procedural fairness thesis of this model is unsustainable if the rejection of reasoning from *a priori* commitments, as well as the rejection of the equality principle (even in its thin version, Deaveaux 2006, 219) are taken to their logical conclusions.

While I think that the two paths taken by dialogical approach adherents are rooted in non-domination premises, I do not think they explain the authority of democracy sufficiently well, and in a way which brings out the significance of non-domination. The holistic account of the authority of democracy developed by Tom Christiano comes closer to a non-domination model. What makes this model suitable is that it develops a form of evaluative dualism in assessing democratic institutions. “A conception of democratic authority must show that while

3 Benhabib’s thesis in *The Claims of Culture* is that a distinction between cultural and moral discourses is possible and viable, or in other words, that not all manner of universalism is a form of ethnocentrism. She develops an outline of ‘pluralistically enlightened ethical universalism’, which I understand to follow a similar logic with respect to dialogue that is followed here with respect to the commitment to non-domination as a condition of legitimacy. She identifies the existence of communities of interdependence, in which conversation between cultural communities is driven by a pragmatic imperative to interpret and understand each other. The fact of interdependence bears two significant consequences: in the first instance, it becomes untenable to treat and interpret cultures as sealed, immutable and internally self-consistent; and in the second, the community of interdependence can only become a moral community when it resolves to settle issues of common concern via dialogical procedures in which all are participants. The minimal normative rules of dialogue which the latter makes necessary are identified by Benhabib as ‘universal respect’ and ‘egalitarian reciprocity’. These conditions are of course reminiscent of the universal justification strategies of Rawls, Habermas, Scanlon, etc. But it is not the source of philosophical support for them, and the (Western) origin of this support, which lends validity to these features of dialogue. Rather, Benhabib believes, they are ‘weak transcendental conditions’, which we need to distinguish a free consensus from other forms of agreement based on power, violence, or custom. Justification of these norms is based in different philosophical reflections on human inquiry as well as on historical and moral experiences (Banhabib 2002, 37).
decisions can be evaluated from an independent standpoint, the fact that the democratic assembly has made the decision gives each person a pre-emptive and content-independent reason for complying” (Christiano 2004a, 268). These form two “distinct and irreducible” points of view. Christiano’s thesis is that the democratic process has an intrinsic fairness, but that this intrinsic fairness follows from an underlying justice principle – the welfarist principle of the equal advancement of interests. This fairness grounds the *prima facie* obligation of persons to comply with the outcomes of collective decision-making. However, these outcomes are themselves subject to independent evaluation from the second point of view, namely, whether they also serve justice. The purpose of democratic institutions is to serve the public realization of justice, which entails both of these irreducible procedural and substantive components.

Importantly, for Christiano, the procedural component has priority over the substantive where the two conflict, and thus carries more of the overall legitimacy of the institutions. However, “there are limits to the authority of the procedural over the substantive and these limits are founded on the same principle as that which grounds the authority of democracy.” (Christiano 2004a, 268) Parallel to this view, in the rest of this project I proceed on the understanding that the commitment to deliberative democracy cannot be viewed as free-standing, because it is itself grounded in some prior commitments. The relationship between these, as well as the outcomes of procedurally fair institutions, is an important question in political theory generally, and one which frames my discussion from this point on.
Part II: Social groups and norms

Nomoi communities

In this project I discuss what sort of principles should inform the accommodation of the cultural and religious practices of social groups that have, what Ayelet Schachar has termed, “nomoi communities”. I also refer to these groups as “cultural and religious groups.” In this section I clarify my usage of these terms, and the focus of my analysis.

Similarly to Schachar, I use the term nomoi to emphasize the focus on social groups which have group-specific rules and where the authority of custom is tied to a cultural or religious narrative about a unique collective history and/or set of beliefs. The nomos of such a group may not be formalized in some coherent and comprehensive way, but the system of beliefs and shared meanings determines to a great extent how collective affairs are organized, and how important aspects of individual lives and roles are understood. As I see it, the nomos of cultural and religious groups may perform a dual function. On the one hand, it expresses an aspect of the group’s identity, of what its distinctive shared experience consists in (e.g., “the Principle” of plural marriage is central to the doctrine of fundamentalist Mormonism). On the other hand, it also expresses a moral perspective – certain norms are to be kept not just because they are important to being X, but because from X perspective they are virtuous or even required (e.g., children must only be had “legitimately”).

Not all cultural and religious groups have nomoi communities in this sense, and the ones who do are not bounded or static. Although nomoi communities tend to be territorially concentrated, they are very rarely isolated, and usually have a rich history of interaction with
other social groups which makes them dynamic, heterogeneous and porous (to various degrees). They share these features with other more broadly defined identity groups. However, the ‘fluid’ nature of social groups does not mean that the nomos that emerges in the cultural and religious social setting is equally elusive. To the extent that the nomos can be compelling to individual lives, and in some instances institutionalized, we can focus on the group context that sustains it and question how specific practices operate.

A key factor in this is that our membership in cultural and religious groups is typically acquired by birth and early childhood socialization, and they are in this sense non-voluntary. The identities they confer from generation to generation are experienced as ‘given’ and ‘always having been’ by us (Young 1990, 46), even as they are personally redefined by individuals and publicly rearticulated by members and non-members. Thus, although neither groups nor identities are “fixed”, their significance to the lives of persons is unwavering. Regardless of how comprehensive the cultural and/or religious nomoi are in scope (whether they advance a fairly comprehensive worldview or a more fragmented one about specific aspects of members’ lives), where they have political and social effects these are of considerable depth. This feature of nomoi communities is treated by many as normatively crucial in constructing arguments for group accommodation, because it makes the claim for the recognition of their difference qualitatively different from that of associations which spring from individual choice.

The focus on cultural and religious groups as nomoi communities is not uncommon in the multiculturalism literature, and resembles the accounts given not only by Schachar 2001, but also Parekh 2000, Deveaux 2000, Weinstock 2005. In various ways these authors recognize
that such communal diversity is “logically distinct and raises questions that are unique to it” amongst other forms of identity related difference (Parekh 2000, 5).

Nomoi communities are not to be understood as defined by opposition to mainstream society. ‘The majority’ in most existing democratic states constitutes a nomoi community with cultural and religious practices, and these practices invariably fall short of a non-domination ideal in some way. When this comes to light, however, the limits of these practices are evaluated in terms of the tension between the nomos of the community and the democratic principles of its political system. Challenges to the practices of minority nomoi communities, however, have a different relational structure, and their accommodation raises additional kinds of legitimacy concerns between communities. My reference to cultural and religious groups is situated within the context of these concerns and instrumental to the need to speak with some approximation about the social groups involved in the multitude of actual cases – but this does not imply that conceptually ‘culture’, ‘religion’ or ‘nomos’ signify something peculiar only to minorities as ‘other’ to the mainstream. Indeed, one of the premises of my argument is that non-domination is a preferable political principle because it does not presuppose the validity of the nomos of (perceived) liberal majorities.

4 In his work Bhikhu Parekh elaborates on the distinction between communal and other forms of identity related diversity. As he explains, claims to the accommodation of sub-cultural difference, such as that in lifestyle or sexuality, seek to pluralize the majority culture rather than sustain a comprehensive alternative; they are also often expressed in terms of the same value system (Parekh 2000,3). ‘Perspectival diversity’ on the other hand, emanates from “intellectual perspectives on how the dominant culture should be reconstituted” (Parekh 2000, 3-4), such as those espoused by some feminists, environmentalists and other social groups. These challenges are in many ways more radical than those of sub-cultural or communal diversity.

5 Furthermore, there are some accommodation claims for religious practices by groups which do not constitute nomoi communities (for example, the ritual animal slaughter in the Santeria religion practiced by a minority in Florida), as well as accommodation claims for practices in nomoi communities which have
The Constructivist challenge

One well established critique of normative theories of multiculturalism is that they are premised on a misguided conception of culture as monolithic, primordial and clearly demarcated. This has prompted a turn to what Sarah Song terms “the constructivist challenge” (Song 2007, 31). I will not discuss this debate here, but I will point to the constructivist view of culture recently articulated by her because she directs her critique at Schachar, among others, because her critique is accompanied by an alternative normative account, and because her approach to justice in cultural accommodation has similarities to my own. (Namely, her “semi-contextual” approach outlines a political framework for analysis of claims “while leaving the choice of specific policies and resolutions to be decided through democratic deliberation” (Song 2007,10)).

The constructivist view espouses four components. First, “cultures are the product of specific and complex historical processes, not fixed primordial entities” (ibid. 31); second, “cultures are internally contested, negotiated, and reimagined by members” (ibid. 32); third, “cultures are not isolated but rather overlapping and interactive” (ibid. 32); and fourth, “cultures are loose-jointed” and resilient, implying that changes to particular components do not necessarily erase the culture as a whole. Culture is something “narratively constituted” (ibid. 31) by the struggles of different stories and practices to achieve dominance, and it is had historical significance, but are not actually central to the nomos itself (for example, cultural justifications for commercial whaling by Russian, Norwegian and Japanese whalers) (Paula Casal 2003 discusses both cases). My analysis does not speak to these claims directly, in so far as the limits of accommodation there center on issues other than the authority of the nomos.)
experienced differently along lines of age, gender and status. The constructivist view emphasizes fluidity and the importance of cultural overlap.

According to Song, the constructivist conception of culture makes room for a crucial consideration in the internal minority problem, namely intercultural interactions. An analysis of these interactions must include the influence which majority and minority cultural norms have had on each other, scrutiny of the majority’s motivations with respect to different claims, and consideration for the divisive effects of potential condemnation of a minority practice (ibid. 6). Most significantly:

A key normative implication that follows from adopting the constructivist view of culture is to shift the basis of evaluation of group demands from inherent features of groups to the social and political effects of cultural identity groups. The question is not whether cultures should be preserved on the basis of inherent features they posses, but whether the particular claim in the name of culture should be accommodated. This means focusing on the content of minority group claims (their goals and actions), as opposed to determining what the groups really are... (ibid. 39).

I agree fully with Song that the focus in accommodation claims needs to be on the content of specific claims and their social effects rather than on assessments of the groups as such - to my mind this is the logical extension of focusing on nomos. I see my account of nomoi communities as fully compatible with a constructivist view of culture thus outlined (including the understanding that culture is not prior to and insulated from politics), and intercultural interactions as by definition included in a relational analysis of domination between cultural communities. Where I disagree with Song is in the view that in the analysis of specific claims we should give greatest attention to “to the politics of cultural construction, change, and maintenance” (ibid. 35). This disagreement is partly pragmatic, since the political construction of culture is a virtually infinite subject and its findings indeterminate, and even groups formed out
of oppression can value their identities and affiliations and seek its accommodation (Young 1990, 47). What I suggest is that analysis is fruitfully focused not on how every specific culture has come about and what political role the accommodation claim plays within that, but on how specific practices are constructed and operate at the time at which accommodation is sought, in light of determining whether its accommodation advances non-domination.

I interpret the constructivist challenge as one way of asserting a dynamic view of groups and group claims. On closer look it seems that the normative implications stated above by Song follow not so much from the constructed-ness of culture as such, but from our awareness of the dynamic of power relations, which in my view is captured by accounting for domination. Referring to cultural communities in ‘the toleration framework’ is not necessarily exclusive of that dynamic, or contingent on a view of culture as monolith. These principles are not principles ‘for all time’ and for whole cultures. They rather assume that there are moments in which some cultural configurations clearly prevail (e.g. such as patriarchy) and we can address the prevalent configurations that emerge despite the fact of their contingency. Law and institutions are one part of a complex of contingencies which produce a given social practice, but they are also a powerful instrument which can be yielded in that complex to curtail certain oppressive aspects of power. The question is what principles should guide this instrument, and how can these principles be malleable to specific social context.

**Focusing on norms and practice**

Since I stated that the primary concern over accommodations should be whether they advance non-domination, one might ask if focusing the discussion on nomoi communities inappropriately narrows the forms of domination that enter into consideration. Nothing in my discussion of
accommodation for nomoi groups precludes the possibility of developing and extending the non-domination perspective to the claims of justice of more broadly defined collectives. Such a discussion would be valuable, but is beyond the current scope of my project. Since my concern here is to develop a relational standard that assesses the legitimacy of relations both between and within groups on commensurable terms, I will address only those groups whose impact on members’ way of life is profound enough that internal domination could occur in the first place, and do so without fragmenting the group. This can only be contextually determined.

Another reason to focus on nomoi groups is because neither nomoi groups themselves, nor the relations of domination between nomoi groups, are reducible to the sum of other group identities that members might be seen to have, such as their class, race or gender. One impact of institutional forms of accommodation is that they would lend legitimacy to some of the norms of the group. That may not be the object of accommodations as such, which is rather to eliminate an aspect of the structural inequality or disadvantage of the group in relation to other groups; but it is a crucial factor in the consideration of what the actual role and form of the accommodation should be. This suggests that all forms of domination at play should be taken into consideration when the role of specific practices is debated. However, it also suggests that simply exposing and accounting for various forms of domination is not enough. What is even more telling is how they converge on a certain subset of members of the group, and this, in turn, is significant in light of how norms within the group codify that convergence.

This emphasis on convergence in norm/practice inevitably takes some attention away from the undercurrent of power dynamics that cuts across cultural and religious group lines. These patterns of domination can be exemplified in the specific norms of such groups, but they
can only be understood within the context of larger historical and social processes. This broader context mandates the configuring of social groups along lines of class, gender, age, sexuality, nationality, etc. For many theorists, these are the only dimensions of domination and types of grouping worth exploring. However, redrawing and expanding the subjects of domination in this way leaves little to say about how we should think about actual norms and practices which give converging forms of domination their concrete shape, or which attempt to resist some of these forms. There are at least two reasons for this.

The first is that while people’s lived experiences are certainly affected, even charted, by their positioning in broad structures and cross-cutting groups, the particular meaning, significance and fulfillment associated with these experiences are filtered through their positioning in nomoi groups. Perhaps even more importantly, the improvement of one’s lot vis-à-vis these different structural social locations must make sense within the system of one’s more immediate relationships. (The opening of more professional avenues for women might not actually spell status improvement for those women who think them incompatible with the observance of religious dictates (say, re. chastity) or custom (say, re ‘decency’.)

The second reason why obscuring nomoi groups is not productive is that there are some broad patterns of domination which are profound, but which affect social activity in very subtle and intangible ways. In other words, there are forms of disempowerment, which can only be identified in specific norms and practices, and/or which public institutions can only affect at that level. For example, the status of women across virtually all societies is affected (sometimes deeply) by popular perceptions about appropriate physical appearance. Clothing can very often be a cultural signifier of virtue (or vice) and social role, to such an extent that non-conformity
with acceptable dress can put one at risk of ostracism or even violence. In other ways, the pressures of cultural perceptions about desirable body aesthetic lead millions of women to behavior that exposes them to great health risk, often in settings where appearance greatly affects a woman’s life prospects. The social processes that reproduce such deep-seated biases are too elusive to address directly. They have few tangible components, and involve the mundane interactions and unexamined beliefs of innumerable agents. Since domination here operates along the lines of something that is not subject to redistribution, specific practices in specific communities are the only material expression of the domination and the only intervention site for institutions. To return to the issue at hand, the aspects of domination which can be tackled under the banner of accommodation are those which can be seen to be codified in concrete norms or traced to identifiable agents.

**Social ontology**

As Iris Young points out, “neither social theory nor philosophy has a clear and developed concept of the social group” (Young 1990, 43). Given that there are multiple plausible views, here I rely on the understanding of social groups developed by Larry May in his work *The Morality of Groups* (1987), which bears much resemblance to Iris Young’s account from 1990, and resonates in Carol Gould’s ontological foundation for democratic theory (1990, 2001). May’s position is that “relations among individuals do have a reality, a distinct ontological status which is different from the individuals who are related. However, the reality of these relations is not sufficient to ensure that the groups, which are composed of individuals in relationships, have reality independently of the individuals who compose those groups [emphasis in original] (May 1987,23).” He further develops the thesis that social groups should be given moral status which
is different, but derivative from, the moral status of individual members – though importantly, that they have no moral standing completely separate from that of persons (ibid. 3). This status is significant because social groups can be harmed in their common interest, and can suffer harm even without common undertakings (ibid. 114). Iris Young defines a social group as “a collective of persons differentiated from at least one other group by cultural forms, practices, or way of life. Members of a group have a specific affinity with one another because of their similar experience or way of life, which prompts them to associate with one another more than with those not identified with the group, or in a different way (Young 1990, 43).”

Both of these understandings have a role in Carol Gould’s social ontology, in which ‘social individuals’ are fundamental entities from which others are derived (Gould 1990). Gould, however, rejects the notion that there is a clear ontological-moral distinction with respect to social facts, and by extension with regard to the status of individuals and groups as well (Gould 2001, 45). To my mind, this distinction exists, and is necessary precisely because of the indeterminacy of ontological arguments. The logical conclusion of rejecting the ontological-moral distinction must be that those who have no conviction in individualist ontology would have to reject the validity of any individual moral rights for persons. If any individual would entertain this self-negating view, it seems doubtful that her moral reasoning could proceed very far. The ontological primacy of individual vs. group debate can be set aside in many arguments, in a way that the issues of moral primacy cannot. In my view the moral value that attaches to persons as agents and to aspects of their relations cannot be contingent instrumentally on the ontology of that agency.
I conceptualize the question of accommodation vis-à-vis the status of individuals for 2 reasons: 1.) I take it that only persons can experience human suffering, and thus they are morally prior, but this does not imply that they are ontologically prior, in that it does not specify anything about sociality, about the constitutive relationship between the nature and identity of the person vis-à-vis the group, or about agency and structure. This is consistent with social construction theses; and 2.) because the experience of domination of collectives is cashed out in the lived experiences of persons.

When it comes to moral priority it is not the case there are never any circumstances in which the interests of the group outweigh the interests of the person. However, the calculus of interests which takes into account ‘happiness’ and the moral imperative to prevent certain evils, is qualitatively different from the understanding that the moral status of the person is never contingent on the interests of the collective. This I understand to be paradigmatic for arguments against slavery, for example (which we would not permit individual persons to be subjected to even if we held a fully ontologically deterministic view about them). Of course, there are many circumstances in which the lines between moral status and interests are blurred, such as the difficult questions about abortion and freedom of conscience. But in my view it is not a requirement that political theory be able to resolve such dilemmas in order to proceed to discuss ‘the political’, and though there are no ‘settled’ debates on social ontology to draw from, we can still make assertions about the status of persons and groups.

It is important to note here that what counts as domination for some, may be experienced as liberating for others, or at least consistent with freedom. Indeed, I take it as a fact of moral minimalism (a-la-Walzer) that the moral importance of non-domination is
recognized, but that there is disagreement as to concrete forms of domination of this morally impermissible sort. Individuals need to be morally autonomous in order to be cognizant of domination, and therefore I defend the view that relational moral autonomy must be recognized as a minimum requirement of social arrangements if the exercise of power (especially political, and especially institutional power) is to be legitimate vis-à-vis them as moral subjects.

**Conclusion**

This chapter has defended the focus on nomoi groups, both practically and philosophically, and explained the particular account of groups that it operates with. It has also defended its engagement specifically with the democratic model of multicultural justice, and situated the problem, not only in terms of the relationship between process and outcomes, but also in terms of the relationship between process (a democratic processes) and substantive or *a priori* commitments.

I considered the two dominant paths pursued by dialogical approach adherents to explain the authority of democracy - i.e. why the procedural requirements and outcomes of the democratic method should be seen as binding without substantive commitment to democracy..

On the first path, some posit the existence of moral consensus regarding the minimal components of the democratic method (Benhabib, Parekh). This path, however, is contingent on the success of establishing such consensus. On the other path is the attempt at a thin deliberation model such as Deveaux’s. But the procedural fairness thesis of this model is
unsustainable if we take to their logical conclusion the rejection of reasoning from a priori commitments, as well as the rejection of the equality principle.

However, I have suggested that both of these paths can also be shown to originate from non-domination premises. More interestingly, non-domination does not fall neatly on either side of this dichotomy, as it has features that link it both to the juridical and to the democratic approach. On their own, neither of these approaches could explain the authority of democracy sufficiently well, and in a way which brings out the significance of non-domination. This is what I will turn to in the next chapter.
Chapter 3

Political Legitimacy, Non-domination and the Justification of Political Authority Over Individuals and Groups

The idea that the forms of accommodation of cultural and religious group practices should be determined through democratic means has high intuitive appeal. So does the notion that minority groups should not be required by public institutions to accept and internalize values and norms steeped in the majority culture (especially those groups that are already subject to marginalization and assimilative pressures). As I discussed earlier, however, these two intuitive ideas often come to be at odds with each other, and this is reflected in the literature on multiculturalism. Democratic mechanisms are themselves informed by egalitarian concerns, rendering representativeness and inclusion paramount values. These mechanisms tend to diffuse authority and demote the significance of particularistic identities. For this reason they might not be acceptable to all groups or they might not be compatible with all of a group’s practices. Where they may be recognized as politically necessary, they might not be prioritized as fundamental to justice (rather than occasionally instrumental).

Proponents of democratic approaches to accommodation thus face a difficult task, because they advance democratic solutions not merely as pragmatic, but as intrinsically just. They see democratic resolution as required by justice, or as the only legitimate means of uncovering the content of justice, or as itself politically authoritative, i.e, as giving rise to a duty
of justice to comply with democratic outcomes. Fervent proponents of the dialogical approach do not see democratic resolution as contingent on whether agreement about the virtues and proper forms of democratic deliberation already exist within all different communities. Instead, they see it as the only appropriate approach, and find different ways to argue that the principles that legitimate this view are either grounded in minimal moral universals, or grounded in basic, culturally neutral rules of procedural fairness.

In the previous chapter, I discussed the difficulties that face both of these arguments for democracy. I explained them in terms of the deeper philosophical difficulties in specifying the relationship between substantive and procedural norms. Even though cultural conflicts are not always about deep moral disagreement, cultural pluralism still poses a significant challenge for this relationship. Because of this difficulty, attempts to posit proceduralism as culturally unbiased—because-substance-free are not entirely convincing.

In this chapter I put these difficulties in the broader context of the standard challenges faced in theorizing morally legitimate political authority. My goal is to defend the advantages of a non-domination approach and I begin to outline this approach here by relating the concept of non-domination to the question of when political authority can be said to be legitimate. However, this chapter does not aim to refine, or align with, one set of answers to what makes political authority morally legitimate, whether we have a prima facie duty to obey the law or not, and whether having a duty to obey the law is coextensive with owing obedience to a state.  

6 A great deal of the philosophical debate on political authority is set around the relationship between the rule of law and political obligation on these terms (Durning 2003). A second set of questions in the debate is about the nature of political obligation, and whether it should be conceived of in individualist terms, or whether it is a species of moral duty or virtue inherent in the bonds of the political community (Green
Instead, it seeks to make use of some of these philosophical arguments in a way that can inform a broader concern with theorizing political authority in pluralist societies where moral legitimation is due to both individuals and groups on commensurable terms. In the course of this discussion, I also outline some key differences between a non-domination principle and a democratic one.

The moral legitimacy of state institutions vis-à-vis socio-historic groups is *not always* reducible to their moral legitimacy to (abstract) reasonable individuals. In modern diverse societies, the justification of the political authority of the state has two dimensions. To explain this two-dimensional view of legitimacy in the context of inter-cultural accommodation I borrow from John Simmons’ analytical distinction between legitimacy and justification, and I argue that Simmons’ thesis is clearer and more useful when applied to this context (even though he himself was concerned purely with individuals). I also construct an account of non-domination as a minimalist relational principle at work in the moral justifications of power based on consent. I conclude by outlining several advantages to a non-domination analytical framework, modestly

1990). There are at least four distinct positions that have emerged along the lines of these questions. One is the position that a state could be legitimate if it is morally justified in exercising power, even if its subjects cannot be said to have a special duty to obey its laws. This view has been put forward by Buchanan, Waldron and Edmundson (Waldron 1993, Buchanan 2002, Edmundson 1998). A second position has been that such a duty is essential to legitimacy, and that we all have a duty to obey the laws of just states for various moral reasons (This view has been associated with a particular reading of Rawls (Rawls 1971) as well as Christopher Wellman (Wellman and Simmons 2005)). A third view, sustained by Simmons and other philosophical anarchists, is that while a duty to obey the law would indeed be essential to legitimacy, this duty is not a natural moral duty and most of us have not incurred it in any existing state. A fourth position has been that the legitimacy of a state should not be explained in terms of its’ subjects obligation to obey the law, but in terms of other bundles of rights and benefits that the state provides (Klosko 1989, Copp 1999).
concerned only with the context of intercultural accommodations (rather than as a ‘full’ theory of legitimacy).

**Making room for legitimacy in non-domination: Pettit and Young**

The concept of non–domination is most commonly associated with Phillip Pettit’s republican theory of freedom and Iris Young’s global justice account of non-domination as self-determination. Before exploring how we can make room for non-domination in theorizing legitimate political authority I will point to a number of ways in which non-domination is already connected to legitimacy in these two renowned bodies of work.

In his landmark book *Republicanism* Pettit develops a full theory of non-domination as an ideal of freedom and defends it advantages over standard ‘negative’ liberal views of freedom as absence of interference and ‘positive’ liberal views of freedom as self-mastery. A relationship of domination is defined by Pettit as one where one of the parties *can* interfere on an arbitrary basis (i.e., at will, with impunity and without justification) with the actions and choices of the other, exemplified in the most extreme by the master-slave relationship (Pettit 2000, 22). An essential point of this definition is that domination obtains not only in the instances where interference is actually exercised, but also in the threat of interference. In other words, it obtains where a relationship of vulnerability and subordination exists, even if the subordinate party is treated benevolently. Thus it is possible to have domination without interference, as well as interference without domination. An important implication of this view is that it allows us to recognize forms of interference which do not actually constitute loss of freedom, or may even enhance freedom, such as just laws. Equally, it also allows us to recognize that many are
unfree because they lack security against the arbitrary will of the more powerful even if they are not subjected to interference by them at any given time.

In *Inclusion and Democracy* (2000) Iris Young lays the ground for a theory of global democracy, the cornerstone of which is self-determination, reconceived in terms of non-domination. The corollary of this is the view that peoples are relationally constituted and thus the scope of justice obligations to which political institutions must correspond does not align with the borders of nation-states. For Young, the requirements of global justice are inconsistent with the conventional interpretation of self-determination as freedom from interference (Young 2000, 237-238).

The concept of relational autonomy, according to Young, complements the concept of freedom as non-domination because both refer to a particular set of social relations from different angles. Relational autonomy refers to “the structuring of relationships so that they support the maximal pursuit of agent ends” (Young 2000, 258). Young understands this to imply a presumption of non-interference, but against the background recognition that agents are inter-dependent and thus autonomy is as much about how they are situated as it is about how they might be treated in any given instance. In the context of the self-determination of peoples, the insight offered by the notion of relational autonomy serves to advance the conceptual shift away from ‘independence’, given that peoples constantly affect one another and that group memberships are dynamic and overlapping. Non-domination gives a more concrete expression to the accompanying intuition that in a context of inter-dependence what is especially impermissible is *arbitrary* interference with others’ pursuit of their collective endeavours (ibid. 258-259).
This conjunction between relational autonomy and non-domination reconfigures self-determination in a way which has serious implications for global justice, especially because Young accepts that distinct peoples have a *prima facie* right to self-determination (ibid. 256). (She cites two reasons for this: one is that the flourishing of individuals is in great part contingent on the flourishing of the meanings and practices that serve as ‘sources-of-self”; and the second, that structures of exploitation and domination develop around processes of social and cultural differentiation.) Self-determination means that peoples have rights to build their own institutions of governance in order to pursue distinct ways of life and goals associated with them. But it also comes to mean that peoples have a moral entitlement to be free from domination. In as much as they are interdependent, peoples ought to take each other’s interests into account and negotiate the terms and effects of the relationships they find themselves in (even if not explicitly chosen). The non-domination requirement implies that peoples have no *prima facie* right to non-interference from others. It also implies a related duty to conduct interactions through democratic means, both within and across jurisdictions. Thus, according to Young, if the normative principles of global governance are to correspond to non-domination, we must accept that even though it is not possible to detach governance from land

7 “Domination consists in institutional conditions which inhibit or prevent people from participation in decisions and processes that determine their actions and the conditions of their actions. The aspect of social justice that domination denies is self-determination. Oppression, the second aspect of injustice, consists in systematic institutional processes which prevent some people from learning and using satisfying or expansive skills in socially recognized settings, or which inhibit people’s ability to play and communicate with others or to express their feelings and perspective on social life in contexts where others can listen. The aspect of social justice that oppression denies is self-development.” (Young 2000, 156)
and resources, peoples do not have a right to a “single, bounded, contiguous territory inhabited only by members of their group” (ibid. 260).

Both Pettit and Young are committed to the view that political institutions should preserve and promote non-domination for all within their scope. Nevertheless, the concept takes on different nuances in their different projects. On Pettit’s account the dominating party is always an agent, rather than a system (Pettit 2000, 52), and domination is always a matter of degree; it can be more or less pronounced, and it can affect some aspects of an agent’s life but not others. Because domination encapsulates the capacity and threat for interference, Pettit believes that the existence of domination will tend to be common knowledge between agents (i.e., there will always be awareness of who has the upper hand, except for instances of secret manipulations). Young places much greater emphasis on the differences in knowledge that dominating and dominated agents will have, including the differences in their perspectives about the nature of the domination that obtains among them.

Pettit focuses on developing non-domination as a conception of freedom, and not social justice more broadly. In this sense he does not refer to structural inequalities that may precipitate domination as themselves ‘perpetrating’ domination – whereas, for Young “domination consists in institutional conditions...” (Pettit 2000, 52; Young 2000, 156). Nevertheless, for Pettit, as well, non-domination is conceptually closely tied to the ideal of structural equality – since, by definition, non-domination is maximized when people enjoy it with equal intensity, and for each person it is a function of the relative powers of others (Pettit 2000, 114).
Pettit explicitly states that non-domination refers to the freedom of both individual and collective agents, and so his account does capture domination between groups as the sort of failing that institutions of justice must be concerned to eliminate. However, collective agents are not theorized separately in his theory. Rather, these agents are relevant for Pettit in so much as they engender the communitarian character of non-domination. By the latter he means that non-domination “can be realized for one person only so far as it is realized for others in the vulnerability classes to which that person belongs: thus a woman can be fully free in this sense only insofar as womanhood is not a badge of vulnerability, only insofar as all women are free (ibid. 275).” While this is certainly consistent with Young’s views, concern for domination between classes and groups is much more prominent in her work. Her relational social ontology offers a richer account of how structures of domination track relations of similarity and distinctness, as well as how group differentiation can itself be emergent from domination.

Finally, the most pronounced difference between Young’s and Pettit’s approaches to non-domination is in how they conceptualize its connection to democracy. Petit makes it clear that democracy is not itself a bedrock value in a theory of government centered on non-domination. “Democratic participation may be essential to the republic, but that is because it is necessary for the enjoyment of freedom as non-domination, not because of its independent attractions” (ibid. 8). The vision of democracy he outlines is inclusive and deliberative; however, the centerpiece of this vision is contestation and opportunity to challenge established rules at different levels. “[T]he point is to create a testing environment of selection for the laws, rather than to have laws that are consensually designed” (ibid. 278). Young, on the other hand, suggests that there is a very tight normative connection between democracy and justice;
democratic inclusion is an independently valuable bedrock principle. Positing domination as the
mirror opposite of self-determination, Young reinterprets the institutional requirement to
preserve non-domination for everyone in a deeper way than Pettit: “to arrive at a concept of
self-determination, I add an element that Pettit does not emphasize, namely participation in
making the collective regulations designed to prevent domination. Democracy in that respect is
entailed by self-determination” (Young 2000, 33).

Pettit is interested in non-domination as a regulative ideal, as the basis for a full-fledged
republican theory of government. In this context he takes care to emphasize that non-
domination should be thought of as a good that the state should work to maximize, as opposed
to a mere principle of constraint in how the state goes about pursuing other goals (Pettit 2000,
97-99).

Because principles of legitimate political authority are widely perceived as having
constraining rather than mandating function, the suggestion to recast non-domination as a
normative legitimacy criterion may seem at odds with Pettit’s theoretical project. However, I
am not interested in contesting the status that Pettit accords non-domination as an ideal.
Rather, I am interested in non-domination as a moral intuition about political authority that
political ideals have to align with. The reason for this is that cast as an ideal, non-domination can
be treated as just one answer to what it means to be free. This can make the appeal to non-
domination less compelling in a pluralistic society. What I would like to emphasize, however, is
that (especially in a pluralistic society) non-domination has a more fundamental role. Non-
domination speaks not just to the best uses of power, but to the very (im)permissibility of
certain power relations. Specifically, the work that I want non-domination to do is to furnish the
reasoning for why oppressive socialization is of fundamental concern for any legitimate political authority, without recourse to specific substantive values or versions of contestable justice claims.

First, by its very definition, non-domination distinguishes between appropriate and inappropriate relations of power. The emphasis on rejecting arbitrariness is crucial – what is objectionable is not interference as such, but arbitrary interference or living in the constant fear thereof. And it is objectionable because the dominating party may at its pleasure interfere with the situation of the dominated without having to track their interests and concerns, and/or without tracking their interests “according to their own judgments” (ibid.55). Thus the emphasis in conceptualizing non-domination is an emphasis on the moral justification of power, including an element of mutual understanding between the parties as to what constitutes such justification.

Second, and perhaps most instructive, is that Pettit speaks of non-domination as linked to the status of persons. Specifically, to be treated as a person is to be treated as a voice that cannot be ignored without independent justification. Pettit describes the situation of those subjected to domination in very strong terms: “[I]n the absence of such freedom [as non-domination] they will be the strategy-bound, subordinate sorts of creatures who cannot expect to be treated properly as persons” (ibid. 92). In his discussion of this link to status Pettit tries to make the case that non-domination is a primary good in the Rawlsian sense, i.e. a good that everyone in a pluralistic society has reason to value, no matter what sort of life they wish to pursue (ibid. 90-91). But if we take the admonishment about the worst kind of subordination
seriously, then it seems that non-domination is inextricably linked to the most primary good, the fundamental moral good of being recognized as a moral agent of equal worth.

Third, immediately following this Pettit argues that non-domination is something that individuals cannot pursue adequately by private efforts (presumably because they cannot ensure reciprocity of power). This is one of the reasons why non-domination is a properly political concern.

Lastly, both in Pettit and in Young, non-domination is “institutionally constituted, not caused” (ibid. 106). In other words, it is not the case that proper political institutions are designed and when they operate they cause relations of non-domination to materialize. Rather, power relations shift the moment that the right institutions come into being: “to enjoy such non-domination, after all, is just to be in a position where no one can interfere arbitrarily in your affairs, and you are in that position from the moment that the institutions are in place” (ibid. 107).

Taken together, these aspects of non-domination suggest that it is the sort of criterion that any proper evaluation of legitimacy must take into account. Linking non-domination to moral status makes it difficult to reject the value of non-domination for others without rejecting it also for oneself, or without making a straightforwardly immoral claim. The second and third aspect above, especially, amount to the implication that non-domination is a basic requirement of any morally legitimate political order. Since domination is a pervasive aspect of social life, it seems morally imperative that political institutions should both a.) not exemplify it themselves and b.) whatever other principles and values they enshrine, they should at the very least exercise their own coercive power over individuals and groups in ways which enable their
resistance to domination. A morally justified political authority cannot be indifferent to the equal moral status of those whom it represents, and to the extent that non-domination captures that requirement government policies must be constrained by it.

Cast in this way, as a thesis about political legitimacy, non-domination is a principle which all groups in a pluralistic society have reason to value, whatever their convictions about the nature of freedom. Minority groups in particular will have an obvious interest in maintaining it, as it explains why they should not be held to ideals that they reject, and why doing so is not only an injustice but a systemic failure of the sort that erodes the legitimacy of institutions. I will return to the discussion of groups and legitimacy after I have explored some of the more basic questions about non-domination’s role outside of Pettit’s and Young’s theories.

*Making room for non-domination in the question of political legitimacy*

In the introduction I defined the non-domination principle of legitimacy as the principle whereby a political authority derives legitimacy from the degree to which its political institutions are configured to, and work to, promote relations of non-domination among its individual and collective subjects. Before outlining how a particular *conception* of non-domination (eg. Hayward’s) fills out the content of this principle I will outline broader reasons why a *concept* of non-domination has a place in theorizing political legitimacy. In the cognitive sense, non-domination is a relational concept that refers to absence of relations of domination. For my purposes I will discuss non-domination in the normative sense, as containing the view that perpetuating a subordinate social status for agents is prima facie wrong. The two main contenders for a conception of non-domination are Pettit’s, which identifies non-domination as
a state of freedom from *arbitrary* interference and from the threat of arbitrary interference by another agent, and Hayward’s, which identifies non-domination with the state of power relations in which all are socially enabled to affect the terms of those relations. Both of these articulations reject a certain type of asymmetrical power relation between agents that leaves some more vulnerable to others, hence my generalization about the overarching notion entailed in both.

In a very basic sense, the concept of non-domination is already entailed in the philosophical question of how political power is legitimated. This is by virtue of the question’s assumption that control of one specific agent by another specific agent always begs justification given that human beings are morally equal and there is no ‘natural’ basis for one person ruling another. Yet despite being implicit in the question, the imperative of non-domination has not been central to theories of political authority. This is to a great extent because concern with subordination has been displaced by concern with coercion by another feature of the legitimacy problem. What characterizes political power specifically is its monopoly on the right to coerce people to do or not to do certain things. Understandably, this characteristic sets the bar of justification of political power very high. What it also does however is to frame the philosophical question in terms of what can justify the coercion of individual agents, and not on the broader problem of subordination.

In his landmark paper “In Defense of Anarchism” Robert Paul Wolff famously claimed that the “fundamental problem of political philosophy [is] how to make the moral autonomy of the individual ... compatible with the legitimate authority of the state” (Wolff 1976, vii). The problem is fundamental insofar as most contemporary political thought assumes (or at the least
does not deny) that coercion is *prima facie* wrong. We can only justify coercion if we are forcing people to do things that they have a duty to do, or forebear from doing, as a matter of justice. This standard assumption seems incompatible with legitimate *political* authority because any adequate account of such authority would have to ground the duty of the subject to obey not only in the content of the rules or commands issued (their moral correctness or justice) but in the nature of the source issuing them. If this is not the case, we can explain moral obligations but not political obligations, understood as *prima facie* obligations which require us to comply simply because they were issued by a legitimate political authority.

Several decades later, Jonathan Wolff has offered a useful overview of central themes and common difficulties in theories of legitimate political authority and the duty to obey it. He identifies three types of grounds for political obligation invoked in such theories: *rational* grounds, where a condition of the legitimacy of an arrangement is that it furthers the interests of those affected; *reciprocal* grounds, which make appeal to the idea of contributing one’s fair share to the provision of public goods generated by political authority; and what he calls ‘*reasonable*’ grounds, where a scheme is legitimate if it fulfills the requirements of justice beyond the requirements of the above two grounds (Wolff 2000, 180-181). (I will refer to this last category as justice grounds for clarity). According to these approaches we have three broad types of political obligation theories: “being compelled to obey the law is to our mutual advantage; or it is required by some notion of reciprocity; or required by a concern for justice” (ibid. 182).

Importantly, however, these different theories follow a similar set of assumptions about the nature of the political obligation problem, and about what is required from a theory if it is to
generate a satisfactory account of political legitimacy. Wolff suggests that the structure of standard (liberal) theories is as follows. First, there is an underlying assumption about the burden of proof. The task and the endgame of a theory of political obligation is to refute the philosophical anarchist. This assumption has a powerful, structuring effect, so that broader questions about the morality of political power tend to fall by the wayside. Moreover, this is not necessarily productive, for as Wolff eloquently puts it, “the defender of political obligations is being set a task the philosophical anarchist refuses – the task of providing conclusive positive arguments for the view, perhaps even a ‘knock-down’ deductive argument from unquestioned premises. But it is unrealistic to suppose that any position in moral or political philosophy could meet such a burden (ibid. 183). The rest of the main assumptions follow in this vein. Secondly, these theories assume that there must be one singular principle of justification for our duty to obey the law (ibid. 182). Third is an assumption driven by the fixed domain of state authority, which is that the political legitimacy of the state must imply universality of political obligation for everyone within that domain (ibid). And last, but not least, is what Wolff calls the uniformity assumption – e.g. that in addition to applying to everyone, the political obligation must also apply equally strongly and in the same fashion (ibid). As Wolff points out, this boxes theories of political legitimacy into a tight corner so that “together these assumptions have the effect of forcing the theorist of political obligation to adopt a greatly over-simplified, and implausible, view” (ibid.183).8

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8 In his own approach Wolff rejects the notion that each of these assumptions is necessary for a plausible theory of legitimate political authority. He advances the view that philosophers must accept that there is no single ‘key’ premise that unlocks a single decisive principle of legitimacy, but that in fact there are multiple justifications at work in overlapping reasons for political obligation. Since the modern state is not
This account of the challenges of the typical structure of political obligation debates makes room for the case that different models of political legitimacy can be explored, and more importantly, that in principle a plausible approach to legitimacy can and probably should incorporate a complex of mutually supporting principles. This aligns with my position, which is that non-domination is a principle at work alongside justice considerations and need not displace or prove itself to be ‘the’ solution along the impracticable standard of the four major assumptions. Instead, whatever specific model of a theory is advanced, non-domination bolsters all the usual types of moral justification for political authority.

If we take a step back from theory-tailored definitions and consider it at the conceptual level, we can find that both in its philosophical and its actual political use, political legitimacy is broadly taken to signify a condition of acceptance of political authority other than that derived from force and compulsion. Although any de facto political authority must have some means of enforcement, if the only reason we comply with an authority is because its sheer might compels us, then this authority is not legitimate in any sense – it is simply and literally ‘in power’. The acceptance of political authority which legitimacy speaks to is thus something qualitatively different from being overpowered; i.e., it is something grounded in the existence of normative

a one-dimensional monolith, it may be the case that there are different functions of political power which might be open to different justifications. For instance, the moral justification of political power could entail a classical appeal to rational self-interest in that the state provides protections of basic rights, at the same time as an appeal to fairness and reciprocity in that it also supplies universally consumed public goods. The weightiest type of justification is that related to the state’s function in providing measures of justice, which comes closest to fulfilling the universality and uniformity criteria (Wolff 2000, 190-191). One result of this ‘plurality model’ is that we have to consider that there is some variability in the level and type of political obligation among citizens depending on their relation to functions of the state. Yet, Wolff suggests that this should not lead us to jump to the frightening conclusion that some citizens will have no duty to ever obey the law, since there may be independent applicable arguments for compliance (ibid. 193-194).
reasons for the authority which moral agents can recognize, and which these agents are due as moral subjects and not just its objects. Though coercion may sometimes be warranted on moral grounds, the notion of legitimacy speaks to the strength of those moral grounds, rather than to the success or failure of the coercion itself. This widely shared feature of the normative sense of political legitimacy is captured by the notion of non-domination.

Non-domination may appear as an odd notion in the context of legitimacy in two ways. First, it may seem that non-coercion, rather than non-domination, is the minimum condition of moral acceptability which the normative sense of legitimacy denotes. It is not coercion per se, however, that legitimacy excludes (since coercion may be justified in preventing serious moral wrongs). Instead, legitimacy excludes the overpowering of some by others without moral reason, the sense that subordination in and of itself does not give rise to moral claim. However, there are means of overpowering which are not strictly coercive, (e.g. exploitation) and yet far from morally justifiable. In this sense non-domination reflects more appropriately the power relation of agents which a normative account of legitimate political authority implies.

Furthermore, non-domination is a more dynamic concept, which speaks to structural conditions entailed in political authority, rather than to singular events of forceful interference, as non-coercion does. Though these advantages can be debated, at the very least it can be said that non-domination is highly relevant to evaluations of the moral legitimacy of political authority. At the very least, any account of legitimacy that does not militate against domination is clearly deficient.

An important distinction to be made is that non-domination entails the view that there is a moral wrong in the perpetuation of subordinate social status, rather than the more general
idea that being subjected to any kind of power is wrong. Some thinkers conceptualize power in such a way that its meaning already contains negative evaluative connotations. (I discuss this in the coming chapter.) But in many cases it is recognized that social constraints are necessary and can be enabling, and so the presence of power is neither avoidable nor automatically bad.

People are subjected to other agents or to rules in a variety of circumstances in human society that are not morally objectionable. (And there are also instances of subjection that are objectionable but that are not generalizable phenomena). The problem for non-domination is the structuring of power relations in ways that designate subordinate social positions, rather than the fact that an individual could potentially find himself dominated in various social circumstances (say, by a boss or by a nasty mother in law). (In terms of the specific conceptions mentioned above, this is more clear in Hayward, because she focuses on non-domination as political freedom, whereas Pettit’s freedom as non-domination is broader and so the dominating mother in law is a problem, but just not the kind that public institutions could solve).

As mentioned above, political power is defined as the power of those social organizations that have monopoly on the right to exercise coercion within a given domain (usually but not necessarily a territorial one). Of course, there are many entities that have great social power (such as corporations, media, or religious institutions). The main questions to answer, then, are: what sort of entities can wield political power legitimately? Furthermore, how can the wielding of coercive power be in principle consistent with a rejection of domination? Would political power itself not constitute a form of domination?

One way in which Pettit deals with the potential problem of the state as dominator is by distinguishing between imperium and dominium. On this distinction, imperium pertains
essentially to jurisdiction, a kind of delimited power to command with a presumed purpose, whereas *dominium* entails a right akin to ownership where control can be exercised arbitrarily (Pettit 2000, 36, 171-183). In Pettit’s own work this distinction is not about two kinds of power, but essentially two kinds of power-holders – one public, such as the state, and one private. Importantly, the ideal of non-domination applies to both the site of imperium and the site of dominium. However, “while the state may – indeed, must – use its imperium to combat the domination that can arise from particular configurations of private dominium, this use of state power has to be limited and controlled, lest imperium itself become a source of domination, subjecting citizens to an arbitrary power of interference on the part of the government rather than each other” (Markell 2008, 24). With this distinction, Pettit goes beyond designating non-domination as a central good that states should promote because it is the best account of freedom among competing accounts. He is actually designating non-domination as constitutive of the legitimacy of the state, because an imperium that has become a source of domination has essentially lost its morally distinctive feature and become assimilated to one kind of private domination.9

9 The fact that non-domination has taken on this role becomes clearer if we apply Pettit’s distinction to the analysis of failed states. A state is generally thought to have ‘failed’ if its institutions have become dysfunctional to the extent that its overall ability to uphold the rule of law has collapsed. Since there is no such thing as a power vacuum, even where there is a law vacuum, societal life becomes the site of the dominium of the powerful agents and entities that remain (e.g. Somalia, Afghanistan). Similarly, and more interestingly, we could and should also think of deeply corrupt or tyrannical states as failed states. These are states in which public institutions still function with public funding, but not to public ends. The form of this problem can vary. In one instance we have the rule of law being upheld with great efficiency by dictatorial regimes, despite the law itself being arbitrary or unjust (former Soviet Bloc, Saudi Arabia, Iran, North Korea). In the other instance we have the rule of law being de facto absent or waning in deeply corrupt states, even if a good deal of seemingly just laws (e.g. relatively reasonable and ‘decent’) exist on the books (the majority of Eastern European states, Mexico). And in some instances the problem oscillates between these two forms (Russian Federation, Pakistan, South Africa). In all of these scenarios, however,
On all accounts, in fact, the subjects of political legitimacy are public entities that make and enforce laws, and not just any social actor who might have aspirations to become powerful in political life. For any legitimacy theory, it is not the case that whoever succeeds to impose a monopoly on coercion in a given domain becomes the political power (though sadly that is historically the genesis of most actual political institutions, and the source of concern about the legitimacy of political authority vis-à-vis groups). Rather, all theorists assume that the moral right to exercise such power attaches only to a certain kind of authoritative entity. The point of political power is not just to establish a singular source of rules and edicts. The point is to bring about the rule of law by setting boundaries to the social power of various actors so that social affairs are governed by principle and not by force. If we accept this characterization, however, there is no reason to confine our understanding of legitimacy to the framework of moral justification for coercion, since coercion itself is only a functional aspect of political power. Its morally distinctive feature is its regulation of other social power. The advantage of non-domination is that it refers us back to this feature and reminds us that subordination, above and

the failure of the state consists in the sweeping and overt usurpation of public institutions by private ideologies and/or interests. As Markell points out, using Pettit’s terms, the imperium itself becomes a source of domination “subjecting citizens to an arbitrary power of interference on the part of the government rather than each other” (Markell 2008, 24). Thus, to reiterate, although Pettit advances non-domination as a theory of freedom, it becomes apparent in the case of failed states that it is not just the freedom of their citizens that is in question but the legitimacy of their actual political authorities. That freedom and legitimacy do not just happen to be coterminous here becomes clear on the intuitive level when we recognize the difference between a legitimate state’s failure to advance its citizens’ freedom in the face of overwhelming pressure from social powers within and without (e.g. states forced to make certain economic treaties or bailouts), and a state’s failure to exemplify legitimate political authority in the first place (puppet states). Of course, no ‘successful’ state is entirely free from corruption and no failed state is entirely devoid of good intentions. But this does not work against non-domination as a legitimacy principle – on the contrary, the example highlights another of its strengths, which is the possibility of speaking about legitimacy as a matter of degrees, based in turn on the differentiation of domains of domination.
beyond coercion, is also paradigmatic of illegitimacy. Curtailing the patterns of domination that social power produces is thus properly within the remit of a morally legitimate political authority.

**Non-domination and democratic legitimation**

In the introductory chapter I indicated that non-domination both demands and checks a democratic embodiment of political power. The central concerns of democrats are whether collective decision-making is characterized at minimum by the inclusion of all affected and by the formal equality of all participants. Democratic principles demand that material and status inequalities and their effects be suspended from the process of political deliberation itself as much as possible, in order to create a space where persons and groups can interact as moral equals. Hearing all voices and giving them equal consideration can only occur if the political forum has mechanisms to counteract the power disparities outside that forum. One question that naturally arises is whether a democratic theory of legitimacy does not already cover the same concerns that non-domination represents, thus making a non-domination principle redundant. This is especially important to my overall argument because, as I suggested in the previous chapter, it is important to advance an approach to group accommodation that does not replicate the same foundational issues as the juridical and dialogical approaches. To this end I suggested that non-domination is in fact, a more foundational precept than the principle of democratic self-determination. A host of reasons for this (which are explained in the coming chapters) are derived from issues surrounding theorizing normative judgment of power. However, here I want to take the example of one prominent argument for democratic
legitimacy – Allen Buchanan’s – where the logic of non-domination is propelling, and not just following along, democratic prescriptions.

Some theorists have an instrumental view of democracy. On that view, democracy may be the best way to achieve political legitimacy, but since democratic outcomes may not always be consistent with justice or the protection of freedom (especially for minorities), it is not the case that democratic decision-making is *definitive* of political legitimacy (Raz 1995). On the other end of the spectrum, however, are those who hold that democratic institutions are the only ones that can have political authority. The reason for this is that the right to rule can only be generated through those who are ruled. Those who hold a non-instrumental view of democracy see it as an extension of treating persons with respect. This comes from the egalitarian idea that a) social cooperation should be organized in a way that serves the interests of all members of society equally, or alternatively, b) that laws and policies should be grounded in public justifications that everyone can reasonably accept (Christiano 2006). If the morally legitimate political authority is meant to be an authority which exercises coercive power in the manner necessary to preserve or restore equal respect, then this must be power that is wielded democratically.

At this point it is clear that the premises of the egalitarian democrat resemble those of the non-domination advocate, and so we might wonder whether their ideals are not coextensive. To not be dominated would imply that one enjoys as much self-rule as anyone else does (even if not necessarily as many opportunities and resources). And democracy is identified with the view that citizens can be free and ruled at the same time by ruling themselves. The first egalitarian idea, which suggests that the interests of all members of society should be served
equally, corresponds to the idea that subordinating the interests of some classes of people to those of others is wrong. The second egalitarian idea which requires a process of public justification corresponds to the idea that imposing laws which a minority group could quite reasonably disagree with fails to treat the holders of the minority view as equals. In order to disentangle democracy and non-domination and get at the meaning of these parallels it is necessary to look at a more specific line of reasoning about the democratic legitimacy of political authority.

Buchanan adopts a particular distinction between political legitimacy and political authority. Political power is legitimate when the entity wielding it is morally justified in doing so. For this to be the case it must do a credible job of protecting basic human rights through processes that respect those rights, and it must not have usurped that function from another legitimate wielder of political power. The entity gains political authority when it has both political legitimacy and has the right to be obeyed by those on whom it imposes rules (Buchanan 2002, 689, 691, 703). On this distinction he develops the argument that only a state that is just and democratic (where this is attainable) is a legitimate political authority. A key aspect of his account is that we should be skeptical of the idea that we can ever have an obligation of compliance to those who impose rules themselves. The right of the governing institutions to be obeyed when they are morally justified in ruling is grounded in duties that persons have to each other. Specifically it is grounded in what Buchanan calls the Robust Natural Duty of Justice – the duty to help ensure that all persons have access to institutions that protect basic human rights (ibid. 703). This duty is established by the precept that all persons are to be accorded equal concern and moral respect, combined with the factual premise that ensuring such equal regard
necessitates just institutions (ibid. 704). Once we acknowledge that we owe such a duty of justice to each other we must also acknowledge that no one has a right not to be coerced to do what the duty requires, or, in other words, that no one has a right to opt out of compliance with justice effecting institutions.

Importantly, however, in Buchanan’s account the duties that we have to each other do not, as such, already establish the requirement for democratic political authority. As Buchanan says, even if in principle we have the duty of justice that requires that we comply with a just state, political legitimacy still has to answer the egalitarian challenge. It must explain why, if we are all fundamentally equal, some sets of individuals have power to enact rules on others (ibid. 710). This is a significant challenge since ordinary citizens are separated from the apparatus of the state through legislators, judges and law enforcers who wield more power in society than others. The only plausible answer to the egalitarian challenge can come from democracy: the asymmetry of power entailed in political institutions is neutralized as a moral concern when people have an equal say in who gets to wield power and what the basic laws are. In this solution the power asymmetry is not denied. “Democracy does not actually achieve equality in political power, but it does take seriously the idea that inequalities in political power are problematic from the standpoint of a commitment to equal consideration of persons by offering an account of how majoritarian processes can contribute to equalizing power over the allocation of inequalities in political power” (ibid. 712). In this way the need for political authority to be democratic becomes linked to our basic mutual duty of justice.

From the perspective of my argument, the most notable aspect of this theory is what it is that democracy solves and what makes it necessary as a counterpart to the justice
requirement for a legitimate political authority. In the first place this is the recognition that inequalities in political power are problematic even where the basic duty of justice might be fulfilled by the imposition of laws that protect basic rights through undemocratic means.

Secondly, the need for democracy follows from the egalitarian challenge which posits that there is a contradiction between equal respect for persons and subordinate status, to the effect that inequality of power begs justification. Both of these reasons reflect the logic of non-domination. If it were conceived within a theory like Buchanan’s, then, non-domination would come from the same premises as the natural duty of justice that obtains between moral equals, and would thus be part of the derivation of the democratic requirement and not just one aspect of democratic procedure.

To return to the main question above, it is true that in many contexts democratic legitimacy and non-domination would entail one another. However, there are some differences. First, the non-domination principle is much more general. It is of the same order as the principles from which the justification of democratic arrangements is derived, and not just an aspect of these arrangements. For example, non-domination can be conceived without reference to a specific institutional arrangement, whereas equal participation in collective decision-making is indispensible to conceptualizing democracy. (Though the conception of non-domination I discuss later – e.g. Hayward’s - focuses on the abilities of agents to affect power relations, this is conceived much more broadly than political participation, concerning social norms and boundaries to action beyond specific public decisions and events). Second, although it is more general, as a principle of legitimacy non-domination is actually more demanding than the legitimacy criteria of the democratic process. Both are interested in ensuring that no one is
being dominated by the political authority itself, which is best guaranteed through robust democratic mechanisms. However, on the non-domination principle, the question is not just whether the public authority is democratically constituted, but also whether it is constituted in a way that promotes non-domination between the socio-historic groups of the state, as well as whether it acts in ways that promote non-domination in social practice (keeping in mind the inherently limited grasp of public institutions). Thus, even though democratic principles are more elaborate, their focus is narrower than non-domination. Whereas the procedural checks and balances of democracy aim to eliminate domination in the construct of the public forum, the non-domination principle makes legitimacy contingent on whether the political authority both instantiates and pursues policies that advance non-domination at the actual site of social power. It is in this sense that non-domination both demands and checks a democratic method.

One could suggest at this point that positing the differences between non-domination and democratic legitimacy in this way overlooks the expansive implications of egalitarian democratic reasoning. If to be respected means to be heard and counted equally in matters that affect us, then it seems that democratization across all spheres of social life is desirable or even necessary. Many democrats argue just that. In the heart of democratization, however, remains the commitment to the democratic method, and extending this to all aspects of civic life risks becoming exceedingly demanding, both in normative and in empirical terms. By way of contrast, non-domination remains different in that it is only committed to the direction of structural change (e.g. towards reducing domination). It does not specify that domination must be reduced via instituting any particular kind of process (or, for that matter, any requirement for egalitarian outcomes).
Non-domination and the legitimacy/justification distinction

The idea that there are legitimacy concerns with actual political authorities that are not accounted for by either justice or democracy is present in the literature on political obligation, and in particular in the prominent work of philosophical anarchist A. John Simmons. In his view arguments about the justice-conferring role of the state, or its benefits, are relevant to what justifies the existence of the state, but not to whether the state has legitimate authority over any specific individual. For Simmons only an actual transaction between the authority and the subject can generate any duties, and only individual consent can generate a duty to obey. His work draws attention to how the political realm mixes up moral reasons for compliance or non-compliance with our relationship to the state as enforcer. Only if the moral quality of this relationship itself is good, can a state be legitimate.

According to Simmons, legitimacy is concerned with the concrete history of the moral relationship between the state and its subjects, beyond the requirement of just treatment in any instance (Simmons 2001). This moral relationship is constituted by the specific interactions and political histories we have with institutions. Thus, in order to assess legitimacy we need to engage in a qualitatively different evaluation from that which applies to other features of the state.

We can say that generic evaluations in political philosophy are grounded in the general moral virtues or other positive qualities of political arrangements (such as their justice or reasonable acceptability) or their moral accomplishments for their subjects conceived as a whole (such as increases in social happiness). What we can call transactional evaluations are grounded in morally significant features of the specific histories of interaction between individual persons and their polities (features such as the giving of consent or the receipt of benefits, along with the subsequent absence of rights-violations) (Simmons 2001, 149).
For Simmons, liberal theories of legitimacy are consistently guilty of the methodological mistake of conflating justification and legitimacy: they provide independently important moral and material reasons for the existence of the state and infer from them a corresponding political authority of its institutions over individual persons, regardless of whether every person in fact endorses them or not. Thus political obligations are often inferred from the assessment that participation in the cooperative schemes of the state is prudent for increasing wealth; or from ‘fair play’ requirements to do our share to contribute to already existing ‘unsolicited’ benefits, such as security; or from our moral duty to aid those in need; or from the state’s role in facilitating justice and virtues. In all such accounts of our political obligations, justification supports the desirability of these ends and the desirability of political arrangements vis-à-vis those ends, but fails to demonstrate that such arrangements automatically acquire their own subjects, or that the extent of our moral obligation to such arrangements is greater than simply not obstructing them. This mistake is especially egregious in Simmons’ view because it fails to explain the coercive power of any particular state over any particular individual. “The establishment of political justice and the enforcement of political rights for willing participants in states neither logically, morally, nor empirically requires mandatory membership (with a member’s rights and duties) for the unwilling” (ibid. 152). The only way to avoid this philosophical inconsistency is to recognize that “[t]he proper grounds for claims of legitimacy concern the transactional components of the specific relationship between individual and institution” (ibid. 155).

It is not possible here to explore the full breadth of Simmons’ reasoning but he effectively limits his understanding of duty-generating transactions only to what is voluntarily
and actually incurred (Wellman and Simmons 2005, 114-120). This position relies strongly on a
Lockean distinction between natural and other moral duties. In the domain of the political, the
moral reasons to obey do not automatically convert to moral requirements – those can only be
incurred through a binding transaction, such as promising, giving consent or soliciting and
actually receiving benefit (Simmons 2001, 18). In other words, the fact that the dictates of
natural duty and of law may often coincide (as in the Samaritan duty to aid a stranger in peril for
example) does not mean that we are obliged to follow what the law requires merely because it
requires it. Philosophical anarchism follows from the fact that there are no existing states in the
world which have the explicit consent of all their subjects, or which can be shown to exert
authority only over those subjects who solicit and receive benefits from institutions.

The concept of consent does crucial work for Simmons’ account of a proper
transactional evaluation. The thrust of his critical position against ‘generic evaluations’ of
legitimacy is in the a priori ethical commitment to voluntariness. The normative (or even
empirical) origins of this commitment, however, are never revealed in his work, and
consequently its limits are not fully articulated. Yet there are several issues related to
voluntarism and consent, which indicate that how we theorize their limits is not trivial to the
legitimacy/justification distinction.

To begin with, Simmons lacks an explanation of what makes consent a clear ground of
obligation (Edmundson 2003, 214). Consent is surely a very appealing source of moral
legitimation because it empowers the individual and speaks to the internalism of moral
motivation. However, to count as a moral transaction, consent must be differentiated from
mere conformism at any given moment. With respect to political membership, it must refer to a
direct expression of will with respect to common endeavours yet to unfold, such as promises, contracts and other assurances of cooperation. If that is the case, it seems that the strength of consent as a ground for obligation rides on the implicit limits to its revisability. As Edmundson explains:

My ‘preference structure’ may change between the time I promised or consented and a later time. Why doesn’t the bond vanish with the change? Granted that there may be reasons to keep promises, why are they required to be kept? If the answer invokes detrimental reliance by the promisee, or an unfair advantage gained by the promisor, or the general utility of regarding promises as binding, then the promise or consent seems to have dropped out as the ground (much less the clear ground) of the requirement, and to have been replaced by a more basic principle of harm or of fairness” (Edmundson 2003, 214, emphases in original).

In other words, a closer examination of how consent gives rise to duty requires us to engage in some kind of ‘generic’ evaluation alongside the transactional. Thus the problem stands for Simmons that the reasons why consent would obligate us to the state may very well be reasons which do not in themselves allow a distinction between moral justification and legitimation grounded in voluntariness.

Drawing on Lockean natural law premises, Simmons argues that moral reasons are compelling in the justification of coercion in specific instances (Simmons 1987, 276-279). Thus the range of respect for voluntariness is limited by ‘natural’ duties (to preserve human life, to keep promises, not to lie, cheat or steal, etc.) – no ‘transaction’ is necessary for these to apply, and if we lack the moral motivation to act in accordance with these duties we can and should be made to comply by others. The enforcement of these duties is presumably legitimate by any capable agent, regardless of whether we’ve ever had any transaction with that specific agent (though a history of transaction would be relevant if there were multiple capable agents). At the
same time, however, natural moral duties cannot be conceived as entirely apolitical. The specific content of natural duties must inevitably be determined vis-à-vis concrete situations, where it is often ambiguous or yields conflicting imperatives - an issue which is bracketed in Simmons work. If the full moral force of our obligation to obey (or even become) the agent of enforcement rests with the correctness of that content, then it becomes essential what mechanism for determining this ‘natural’ content has moral authority, and whether we have *prima facie* obligations to moral authority because of its feature of moral correctness.

The crucial consideration, then, from a perspective of moral commitment to the voluntaristic approach, is at least one step back from where Simmons, and many other theorists, conceive it. It is not what sort of moral agency and voluntary transaction is necessary to bridge the gap between moral reasons and moral requirements in the realm of the political, but rather how can respect for voluntariness be ensured in the first place, and with respect to what duties. Voluntarism, broadly defined as “the privileged position of moral dominion over self-regarding affairs” (Wellman 2005, 18), is not logically consistent with a rejection of negative moral duties. The primary moral transaction that makes voluntarism coherent is the mutual recognition of persons as moral agents of equal moral worth. Negative moral duties (on the equality driven understanding) in effect spell out the most minimal signifiers that such recognition obtains amongst persons. Having these ‘natural’ moral commitments as duties cannot be a transgression of my position of moral dominion when it is also a testament that I have such dominion to speak of. Thus the mutual recognition of equal moral worth is not primary in the sense that it is non-consensual, but in the sense that it is pre-consensual. It is where the conversation about transactional evaluations has to start.
Our reasoning about moral recognition and moral duties cannot be conceived against an abstract baseline of perfect absence of coercion. Even if I could opt out of submission to political authority, I could not opt out of being in relationships of power, which permeate human society. Any account of our relationship with political authority must take into account the conditions of domination to which individuals are vulnerable. Considering the fact that we are always subject to multiple forms of ‘might’, it is especially pressing to pay attention to those kinds of domination that must be excluded from the articulation of ‘right’. To ensure that I am accorded equal moral respect can mean multiple things, but at the very least it means to treat me as a subject of justice, who must be treated in accordance with moral principles rather than whim, and to whom these moral principles apply with equal and reciprocal weight. In essence, it requires a principled commitment to submit your relationship to me to the rule of appropriate laws, rather than force or chance. Or in other words, it requires a mutual recognition that a standard of justice applies to our encounters, at the background of any other forms of relationships we take part in. Without such a commitment, it is not clear that I can have privileged moral dominion over self-regarding affairs.

However, the legitimation of the rule of law as such is not synonymous with the legitimation of specific institutions. Since legitimacy would imply a prima facie duty to obey the law, the transactional components of the specific relationship between individual and institution can be re-interpreted in two different contexts, determined by the power relations at stake. In the first instance, vis-à-vis our peers, we may wonder whether we have a general duty to submit to a rule of law as a matter of principle. In the second instance, we may wonder whether we have a duty to submit to a historically specific system of laws and institutions which is trying to
make a claim on us, acknowledging that it is not enough to simply assert that those institutions are in principle justifiable. Factoring domination into our account of political authority here requires that we engage in transactional evaluations that can reveal the power lineage of those institutions and determine whether they actually advance moral recognition.

In the first context of prima facie duty to the rule of law, the distinction between legitimacy and justification is cogent, but does not appear as decisive as Simmons claims, when we factor in that in this instance the moral commitment to voluntarism is itself presumptive of a certain kind of authority amongst individuals, which requires only justification. The ‘transactional components’ in this instance are between persons, and the transaction is one of mutual recognition of equal moral worth. Thus, Simmons seems to be correct to insist that ultimately it is the transactional components related to voluntary agency that matter for the legitimation of political obligations; but he does not present a compelling reason to privilege those transactions which exercise voluntarism (i.e. consent) over the preceding moral transactions which establish a commitment to it (i.e. recognition). The distinction does pan out in the second instance, when the authority of specific institutions of the rule of law is at stake, even though by this point Simmons’ anarchist conclusion has been rejected in the sense that the prima facie force of political obligation towards just institutions is reasserted. What the distinction does instead, however, is establish that the particular moral histories of different groups vis-à-vis the state matter.

If explicit consent is not the only plausible legitimating transaction, the morally significant features of specific histories of interaction can only emerge when these histories are understood in relation to each other. In the case of individuals it makes more sense to make this
transactional evaluation on the basis of the specific history of the laws which uphold moral
equality and their application to *diverse identities*, rather than to the life of every individual. The
main reason for this is that where the relationship between specific individuals and their states
has ‘soured’ to the point of de-legitimation it has usually been for two reasons – either due to
the random failure of institutions to protect specific individuals through weakness (such as lack
of resources), incompetence (through lack of experience) or accident, giving rise only to the
argument that better (more efficient, more rigorous, more vigilant) institutions are necessary; or
due to intentional or neglectful discrimination (in their laws and policies) and structural injustice
(in the institutional design itself). In the latter case, however, such maltreatment occurs for
classes of individuals under a common denominator, and only very exceptionally against one
select individual. If we ask ourselves what are the circumstances under which institutions fail to
provide for equal protection under the law, it is difficult to describe such circumstances other
than of the individual being denied precisely because of their membership in a group or because
of a characteristic of their identity. In my view this constitutes a strong reason why Simmons’
emphasis on the transactional evaluation of relationships to the state rings more true for the
group level of analysis of legitimacy than for individuals, as he intended. I turn to this in more
detail in the next section.

**Non-domination’s contribution – legitimate political authority and groups**

The constitutional principles of most modern democratic states presume a universal and
unmediated relationship between individual citizens and the institutions of sovereignty and rule
of law. Robert Paul Wolff’s claim about the incompatibility of individual autonomy with the
legitimate authority of the state must be taken seriously (Wolff 1976, vii). At the same time, most active challenges to state authority which are couched in legitimacy terms are made by groups who see themselves as wronged or disadvantaged by the state’s form and practices, rather than by the lone anarchist who questions the moral grounding of political authority in general. This is true of a variety of cases – for example, of indigenous peoples who dispute the colonizer state’s right to rule them; of minority nationalists, who challenge the authority of states dominated by a different ethnic or national group over them; and of some religious communities, who perceive the modern state to be animated by a conception of the good which they don’t share, and who reject the political authority of the states they live in on this ground. In this sense, while both individual persons and groups can question the legitimate authority of the state, political challenges against it emerge mostly from groups. And while both can question the justice or fairness of particular policies towards them, it seems that often what lies at the heart of legitimacy challenges by groups is the view that the state’s authority embodies the systemic domination of some over others.

This leaves us with a significant gap. On the one hand, individuals are the most vulnerable moral subjects over whom political power is exercised, and thus arguably the most demanding of justification. On the other hand, a purely individualist, universalist understanding of the legitimacy question evokes answers rooted in generic principles rather than contextual considerations. Unsurprisingly, these answers do not translate readily into explanations of which persons have obligations toward which reasonably just political authorities. Despite their richness, political legitimacy theories are largely ahistorical. Thus, their individualist terms of
moral legitimation cannot easily accommodate the types of reasons that distinct groups cite for why certain authorities are illegitimate with regards to them specifically.

Political theorists who aim to assess the legitimacy of particular political units over particular peoples or territories inevitably struggle with this theoretical gap. Their models are often derivative of assessments of whether the conditions which justify authority over individuals, generally and abstractly speaking, are met for the group members in question: i.e., whether certain benefits have been provided, or whether there is tacit or direct consent to be governed, whether fulfillment of natural duties is achieved, or whether there are other associative obligations which prop up the political obligation. The histories of groups with specific institutions and with other groups are interpreted as evidence of the extent to which these conditions are met vis-à-vis individual members (for example, Hendrix 2008). In such cases, only those aspects of group histories that are convertible to the individualist criteria actually come to matter, even when actual claims are not driven by those aspects.

One example of the non-reducible nature of the group context of legitimation, can be found in Jeff Spinner-Halev’s analysis of what he terms ‘enduring injustice’ (Spinner-Halev 2007). Enduring injustice is a historical injustice (such as genocide, enslavement, displacement, forced assimilation and other forms of oppression, etc.) the direct harms of which continue to unfold in the present. Spinner-Halev argues that the solutions to such injustices offered by liberal theories of justice are insufficient, in that they focus on the allocation of responsibility and redistribution of resources, but fail to take history into account in the way that matters to the collective narrative and collective memory of the victims of the descendants (Spinner-Halev 2007, 576).
Spinner-Halev identifies at least two major difficulties with addressing enduring injustice on par with current injustices. The first is that the harms involved are not possible to compensate for in purely material terms, such as when the loss of sacred objects and spaces, disruption of family attachments or exile from homelands are involved. The second and related difficulty is the problem of mistrust:

Collective memory (and so history) matters here because justifiable mistrust is not the consequence of one or two mistakes by a government – random mistakes are to be expected – but are a result of repeated mistreatments over time of members of the same group. The history and memory of the enduring injustice fuel the current mistrust. (Spinner-Halev 2007, 585)

Since repeated mistreatments occur and generate mistrust in vastly different political systems, it seems from Spinner-Halev’s own further analysis that the mistrust he describes is rooted in the experience of subjugation through exclusion from political authority, and not just in the failure of one or other ideological practice. In his conclusions, for example, he suggests that if enduring injustice is to be addressed despite the historical continuity of guilty institutions, what governments ought to strive to show is “that they are very much not like their predecessors” (Spinner-Halev 2007, 586, emphasis in original). This means that they ought to do more than tally up the economic benefits and losses from the injustice. To repair trust they need to make the political changes necessary to restore inclusion of the group into the “basic model of political responsibility: that members of a political community have a responsibility toward one another to live in conditions of justice (or at least decency)” (ibid. 588). Thus, in my view, the problem ‘beyond’ justice which Spinner-Halev alludes to is essentially a problem of legitimacy, and the difficult features of cases of enduring injustice which he describes are those which require us to take into account domination.
It is a widely held view that systemic oppression and targeted aggression in the memorable past fail the agent-justification of political authority of the guilty institutions. When acts of violence and/or oppression have been perpetrated on a distinct minority group by existing political institutions, even after the perpetration has ceased and these same institutions have transitioned to a more just system of laws and equitable treatment, the moral quality of the relationship of the minority to the state is seriously compromised and its legitimacy is said to be lacking. Because as agents these institutions embed the domination of some identities over others, legitimacy requires more than reverting to a just arrangement in a moment of sweeping reform (as crucial as such a moment is in itself). Rather, we are more inclined to accord legitimacy where a political commitment and a political process over time have extinguished the source of the power of some entities or groups resting in any subjugation or moral inferiority of others.

Both individuals and groups are always located in a matrix of relationships of power – there is no starting point of apolitical idyll for persons. The question of the political authority of institutions is never whether power will be exercised, and whether persons and groups can be subject to no power at all, but only what the configuration of power relations will look like within groups, between groups and between the various forms of overlap of these contexts. In this sense, when we are urged to take into account the “morally significant features of the specific histories of interaction between individual persons and their polities” we would be betraying the task if we reduce these histories only to the formal paper trail of consent and benefit which Simmons isolates as morally significant. Surely, the same reasons which make specific histories of interaction relevant - that they help us determine what exemplifies respect
for moral dominion and agency and what doesn’t - also suggest that the moral significance of their features is very much determined by how they are immersed in, rather than abstracted from, contexts of power. It is not a far stretch then, to say that although individuals are personally affected by the rule of law and personally effect it, they do not have *personal histories* with its institutions as they might have with, for instance, families, clubs or workplaces (i.e. histories defined around their personal development). The relationship of individuals to the rule of law is rather constitutive of its history vis-à-vis identities, memberships, and types of acts. It is thus with respect to the morally significant features of the specific histories of interaction between *groups* and their polities that the distinction between justification and legitimacy most appropriately applies.

This logic of legitimacy is expressed by the types of minority challenges to the state referred to earlier. The assimilation of indigenous peoples to the status of equal citizens in the heir state of colonizing forces does not in itself confer any legitimacy to its political authority over them. Though for members of indigenous groups there might be independently sound prudential and moral reasons to comply with fair policies and just basic laws, the history of violence against their identity, along with ongoing inequalities and structural disadvantages, do not make their current states the sort of entities that secure the benefits of recognition and rule of law for them. Only when they are equal participants in the reconstitution of the political authority itself, can we speak of the kind of mutual recognition that can accrue a history of non-domination, and eventually legitimacy. Ethnocultural minorities are sometimes in similar circumstances by virtue of the nation-building policies of the majority, or by virtue of badly drawn borders or long-standing animosity. A string of controversial justice claims usually
attaches to the history of such relationships between communities. But independently of those claims, the unilateral rule of one side by the other is symbolically and morally injurious in such cases, even if such rule were in fact executed equitably and maximized the welfare of the excluded party. And in the case of fundamentalist religious minorities, there are some goods (such as the supremacy of ‘God’s law’) which are perceived to be incompatible with a secular democratic political authority. While the secular democratic form of government has been defended by many as the least oppressive one available, the legitimacy of such states would still be undermined if such groups were denied any accommodation of their identity or suppressed. In all of these examples legitimacy vis-à-vis groups is contextually determined and a matter of degree.

**Conclusion**

In the first section of the chapter I outlined the ways in which room for legitimacy can be found in Pettit’s and Young’s conceptualizations of non-domination, before turning to the reverse consideration and exploring how room for non-domination can be found in traditional liberal legitimacy theories. I put forward the case that despite non-domination’s association with an ideal of freedom it is a concept that is both suitable and necessary to any theory of the morally legitimate authority of the state. Debates about political authority and political obligation have focused on various justifications for the coercion of individuals entailed in political power. While this emphasis is warranted, it is not sufficient, and has not always been fruitful for political theory. Introducing non-domination to these questions produces the analytical advantage of
allowing us to factor the problem of subordination and structural injustice back in, as well as to expand the discussion about the moral ends of legitimate political power. As I emphasized, non-domination does not negate or substitute other types of principles of legitimacy. Instead, it supplements traditional arguments from mutual duties and justice with an argument from the moral imperative of curtailing the patterns of domination that social power produces. Importantly, while non-domination demands that political authority be constituted democratically, it is not a by-product or an aspect of democratic institutions. As it is conceived here, non-domination is both more foundational and in a certain sense more demanding of a legitimate political authority than democratic requirements.

Another analytical advantage of non-domination is that it helps overcome the incompatibility of the individualistic terms of justification with the collective nature of the ‘particularity problem’ in political life. In modern states moral legitimation of political authority is due both to individuals and to socio-historic groups on commensurable terms. Theorizing legitimacy vis-à-vis groups as reducible to legitimacy vis-à-vis individuals does not adequately address this problem. Instead, I suggested that we should focus on the non-domination requirement inherent in the concept of legitimacy, and ask how it can be fulfilled in these two distinct contexts. Since domination pertains to both individuals and groups it allows us to speak about these dimensions of legitimacy in commensurable terms. Moreover, it is a minimalist and inter-culturally appealing notion, which nevertheless has considerable critical and normative implications.

Following this I focused on A. John Simmons’ account of the distinction between justification and legitimacy, and attempted to show how it can be useful in developing such an
approach. When the group context is added to the individual-state dynamic from which Simmons’ distinction is drawn, we can see that it yields two analytical advantages. First, it allows us to differentiate claims that the laws of a given political system are unjust from claims that they embody domination of some over others. Second, if it is claimed that institutions embody domination, the distinction allows us to ask whether these institutions can be reformed by political actors to set the history of moral interaction on a different course, or whether these institutions are inherently oppressive and reproduce domination by nature. The answers to these questions are also to a great extent ideological. The anarchist view is the most radical answer in that it takes existing political authority as such to be oppressive, though as I suggested through my discussion of Simmons, the premises of this view can be as dubious as the premises they target in other views. But where the competing claims are of a more constructive nature, the distinction caters well to pluralist societies, because legitimacy attaches additional political value to the accommodation of diversity, and imposes a condition of non-domination over how conflicts over justice are resolved. Thus, in my view there is an emancipatory potential in the distinction between justification and legitimacy. It creates a critical perspective in that we can question what kinds of institutions best express a principle of non-domination and to what extent a specific historically contingent system does this, as something different from questioning whether laws apply equitably in a given instance.

Modern pluralist states have a mandate to uphold the rule of law and non-domination with respect to all members. Non-domination embodies a respectful stance towards the individual and/or the collective agency of others in expressing and constructing their distinctive identities and beliefs. This is something that cannot be extinguished if we are to treat them as
equal moral subjects. Thus it pertains to the dynamic of power between majority and minority communities, and sets a condition that we try to adhere to with respect to that dynamic. At the same time, the equal status of individual persons demands that the same dynamic be observed with respect to the relationships between identity-conferring groups and their members. This suggests that there are limits to pluralism inherent in the conditions of non-domination which political authority must preserve if it is to remain legitimate both with respect to individuals and to groups.
Chapter 4

Power and Domination

In the previous chapter I argued that our thinking about political legitimacy should be guided by a concern with domination, above and beyond concerns about the justifiability of coercion. Viewed from this perspective, a political authority derives legitimacy from the degree to which its political institutions are configured to, and work to, promote relations of non-domination among its individual and collective subjects. This principle is presupposed in democratic accounts of legitimacy, and it has the important advantage that it offers a consistent standard for assessment of intra-group and inter-group relations.

Since some of the most difficult problems for multicultural justice arise in contexts of differential power, it is important to ascertain when inter- or intra-group domination is occurring. At the heart of the concept of non-domination – as well as its antithesis, domination – is an account of power. This chapter looks at some of the well known challenges in theorizing the morality of power, which are located in structure and agency debates in social theory, and then relates these to non-domination as a principle of legitimacy and to the other central concept in this project – that of relational moral autonomy. Although the thesis argues that a structural approach to issues of power is necessary and important, it is also important to conceptualize this in ways that leave room for individual agency or autonomy. This insight has been hampered by methodological commitments in sociology and normative theory, with sociological theory emphasizing structural dimensions of power, and normative philosophy beginning from the presuppositions of individual agency. The concept of non-domination
incorporates both elements analytically, and so requires a fuller understanding of the idea of power. Importantly however, non-domination does not have to be tied to a particular philosophical thesis about how these tensions between structural and agentive views and between sociological and normative ends are resolved.

**Normative and sociological tensions**

Although the study of power has changed considerably in the last few decades, the paradigmatic understanding of power in political science has tracked the conventional use of the term, which refers to the instrument or ability that one agent has to influence another agent. The most prominent example of such a definition of power is Robert Dahl’s formulation: “A has power over B to the extent that he can get B to do something that B would not otherwise do” (Dahl, 1957). Even when the scope of influence of this understanding of power was expanded to include the ability of A to shape not only B’s actions but B’s thoughts and preferences as well (such as in the account developed by Steven Lukes), the underlying notion remained that power is always ‘cashed-out’ in the actions of agents. (In the next chapter I explain how Hayward sets out to challenge this treatment of power as a social force that “wears a face” (Hayward 2000)).

There are many reasons for the persistence of this notion, which are tied to the development of political science as a social science, as well as to shifts in presumptions about what the domain of ‘the political’ is. Many of those who studied power were interested implicitly in political power, and political power was understood to denote the distribution of power between persons, organizations and institutions. In a more limited sense, political scientists were also
pressed to account for the exercise of compelling material force by powerful agents, whether economically or in war. In this kind of context, the conventional view of power-with-a-face can be an efficient way of naming relevant capacities. However, using the term ‘power’ in this way gives it a crude and narrow meaning and necessarily limits the study of power only to social mechanisms and effects that are directly observable as ‘actions’ and ‘reactions’. As many scholars contended, this ends up in a failure to identify the ways social structures reproduce themselves as sites of power, and yields a distorted image of social phenomena.

Of course, those who operate with a Dahlian understanding of power do not have to be committed to an argument that there is no further depth to social phenomena; or, to the view that there are no other ways of examining why B does what B does except for finding how a specific A diverts a specific B’s course of action. Debates about power are to a great extent about something else. The semantic aspect does not characterize these debates entirely, but it is significant. This is in no small part because the conventional use of the word power (in the English language, at least) makes its meaning quite amorphous, and thus it becomes counter-intuitive to exclude the workings of so many social forces and dynamics from its application in social studies. The naming of ‘power’ seems inextricable from the analytical ordering of social objects in a certain way. We hardly ever define power in order to set it aside – on the contrary,

10 In contrast a language like Bulgarian, for example, has no word that corresponds to the meaning of ‘power’ in English. The closest direct translation carries a much narrower meaning, implying control and jurisdiction. Other meanings of ‘power’ are variously expressed, depending upon the context, with the use of kin terms such as ‘ability’, ‘mightiness’, ‘license’, ‘opportunity’, ‘influence’, or ‘pressure’. Consequently, the phrase ‘power structures’ is not translateable in its broad meaning (the phrase exists in literal translation, but it implies codified institutional structures such as branches of government). The point of this example is to emphasize that the semantic aspect of these debates is significant in framing the conceptual problem of power and the philosophical problem of structure and agency.
within every reference to power it is implicit that the thing signified is important for our explanation or for our moral evaluation of some event or aspect of social life. ‘Power’ is notable because it is the notion we use to chart the effects, the trajectories, and potentialities of agency – and these are contained not just within the intentions and abilities of agents themselves, but also in the ways in which their interactions are structured. Thus it seems that whatever is called ‘power’ is assigned significance over what is not. For this reason, most contemporary theorists will acknowledge that there is no proper use of the concept, and no single thing in the social world that forms the essence of power (Clegg and Haugaard, 2009, 3). Instead, the particular account advanced by a theorist will tend to reflect certain prerequisite commitments, so that what is labeled as power might be more of a systemic or more of an agency-based phenomenon.

Thus, for contemporary thinkers, the context for theorizing the concept of power is set by philosophical debates about structure and agency. Against the backdrop of these debates, the theorizing of power has also taken two divergent paths – one set by normative and one set by sociological perspectives. Given this setting, it is not surprising that power is a contentious and vexing concept.

This is especially well exemplified in the recent debate on understanding power between Steven Lukes and Clarissa Rile Hayward. In this section I will provide an overview of this debate, so as to outline the strengths and limitations of the definitions of ‘domination’ which these prominent theorists offer. Following this, I turn to an account of the tension between sociological and normative interpretive horizons in theorizing power, developed recently by Mark Haugaard (2008). Although Haugaard reveals this tension specifically with respect to
Lukes’ work, I suggest that this tension has shaped debates over other fundamental concepts and questions related to power. The division between juridical and dialogical approaches to accommodating difference, as well as the division between procedural and substantive definitions of individual autonomy (which I examine in chapter 6), both reflect this tension in a significant way.

Structure and agency in social phenomena appear differently to theorists engaged in sociological projects and normative projects. Generally speaking, sociological theorists strive to develop accounts of social structures and their effects on agents that are as exhaustive and as coherent as possible; all the while acknowledging that the pursuit of deep and critical understanding of social phenomena is inevitably value-laden. Normative theorists strive to develop accounts of more vs. less desirable structures, on the basis of a moral perspective on these structures’ effects on agents; all the while acknowledging that ideal norms must be sociologically adequate (in the sense of both feasible, and responsive to moral ills as they are experienced in actuality).

Since both kinds of theoretical projects are connected and mutually constraining, and since power (and by extension, domination) is a central concept for both, it seems intuitive to think that a good theory of power is one which could be equally fruitful on both of these fronts. That is a good theory could satisfy valid demands to capture the same social phenomenon from both sides – so, for example, that the lived experience of a social injustice is both fully understood and its rectification envisioned on the basis of the moral reasoning that designates it as an ‘injustice’.
However, few if any theories of power have been adequate in both of these ways. As the most recent debate along this line - between Hayward and Lukes (in the *Journal of Power* 2008) – suggests, even when theorists agree that naming and analyzing power is an inherently evaluative exercise, theories which are concerned with tracking structural effects and theories which are concerned with tracking responsibility inevitably take on different trajectories (ones that end up in mutually invalidating conclusions, or in intractable differences about the concept of power). Generalizing about contemporary approaches to power, Hayward and Lukes characterize the theoretical gap in this way:

> Participants in the Anglo-American power debate have yet to come to terms with Foucauldian claims about the ways identities, norms, and other social constraints typically thought of as ‘structural’ differentially enable and constrain what human agents can do, and what they can be. At the same time, Foucauldians have yet to articulate a coherent normative account of the grounds on which one might criticize particular power relations, and to elaborate avenues for challenging and changing them (Hayward and Lukes 2008, 5).

For my discussion, the significance of this gap is that its effects reverberate within debates internal to normative political theory. The tension between the de-constructive\(^\text{12}\) and re-constructive\(^\text{13}\) impetus of social inquiry broadly speaking, is reflected (though not necessarily corresponding) in the tension between normative and sociological ‘interpretive horizons’ more specifically. This is in turn oscillating on the tension between centering structure and centering

\[\text{11 Though it should be noted that Foucault himself asserted that: "My point is not that everything is bad, but that everything is dangerous, which is not exactly the same as bad. If everything is dangerous, then we always have something to do. So my position leads not to apathy but to a hyper- and pessimistic activism" (Foucault 1983, cited in Rabinow 1994, 256).}
\[\text{12 Where to deconstruct means to delve, to take apart, to expose and add complexity.}
\[\text{13 Where to reconstruct means to conceive of alternatives, to compare, to ascribe value and to reason through possibilities.}
\]
agency. As notions of power and freedom, domination and autonomy, are conceptually interlocked, these tensions, most obvious in the literature on power, affect the postures adopted by different theories. They generate divisions that are modeled on the kind of gap which Lukes and Hayward identified in approaches to power. For example, there are many difficult questions in various areas of normative theory (as in moral philosophy) which arise from the problem of establishing the authenticity of agency. This problem is at the heart of understanding intra-group domination, and assessing cases like the one I am interested in here – eg. cases where from a critical perspective people appear to be endorsing norms which entrench their domination. The difficulty of authenticity-of-agency questions represents prior questions about free will and determinism inherent in structure-agency debates. In my view, disagreements about the significance and possible resolution of authenticity-of-agency questions have affected the split between procedural and substantive theories of individual autonomy, as well as the duality of justification strategies adopted by democratic theorists, and of course, the legitimacy of political power.

It is widely recognized by theorists in both areas that the structure-agency divide is in some deep sense a false divide, made necessary by the limits of the language we operate with. Faced with the dynamic and complex nature of the social world, we use simplified and conditional terms in order to be able to isolate and name various aspects of it. The language of structure and agency is deployed to give expression to different perspectives on different facets of human action.\textsuperscript{14} This is partly clear from the fact that thinkers from very different

\textsuperscript{14} In the same edition of the Journal of Power, Keith Dowding argues that this is necessitated in the social sciences by the goal of identifying relative influence on outcomes. He goes as far as to suggest that the
perspectives have attempted to bridge, reconcile or transcend this divide in their social ontologies – e.g. Bourdieu, Giddens, etc. Similarly, the sociological-normative divide is itself a very blurry line. This line, nevertheless gives us convenient shorthand for the development of fairly distinct but still inter-connected sets of conversations amongst social thinkers, driven by more-or-less diagnostic and more-or-less evaluative questions. The sense that these lines are somewhat artificial does not, however, diminish the tensions at the level of social ontology. Rather, it suggests one explanation for the abundance of critiques at this level within normative theory itself; as well as an explanation for why the impetus to satisfy such critiques is both potent and futile.

This is easily evident in the concept of domination, a concept which expresses a normative perspective on power – i.e. a perspective where a power relation stands out because we think its features need to be marked out for certain moral reasons. Following Haugaard’s succinct account, the tension theorists encounter here is roughly this: from a sociological standpoint, social agency is facilitated and made meaningful through structural constraint; the representation of ‘free’ agency as social yet unstructured is a non-starter. From a moral perspective, free agency is opposed to constraint; if my agency is structured and I could not concept of power is not essentially contested because what is expressed in terms of structure can be translated without loss into the language of agency and vice versa. Though his thesis may be too strongly put (implying that the difference is entirely rhetorical), his characterization of the logic of explanation in the social sciences is apt: “Structure and agency are deeply entwined but if some explanations seem to privilege structure over agency then that is because for that explanation we look to the structure to explain the nature of the agency. If other explanations seem to privilege agency over structure then that is because we look to an agent or set of agents to explain structural change. However, the fact that specific explanations seem to privilege one over the other does not mean we have to believe that the social theory from which that particular model or explanation was derived always privileges one over the other. ... Nevertheless, preferring the language of structure over agency or vice versa might reveal some value-commitments.” (Dowding 2008, 31)
have done other than what I did, my agency is not morally meaningful agency (Haugaard 2008,101).15

As Haugaard illustrates, this tension is characteristic of Steven Lukes’ renowned theory of power. The great appeal of the argument for the third dimension of power comes largely from the fact that it maps neatly onto an account of human sociality that is much fuller than the one implicit in the two-dimensional views. Yet Lukes’ motivation is explicitly normative and working that into his deeper view of social interaction proves troublesome.

From a sociological perspective, being part of society (assuming for the sake of argument that one could be otherwise) entails being able to interpret the actions of other humans – in other words, to identify an intelligible behavioral pattern of causes and effects. Without such intelligibility it would be impossible for humans to engage in cooperative interaction. Sociality, and the empowerment of agents that goes with it, is premised on the fact that human action is structured (Haugaard 2008b, 100). In Lukes’ s theory, the way in which people mutually constrain and simultaneously enable each other through ordered interaction

15 The tension between sociological and normative theories is also observed by Chris Thornhill in a recent paper on this topic: “[N]ormative and sociological analyses of legitimacy are always separated by certain underlying methodological and evidential distinctions. Above all, these distinctions are reducible to problems concerning the claims and status of theory. For the sociological view, the normative belief that theory is able to prescribe norms for evaluating legitimacy or significantly to adjudicate between opposing accounts of legitimacy appears as an unreflected residue of political metaphysics, in which theory idly posits itself, outside the social world of facts, as a final point of arbitration and absolute objectification. For sociological inquiry, in consequence, normative analyses of legitimacy contribute little to the explanation of the factual or motivational legitimization of power, and they suffer from acute and improbable conceptual literalism (that is, they naively assume that simple concepts or prescriptions can generate plausibly overarching or even enforceably valid analyses of social processes. ... The hostility of normative theory to sociology is ... also finally reducible to a problem of theory: in curtailing the capacity of theory for measuring societal forms by abstracted and defensible criteria, sociology (for normative theory) deprives theory of its ability to provide evidence positively to determine, or to measure the absence of, legitimacy, and it reduces theory to a level of highly contingent and variable description” (Thornhill, 2011, 137).
corresponds to the first dimension of power - i.e the site of the observable strategies and struggles of agents.

Structured interactions produce structural biases – certain individual actions become precluded as a condition of effective cooperation. As a result, the range of possible interactions becomes narrowed, in a way particular to each society. The way in which this becomes organized into politics is of course suffused with the influence of specific social agents. This would be what constitutes the second dimension of power identified by Lukes (and others previously, e.g. Bachrach and Baratz), associated with agenda-setting (ibid.).

The ordering of interaction is not (generally) explicit. Individuals internalize the constraints of the social order they inhabit and attune their behavior to it. This is what makes possible our going about our daily lives without pausing to assess our social environment at each point of interaction. Such tacit social knowledge forms an interpretive horizon, which determines what forms of action become facilitated. Commonly referred to as ‘socialization’, this has also been discussed and labeled habitus in the philosophy of Pierre Bourdieu (Haugaard 2008b, 101). Bourdieu suggests that agents are socialized into various ‘fields’, where a field denotes a crux of roles and relationships particular to each distinct social domain, such as the school or the family. The internalized normative understanding of a particular social role and of how one’s different roles fit together constitutes a social agent’s habitus. The habitus becomes a bundle of dispositions and an enduring way of perceiving the world, or, in effect, processing the structure. As a social agent acts out these dispositions, she contributes to maintaining the meaning of the ‘field’, and structure is so forth reconstituted.
Whether it is this or some other account of socialization that we adopt, it is widely acknowledged that individuals possess some form of practical social knowledge that molds their interests and identities, and that through this knowledge socialization tends to reproduce structural constraints and biases. Importantly, this also includes a social actor’s perception of legitimate power relations. It is at this depth of social interaction where Lukes locates the third dimension of power: “shaping [people’s] perceptions, cognitions, and preferences in such a way that they accept their role in the existing order of things, either because they can see or imagine no alternative to it, or because they see it as natural or unchangeable, or because they value it as divinely ordained and beneficial” (Lukes 2005, 28).

The three-dimensional view of power, and variations on the notion of multiple ‘faces’ of power more generally, represent a now commonplace approach to power (Hayward 2000, 22-26; Hay 1997). From a sociological perspective, the analytical distinction between these dimensions of power is not particularly problematic. In terms of an empirical account of human agency, the three dimensions are not in tension, nor are they hotly disputed. If we are concerned with the identification of social power in a given context, then this approach yields a congruent framework from which to categorize and analyze social interaction.

The difficulty (and the controversial element in Lukes’ work on power) comes when the sociological premise of the third dimension must be reconciled with the normative treatment of power as a corollary to the identification of responsibility – a treatment which implies an agent-centered view (Haugaard 2008a, Hay 1997, Hayward 2006, Hearn 2008). The social theory perspective on power is complicated by the fact that identifying what and where power is tends to be an instrumental exercise. In the most straightforward sense, we want to know how some
social end can be achieved in a given political setting. However, in political theory, we are typically more interested in the asymmetries of power vis-à-vis human agents (this could be termed the ‘distribution’ of power on the classical agent-centered understanding of it as capacities that people have). We want to identify the asymmetries because we want to track moral responsibilities among agents, and to evaluate how systems treat them. Thus it is not surprising that power takes on a negative connotation, so that being in a power relation is intuitively felt to entail domination, un-freedom, illegitimacy.

A great deal of political science deals with what was identified as the first dimension of power, following Dahl’s formula of A’s ability to get B to do something that otherwise B wouldn’t do. This speaks to observable actions, conflicts and effects, and is normatively focused on criticizing specific uses of power in terms of the norms of the social context (eg. within ‘the rules of the game’). In terms of the second dimension of power it is the structures and norms themselves which are up for assessment, though usually still in a contextual way. When it comes to the third dimension of power, however, it seems that the usual contextual props that the theorist uses must fall away to some significant extent, as it is the structuration in the consciousness of agents that must be questioned.

On this picture, the normative theories that I am concerned with here tend to be situated in the second dimension, but are also moving back and forth analytically between the second and the third. As I will show below, the designation of ‘hard cases’ in the multiculturalism literature (eg. the treatment of ‘illiberal minorities’ by liberal states) and in the autonomy/feminist literature (e.g. the treatment of ‘oppressive socialization’) can be interpreted as a contact point where theories which have their sights on issues in the second
dimension are brushing up against the tensions of the third. On the one hand, this is why such contact points are so interesting and revealing; on the other hand, it means that normative concepts appear quite limited in what they can capture for those who want to emerge with principles that are operative. However, this contact point is a good place to determine what we expect a concept of domination to capture if it is to be applied fruitfully to those hard cases.

The third dimension of power raises the problem familiar as ‘false consciousness’. By definition, this kind of power is not visible to its subjects. Their habitus is shaped by the interests of dominant groups, and as a result their practical conscious judgments about their own interests or about the norms they uphold are not reliable indicators of what their genuine interests are or what norms they would genuinely consider legitimate. However, it is also inevitably implied that power in this dimension is visible from the privileged position of the critic, who reasons from a true notion of what the real interests of these social subjects are (and by further implication, what interest-neutral norms looks like). Thus, valuable sociological insights about socialization seem indispensable to understanding and addressing power, but the task of evaluating something as ‘the workings of power’ creates the risk of conjuring up “the deeply condescending conception of the social subject as an ideological dupe” (Hay 1997, 48).16

Yet, even in the second dimension of social interaction, normative theory is always faced with an analogous (as well as related) problem when addressing fully visible structures and power relations. To the extent that we are able to perceive the power of some agents over

16 In some very strong words, Colin Hay elaborates on this unpalatable effect: “Not only is this wretched individual incapable of perceiving her/his true interests, pacified as s/he is by the hallucinogenic effects of bourgeois indoctrination. But rising above the ideological mists which tame the masses is the enlightened academic who from his/her perch in the ivory tower may look down to discern the genuine interests of those not similarly blessed.” (Hay 1997, 48)
others, we do not see power as all the same. Crucially, we want to distinguish more from less legitimate relations of power. The means to distinguish them cannot be completely ‘unencumbered’ or alien to our habitus, but these normative means nevertheless generate very fundamental challenges to it. As a sociological fact, legitimacy is determined by the beliefs of social agents. In a sociological sense, an authority or system is deemed legitimate to the extent to which social actors express the belief that they consider the authority or system legitimate. However, normatively speaking, the significance of the existence of such observable beliefs in a given population is not straightforward. On the one hand, the fact that they are authentically held demands respect, in that the social agents are also moral agents, and moral agents are due respect. In its most trivial form respect entails not dismissing an agent’s beliefs (as doing so would be an aspect of objectification). On the other hand, believing something does not make it so, at least not in the moral sense, as moral sense demands that a belief must stand to moral reason. The legitimacy of a well-functioning democracy, for example, has a dual meaning in the sociological and the normative sense. In terms of the former, democratic institutions exercise power in ways that are widely believed to be legitimate by their subjects; in terms of the latter, these beliefs are also held up by rigorous moral justification.

Sociologically, the same goes for illegitimacy – it is only when those over whom power is exercised consider it oppressive that this power constitutes domination. Yet, normatively speaking, there are a range of situations which are unjust or oppressive even when their social subjects do not recognize them as such. But how can the gravity of the normative considerations be sustained in such situations? The existing ways to address this question rely on the privileged position of the theorist, who must assign normative importance to the
structures we know to be at work in processes of socialization and *habitus* – and in doing so, brush up against the false consciousness problem. All in all, the third dimension of power traps theorists in a constant tension – it is morally pressing to attack injustices perpetuated by power in this dimension; but it is equally pressing to respect moral agents more than ‘the beholding political theorist’. To summarize in Haugaard’s words: “sociologically speaking, if agency, structure and habitus are in synchronicity with each other power relations will be considered legitimate by the agents themselves. However, the third dimension entails a normative judgment on the part of the observing political theorist to the effect that these social agents are mistaken in considering existing relations of domination legitimate (Haugaard 2008,103).”

**Juridical and dialogical approaches, restated**

Formulated this way, this tension is clearly visible in the ‘hard cases’ I am concerned with in the multiculturalism and autonomy literature. The loggerheads between the ‘juridical’ and ‘dialogical’ approaches can be understood in this fashion. Juridical approaches are criticized for their false impartiality and for importing justice reasoning ‘from the outside’, i.e. defining justice prior to politics. These concerns map onto the tension outlined above. When making a normative judgment about the practices of various groups, as well as the just form of relations between groups, the theorist is drawing on his own (presumably Western, liberal) *habitus* for moral intuition. Thus he is not elevated out of the third dimension of power, because there is no such ‘free space’ as it were, to step out into. What his normative judgment might end up expressing is, in effect, a perspective on how the social structures of the practices of others can
be brought into better synchronicity with his own habitus (for example, that they should be liberalized to promote autonomy, or adopt more egalitarian gender norms, etc). The \textit{a priori} reasoning of justice theories, then, may be philosophically reflective, but in its conventional form it does not appear to draw ‘from within’ the social world of the subjects when it reflects.

Dialogical approaches want to circumvent the normative judgment problem of privileging the observer by going back to what is considered legitimate by the agents themselves, and then building in the kind of procedural requirements that will ‘disturb’ the synchronicity between structure and habitus – such as the rules of deliberation, etc. What kind of power relations are legitimate and what kind are not cannot be prescribed ‘in advance’ and then mapped onto specific structures. Instead, those who are in the position of observers should focus on the signs of contestation of social practice, as well as on overt dissent. They should not, however, try to interpret what change this contestation demands. Rather, they should treat it as a signal that democratic process of a certain kind must be facilitated. The deliberative features of the democratic process are crucial. In various articulations, they mandate self-representation, maximum inclusion, equality and protection in the deliberative setting, transparency and revisability, etc. These features of dialogical approaches go a long way to appease the tensions that other normative approaches grapple with. The central place of contestation makes them more attentive to social structures. As they strive to understand what acts of resistance signify and who the deliberants are, they admit some initial story about how specific structures of interaction have shaped identities and constrained possibilities for action. Even more importantly, the primacy of inclusion relaxes the concern with the privileging of normative judgment. It also gives the highest possible significance to the beliefs of those
included. As a sociological fact, people’s beliefs about the legitimacy of certain norms and relations are not sufficient to satisfy our normative intuitions, but this is only because we are uncomfortable with the invisible effects of ubiquitous social power (along with the more straightforward discomfort with the ‘dictatorship of the majority’). The democratic method offers a relief valve for this concern by setting up a public audit of these beliefs, where what is authentically held is also authentically examined and challenged on the turf of moral reason. In other words, if a third dimension of power is at work, then implicit in deliberation is the expectation that agents will come to interrogate this dimension for themselves. This will occur as an effect of their deliberations on power relations in the first and second dimension – i.e. in resolving specific conflicts between As and Bs within existing norms, and in conflicts emergent in deliberation over the content of the norms themselves. If the outcome of the inclusive democratic process is such that the roles and interests of social subjects are substantially redefined, then the third dimension of power would be at least partially exposed and disabled (or, as some would say, at best transformed); power relations would be reconfigured and legitimated without the troublesome infusion of the a priori normative judgment nor the specter of ‘false consciousness’ suspicions. If the outcome is not such, however, then this would indicate that either existing relations are genuinely legitimate; or, that their legitimacy might still be suspect, but that clearly the social agents concerned are not prepared to unsettle them. In the case of the latter, these agents would not have been well served by an external imposition either. Thus, dialogical approaches derive great intuitive appeal from the way they avert long-standing philosophical anxieties about accounting for power in normative judgment.
However, as I aim to show in the coming chapters, this would only work if we have the sort of agents who are in some position to address their habitus (eg in a position of relational moral autonomy). To be able to say who those agents are, we return back to normative judgment. But here we need a compromise, a half-way point between the opposing trajectories of the sociological and the normative. We must refrain from normative judgment regarding whether the agents are mistaken about specific relations at the level of norms. We do, however, require judgment about the relations in which the agents are situated as interrogators (that is, their substantive capacities, but not their substantive views). Importantly, it matters how agents are situated as interrogators within their social setting, and not just once they enter the institutional construct of a deliberative space. For this, we must lean on at least some moral minimalist premises. Political institutions can and should facilitate the relational moral autonomy of persons by disrupting practices that overtly threaten it (for example obstructed access to information, educational limitations, etc.) and making services of social support available to individuals, because such autonomy is an agentive prerequisite for any version of non-domination. This is necessary even when maintaining that the answer to what structural changes are most consistent with non-domination must be determined dialogically (for example, dialogue on whether to change the marriage act).

The work of Monique Deveaux, which I have already discussed, exemplifies this in several respects. A very indicative moment for her theory, but also for deliberative democratic theory more broadly, is the recent sharp turn away from restrictions on what counts as public reason in the deliberative setting. The original impetus for restricting the types of claims and reasons that can be advanced in this setting was precisely so that the effects of power (or at
least powerful presences) can be countered in favour of the power of the better moral argument. Enthusiasm for this mechanism however waned, after many pointed out that people cannot always advance their genuine interests and appeal to their authentic beliefs under this type of public reasoning. From this perspective, deliberants were in fact disempowered by the rules of dialogue. The restrictions on public reason were in effect contaminating democratic space with the \textit{a priori} normative judgments of the theorist about what constitutes a legitimate appeal. Since deliberants are not abstract agents but actual persons who speak from within their \textit{habitus}, the democratic setting should be reconceived as a conduit for probing minds to test the boundaries of the structures they inhabit and a space where they can improve these structures ‘from within’. This is even more pressing when the social justice issue at hand are minority practices and cultural norms. A second, and related, illustrative moment in Deveaux’s theorizing of the dialogical approach is her strong emphasis on uncovering acts of resistance to sexist norms which already exist within communities, and facilitating the democratization of civil society. The turning away from the power of the state, and from frameworks of toleration and accommodation typical of liberal multiculturalism, further signals her discomfort with normative theories which miss crucial aspects of how social power - rather than political/state power – factors into cultural justice.

Bhikhu Parekh offers a different articulation of the dialogical approach which is motivated by similar theoretical and political concerns. He too argues that it is not possible, nor desirable, to attempt to determine abstract principles about what sorts of customs should be tolerated or not. Such determination should emerge from inter-cultural dialogue that aims at establishing a kind of thin moral consensus – only amongst the participants in the dialogue that
is, those subject to the same political institutions – regarding the overarching political values of
the given pluralist society. The primary reason for this is that all normative reasoning is culturally
particularistic, and so if we rely on liberal views about rights and justice then we are not
assessing legitimacy on legitimate terms. All worldviews are imbued with perceptions about
legitimate power relations, and so these perceptions must check each other in the course of
intercultural dialogue. Whatever the emergent conceptual scheme is, it will be the best
candidate for determining the boundaries of the permissible, since it will be derived from the
actual beliefs of social agents, but re-examined and reduced in a way that should reassure
normative theorists. This, of course, does not quite address Lukes’ worry about the third
dimension of power, since ‘false’ beliefs can simply turn out to be mutually reinforcing between
the participants. But Parekh, arguably, thinks that the risk of this is simply smaller than the risk
of privileging reasoning from moral universals).

I have already discussed earlier the view that the dichotomy between juridical and
dialogical approaches is actually false, once we enter deeper considerations about the
philosophical basis of democratic authority. As I have argued, procedural methods do not stand
free from substantive normative commitments. Thus, to put it in the terms I use here, dialogical
methods do not completely free us from the tensions associated with normative judgment
about the legitimacy of power relations in social practice. To the extent that proceduralism
appears liberating, it is only because it caters to implicit normative commitments. Dialogical
processes may be the best way to implement a principle of non-domination – however, the
point I am seeking to reinforce here is that the principle of non-domination is not itself one
among many principles that could be prioritized through democratic means. It is also not a
principle on par with democratic principles, because it is already implicit in democratic principles. Consequently: 1.) an abstract account of non-domination must be derived *a priori*, and this should not be seen as problematic in the context of multicultural justice; 2.) despite the appeal of theoretical approaches which appease the tensions of normative judgment, these tensions will never be effectively resolved. And so, even though a normative account of non-domination must be steeped in a theory of power, and power is in turn the site of tension between structure vs. agency, normative vs. sociological perspectives, non-domination should not be held to the standard of resolving these tensions.

**Power and Autonomy**

An account of power developed within normative theory is likely to be deficient on sociological terms, and vice versa. This is especially evident in the treatment of the concept of autonomy. As Hindess and Helliwell note, there is a sense in which any agent-centered theory is prima facie problematic for some critical social theories because it speaks to:

important differences between conventional social theory, with its emphasis on the socialized character of human subjectivity and behavior, and conventional political theory, with its emphasis on the autonomous individual. The latter appears to most social theorists as an artifact either of structural complexity or of discipline, government, and techniques of the self. In neither case is it seen as providing a reliable foundation for social explanation or normative reflection (Hindess and Helliwell 2008, 815).

The perception of the individual as an ‘artifact’ of structural complexity and ‘discipline’ also has a strong and conflicting presence within normative theory itself, particularly for those committed to the idea of individual autonomy. The problem there, in short, is that the moral
premise that individual persons have equal moral worth, from which all modern moral reasoning proceeds, requires us to treat the individual as a moral agent in a way that is necessarily abstracted from the particularities of any actual individual’s structural setting. And yet, though we want to abstract from the particularities themselves, many normative theorists consider it crucial that we do not abstract from the fact that individual moral agency is inextricable from those particularities (this is essentially the position which relational autonomy theorists elaborate). This is, in my view, the vexed problem which divides substantive and procedural theories of individual autonomy. The most poignant expression of this division is revealed, not surprisingly, on the issue of how to treat cases where individuals have internalized oppressive norms – or in other words, what would be the third dimension of power, a *habitus* in which social agents consider existing relations of domination as legitimate. This is a key problem for feminist theorists, who are concerned with defending the normative judgment that socialization into subordinated gender roles is oppressive.

There are two conflicting moral intuitions which characterize discussions of oppressive socialization in contemporary political theory. One is the intuition to resist the exclusionary implications of liberal (and usually by implication typically Western) conceptions of the person. On this intuition to respect the moral agency of persons means to respect the roles that they authentically embrace, even if those roles are subservient and engender virtues and beliefs that we do not see as particularly valuable. The other intuition is that moral agents are not socialized at an arm’s length from power relations. Their sense of self and of moral value may be formed in such a way that what they authentically endorse simply mirrors the roles they find themselves in; and thus to respect the moral agency of persons means to resist the conditions which
disempower them. These two conflicting but equally strong intuitions prevail to different degrees in procedural and substantive conceptualizations of personal autonomy, neither of which manages to fully address feminist concerns.

Procedural autonomy theories are so named because they attribute autonomy to individuals on the basis of how people form preferences and decisions, and not on what the content of these preferences and decisions is. No preferences and decisions should be excluded a priori from being autonomous, and this includes those which subordinate the agent to another. In short, procedural autonomy theories are concerned with the clarity and authenticity of agency. Substantive autonomy theories, by contrast, posit threshold notions, such as exhibiting self-respect, or pose limitations on the content of actions consistent with autonomy. Thus it is possible for agents not to be considered substantively autonomous even if their decisions were reflective and informed. Though they are concerned with the subjective aspect of agency, they are even more concerned with the emancipatory aspect of agency. Many feminist thinkers prefer substantive conceptions of autonomy precisely because in their view procedural accounts fail to get at the problem of socialization. Procedural accounts allow for the possibility that agents reflect on aspects of social structure from within their habitus and never question the habitus itself; they are driven by beliefs that they identify with, but these beliefs are nevertheless constructed in ways that dominate them. The sense of autonomy of the agents further serves to legitimate the social structures, and thus we are required to respect these structures as a matter of respect for the agents. Substantive accounts, on the other hand, preserve the possibility that normative judgment can be injected into how we view the legitimacy of structures, so that respect for the legitimacy of patriarchal structures can be
significantly curbed or even withheld even if their social subjects do not experience discord with them. The origins of the concept of relational autonomy can be found in this tension between substantive and procedural views. I elaborate on how this concept contributes to this debate in feminist thought and to a richer account of non-domination in chapter 6.

**Conclusion**

The function of this chapter was to illustrate how, by attending to the dimensions of social power, the concept of non-domination goes to the heart of the two related and most difficult problems in the accommodation of minority social practices like polygyny - how to approach accommodation without exacerbating domination between groups and how to treat norms which appear to perpetuate the subordination of the subjects who endorse them. In doing this the chapter bridges, at the most foundational level, the discussion of non-domination as a principle of legitimacy to the upcoming discussion of relational autonomy. The divergence between juridical and dialogical approaches to multicultural justice and the divergence between substantive and procedural approaches to autonomy attend to these questions. Both of these divergences can be understood as informed by the same set of competing concerns about the three dimensions of power. To identify these concerns I discussed them as a matter of the competing priorities of structural and agentive perspectives on power, which animate an even broader divergence within social thought itself.

When we trace these divergences to the analytically functional but ontologically false divide between structure and agency we can better understand how the dichotomies between
juridical and dialogical, substantive and procedural approaches are also in a deep sense false, and thus unproductive. The two concepts I propose in this dissertation – non-domination and relational moral autonomy - do not resolve all of these divides by settling long-standing philosophical debates on power and agency. Nor should they have to. Rather, by espousing features from both sides of each respective dichotomy these concepts offer significant analytical advantages to normative political theory generally, and to the applied problem of determining appropriate institutional action with respect to cultural and religious social practices.

Evaluating relations of power poses a dual challenge for theory because it entails both a deconstructive and a reconstructive task, and there is no conception of power that lends itself equally well to both at once. However, a useful conception of power must be sufficiently malleable to be deployed in a way that highlights one analytical purpose or the other in different contexts. In the next chapter I argue that Hayward’s conception is of this kind, which makes her account of non-domination most suitable to my analysis. (However, I also argue for a slightly modified version of that conception). The challenge is that, on the one hand, a theory has to expose power, (which depends on having a rich account of what power is and how it works); and on the other hand it requires that we be able to talk about power in a way that draws lines around patterns of social relations and makes the moral agency of persons intelligible within those lines. Although non/domination is a structural concept in that it is concerned with structures of power, these structures matter because of the dynamic they produce between moral agents. While structures of power unlock this dynamic, it is always concrete groups and people who are dominated and always individual persons who ‘live’ domination. The difficulty of the challenge is most clear in what Lukes calls the third dimension
of power, and more generally in the question of what makes social norms oppressive. This challenge also makes the notion of legitimate political power difficult, in that it raises the question of what distinguishes the political power of institutions as an appropriate arbiter of other social power, given that there is no neutral position outside our *habitus* from which oppressive social power can be independently identified and regulated. (Some critical theorists might also say that political power merely codifies a *habitus*). Of course, there are many oppressive forms of social power in what were referred to as the first and second dimension, and as the previous chapter demonstrated these are the forms of power which are most contested and which political institutions are designed to address. Thus there may be no conception of political power that can fully satisfy the philosophical challenge arising from the third dimension – yet, the non-domination principle comes much closer than other accounts of legitimacy in acknowledging the challenge and the importance of addressing the third dimension as much as politically possible.

Thus, expressed in the language introduced in this chapter, in the instance of inter-group conflict non-domination is concerned with asymmetries in the first and the second dimension of social power. To gauge this we need a structural account of non-domination that speaks to both of these dimensions. In the instance of intra-group conflict non-domination is concerned with the first, second *and third* dimensions of power. In the third dimension the structural account of non-domination can be supplemented with a more agentive notion like relational moral autonomy, as I explain shortly.
Chapter 5

Power and Non-domination

Relational autonomy and non-domination converge on an intuition that oppression entails the denial of self-determination in some morally unjustified way. Both concepts emerged at least in part to revise and improve inadequate liberal conceptions of autonomy and freedom. The debates around both are driven by concerns with the work these conceptions perform within wider political theories – e.g. republicanism, feminism and/or liberalism. In the previous chapter I defended the view that the strength of the non-domination principle of legitimacy is that it attends to the dimensions of social power. In order for the principle to be applicable between and within groups non-domination must draw on an account of power that can address what Lukes called the third dimension of power. In this chapter I am going to quickly sketch some reasons why the conception of non-domination advanced by Pettit is not the most illuminating in that regard, and then argue that the conception of non-domination articulated by Clarissa Hayward in her book *De-facing Power* is both internally coherent and most helpful for my purposes. As I offer a slightly modified version of her account of non-domination I also develop a preliminary explanation of how non-domination and relational autonomy relate to each other.

Limitations of Pettit’s account

Pettit states that those who think that the state should promote personal autonomy will think that a state which promotes only non-domination is too austere and we need a richer ideal. His
own response to this is that “people can be trusted to look after their own autonomy, given that they live under a dispensation where they are protected from domination by others”. When Pettit discusses non-domination with respect to autonomy, he speaks only with reference to liberal conceptions of personal autonomy and conceptions of self-mastery. But it might be the case that non-domination in fact requires some sort of autonomy.

Pettit’s theory overlaps with widespread views among feminists regarding the shortcomings of the non-interference view of freedom. He also shares with feminism the emphasis on “the social”, in that he conceptualizes domination and non-domination as a kind of “inter-subjective status that is based on group identities” and is a matter of shared knowledge (Friedman 2008, 250). Even though the subjects of domination for Pettit are always individuals, the group-based experience of domination is especially salient for feminists, as it gives non-domination a ‘communitarian’, social character.

However, the ubiquity of capacities for arbitrary interference can pose a problem for his theory and for analyzing the kind of case I am interested in here. Interference is a behaviour, whereas domination for Pettit also inheres in having a capacity to interfere. This can lead us to suspect that the requirements of non-domination are too demanding. Any excess of power is liable to produce domination. Marilyn Friedman calls this problem “unwarranted excessive scope” (ibid. 252). Relatedly, feminists need to be concerned about the relationship between dependence and domination. “The capacities of people to interfere arbitrarily in the lives of others are often, if not always, also capacities to interfere nonarbitrarily for the benefit and care of those others” (ibid. 253). Because dependency relationships are necessary throughout human life, the excessive scope issue is significant. People should be able to care for and meet the
needs of others with their own superior capacities without this constituting domination.

“Arbitrary interference is always prima facie problematic; the mere capacity for it not so” (ibid. 254).

From a different angle, Pettit’s definition of arbitrary interference can be too narrow. Friedman gives the example of traditional marriage, in which the role of the man is understood by both the man and the woman as a breadwinner and protector. The man may very genuinely confer the benefits of protection and breadwinning on his wife in a way that tracks her interests and ideas and does not in itself aim to dominate. These genuine behaviors are part of ‘the bargain’ for women, and the implication is that

A man’s domination of a woman may be inextricable from the pattern of occasional benefits he confers on her; the latter may seem – to both parties – to justify the former. ... In order to apply to whole, complex relationships, the concept of domination should not be defined so as to make a complete disregard of the dominated person’s interests and ideas a necessary condition of its application (ibid. 257-258).

Friedman also points out a problem in Pettit’s loose definition of arbitrariness. He formulates arbitrary interference in slightly different ways in different places in Republicanism. On one formulation, interference is arbitrary if it ignores the subjected party’s “interests and opinions”. On a second formulation, interference is arbitrary if it is “not forced to track what the interests of those others require according to their own judgments” (Friedman’s emphasis, citing Pettit 1997, 55). “This second formulation construes acts of interference as domination simply if they disregard certain ideas of the subject, namely, her ideas about her interests.” (ibid. 259).

Friedman states that the second formulation is the one which better captures the nature of domination – with qualifications. A person’s interests and a person’s perspective are two different things - a person could be wrong about what her interests are. There are various ways
in which one can do wrong to a person by ignoring either her interests or her perspective, or both. But the question is exactly what sort of wrong constitutes domination. If we think that interference constitutes domination when we ignore both, we end up with an account of domination that is too narrow (too few of the wrongs that should qualify). If we think that interference constitutes domination when we ignore either one of her interests or her perspective, the account becomes too wide. Out of respect, I could treat someone according to her views about her interests as she understands them, even though if she is wrong about those interests in effect I am doing her harm. She would still regard the harm as appropriate.

Thus Pettit’s account of non-domination is not the most suitable for my purposes here for three main reasons. First, as mentioned in Chapter Three, an important aspect of Pettit’s account is that the existence of domination will be common knowledge amongst the parties to it – a requirement which makes it incompatible analytically with concern for oppressive socialization as a form of domination, and is also an inappropriately narrow conception. Second, domination is not of normative concern for Pettit in cases where one accepts being dominated in certain aspects of life as part of a larger package of burdens and benefits of group membership. This, however, does not capture an important aspect of non-domination as a principle of legitimacy as I discussed it earlier, which is that domination can consist in excluding agents from determining the conditions of membership, even if despite the exclusion there may be prudential (material interest –related) reasons why they still accept those terms. (This point is perhaps intuitively clearer where inter-group relations are concerned). Third, and related to the first two, Pettit’s conception of non-domination turns on whether agents avowed interests are advanced, or at least uninjured. However, this is problematic if we take seriously Lukes’
thesis about the third dimension of power. In this sense it is important to have a conception of non-domination where avowed interests are morally significant but where this significance is also open to interrogation if those interests are defined by the constraints that relations of domination impose.

**Non-domination in Hayward**

Clarissa Hayward’s account of non-domination is similar to Pettit’s in that for her the notion of non-domination expresses the meaning of political freedom. However, instead of developing this notion by contrasting it to other conceptions of freedom, Hayward develops it in the course of differentiating forms of social relations within a theory of power.

Hayward is interested in setting out an account of social power that captures how power operates, but also one which is infused with a normative concern for how forms of social power can be differentiated and critiqued. While in emphasizing social power Hayward wants to move away from political theory’s preoccupation with codified political power, her interests are not limited to a cultural critique of social norms and practices. She is interested in constructing an account of power that can also be used to address questions about the forms and actions of political institutions and the responsibilities of specific political actors. Hayward’s theory of power is notable for political theorists in at least two ways. First, her theory has the distinctive ambition of offering a *structural* view of power that nevertheless commits the critical analysis of power relations to focusing on *agents’* capacities. Yet, and second, she advances the counter-intuitive view that power is not a thing that specific agents have; rather, power is the very
patterning of complex social boundaries. More significantly, she argues that such an understanding of power is consistent with a normative approach to power, rooted in the value of democracy.

**What does it mean to ‘de-face’ power?**

The function of the concept of power in much of contemporary political thought is to help us ‘put a face on’ the powerful and the powerless. Ascribing power and powerlessness to agents is necessary in the course of highlighting inequality or determining where responsibility resides. This is true for those who are concerned with exposing the means by which power is unequally distributed in a given system or context, as well as for those who are concerned with how power is used by those who have it. Implicit in this role of the concept of power is the generalized view that the possession of power directly corresponds to the enhancement or diminishment of someone’s freedom. And it is this tight connection to freedom that makes power so salient morally and normatively. In this sense, the feature of power that makes power matter to political theorists is agential – freedom, equality and responsibility may denote relational states, but they are *experienced* by As and Bs, and if we had no reference to identifiable As and Bs it would be difficult to get excited about these states themselves.

Hayward seeks to reset the scope of the concept of power, and by extension, to spell out new implications for our view of freedom. Despite the rigor of the power debates in political theory, the foundational “conceptualization of power as a social phenomenon that necessarily wears a ‘face’” (Hayward 2000, 11) was never effectively challenged. This, in Hayward’s view, has had very limiting effects on our ability to understand and account for those social
mechanisms that are exerting power on us but are not attributable to any concrete agents, and are also not detectable from within the field of action of any singular agent. For example, housing patterns correlated with race in US cities are the sort of thing that we should be able to analyze in the language of power and power effects, according to Hayward. Faced with this type of case, standard, agential accounts of power lead us to focus on municipal policies and zoning laws, traceable to the action or inaction of specific individual and institutional agents. Other crucial processes, such as de-industrialization and the ‘white flight’ phenomenon, however, are intuitively ‘demoted’ to peripheral factors in studies that fail to identify them as workings of ‘power’ (Hayward and Lukes 2008, 9). In its crudest form, according to Hayward, the agential power analysis makes such processes appear altogether depoliticized. Yet, this does not mean that those who offer structural explanations to social justice issues are consequently also offering a richer account of power. The 1980s and 1990s saw the expansion of structural accounts of social power. However, as Hayward observes in the examples of Jeffrey Isaac, Thomas Wartenberg and Barry Barnes, structural accounts of power maintained the understanding of a dyadic relation between ‘powerful’ and ‘powerless’ (Hayward 2000, 22-31). They advanced power debates by turning attention to how social structure creates positions with differential endowments, and how As and Bs choose to act only within the parameters of the possible roles within a structure. They underscored the limited knowledge that agents have about the effects of intentional exercises of power, as well as the limited significance of whether A’s power over B is exercised consciously in establishing A’s dominant status (for example, the existence of patriarchy even where men are not exercising power over women consciously and intentionally). Though such advances gave structural context to the power relationship, they did
not reconfigure it fundamentally – power remained conceived as a property that can be dispersed or concentrated, directed one way or the other within a social system.

Hayward does not deny the significance of the fact that some agents enjoy far more freedoms and abilities than others. However, she believes that this fact should not structure our analysis of power relations. Instead of looking at power as something that oscillates between As and Bs, and thus ‘wears’ their faces, we could ‘de-face’ the concept:

We should define power, not as an instrument some agents use to alter the independent action of others, but rather as a network of boundaries that delimit, for all, the field of what is socially possible (ibid. 3)... Power’s mechanisms include laws, norms, standards, and personal and social group identities. They demarcate fields of action. They render possible and impossible, probable and improbable, particular forms of conduct, speech, belief, reason and desire (ibid. 8).

In re-conceptualizing power in this way Hayward draws insights partly from neo-institutionalists and from the poststructuralist work of Michel Foucault. She shares with Foucault the view that social boundaries are not just contingent limitations on action, and so not something that can be ‘lifted’ or evaded. Social boundaries inhere in every possible ordering of social relations, and in that sense power is ubiquitous (though, importantly, not uniform). A corollary claim in that vein of thought is that power is not something external that acts upon the agent, because human subjects are forged through socialization and thus they are themselves the effects of power. The way people reason, what they value, their conduct and their experiences of belonging, are all products of the acculturation of social action. Ergo, if we want to understand how power animates political phenomena, we have to set aside the conventional perception of power as instances in which someone’s will is enacted.
However, the affinity of Hayward’s theorization of power to that of Foucaultians is limited. Even if we accept such a view of social boundaries and social action, as many do, it is not immediately clear why this view should constitute a theory of power, rather than a general theory of sociality. If power is involved in everything then it does not seem analytically advantageous to take it as a starting point in the study of anything particular. Hayward’s motivation in de-facing power becomes much clearer in light of the function she wants the concept to perform – to inform a more sustainable definition of freedom. Her “alternative conceptualization rejects the unsustainable definition of freedom, implicit in accounts of power’s various “faces”, as a state in which action is independently chosen and/or authentic. It directs attention toward a series of relevant empirical questions that students of power-with-a-face tend to overlook” (ibid.p.3-4). In other words, for Hayward the concept of ‘power’ contains within itself an abstracted view of social constraint, and this view inevitably configures our ideas about freedom. The problem with defining power this way or that way is that in so doing we are shifting the abstract lines that determine what counts as constraint, what social constraint is and when is the latter politically relevant (ibid. 27). Theorists of power-with-a-face (including the ‘structural’ strand) are caught reproducing an abstract model of constraint in which ‘the powerful’ restrict the field of action of ‘the powerless’ by limiting their options, or by getting them to think, perceive or desire something they otherwise wouldn’t, in a way that usually tracks their own interests (ibid. 26). This is where Hayward wants to interject. In her view, despite its undeniable intuitive appeal, this model has poor explicative force because it adopts one expression of social constraint as paradigmatic of all relevant social constraint. Ultimately, however, we care about power because we care about the freedoms and constraints it
generates, not vice versa. And thus, for Hayward, our account of power must be expansive enough to adequately reflect the broad range of constraining social mechanisms and especially the patterns that these mechanisms create.

In the scheme of the power relation outlined by power-with-a-face theorists it is necessarily implied that As are distinct from Bs in that As, in order to be marked as ‘powerful’, are in some meaningful sense opting to exercise their power over Bs – i.e, that As have a range of alternative actions available to them and that these are in some way filtered through As’ subjectivity as agents, or else As would also be ‘powerless’. The footprints of this logic are clearly visible in contemporary theorizing of freedom. Social constraint usually presents itself as limitation brought about by powerful agents and structures, and so it appears that we must seek to distinguish behaviors and beliefs that are independently chosen and authentic to the free agent’s desires and interests from those that are the product of distorting influence, whether that be in the form of rules, symbols, or other mechanisms of power (ibid. 27). According to Hayward, analysis which follows this logic overlooks at least two empirical questions which are highly significant to a sustainable – by which I believe Hayward means ‘sociologically adequate’ – conceptualization of freedom. First, it implies a kind of gradation of power, but leaves aside the issue of how the fields of action of the most powerful agents are socially constituted, how their perceptions, wants and choices are conditioned (ibid. 33). Second, it forecloses inquiry into those social constraints that are neither channeled through the intentions of the powerful nor operating to their benefit (ibid. 34). If no agent wills and/or benefits from the constraints their actions create on those of others, then the effects of these actions are not taken to exemplify the proper subject matter of power, and as a result these constraints are never examined
properly. What is not visible as an instance of power is excluded \textit{a priori} from the analysis of un/free action (ibid. 30,34). Thus, Hayward’s frustration with this paradigm of power is really a frustration with political theorists’ inability to focus on the significance of the limiting patterns that are constitutive of the social realm we all inhabit but are not attributable to any one ‘face’ of power in particular (for example, socially constructed racial and gender identities). She feels that if we do not see these mechanisms as power mechanisms, then we would not see the full host of ways in which they are institutionalized, and we would be less equipped to critique the avoidable ways in which they constrain all of us.

To sum up, for Hayward, it is the preoccupation with states of power and powerlessness (or, reinterpreting her articulation - a preoccupation with the shifting positions of being subject OR object) that shapes our intuition to locate freedom in non-interference, or independence, or ‘authenticity’ of the self. The commonality between all these conceptualizations of freedom is that they all entail the notion of transcendence of social constraint. However, theorizing freedom in a way which draws a clear dividing line between free and unfree action is problematic, because in doing so actions which fall on the ‘free’ side of the line assume the appearance of being ‘natural’ or ‘authentic’.

Inspired by Foucault, Hayward wants to reconfigure freedom to reflect the view that there are no ‘spaces of primal liberty’ (ibid. 6). A view that is sociologically adequate would have to be a view that speaks to the way social boundaries create options and limits to action, as well as creating the identities and group differentiations of actors. She parts ways with Foucaultians, however, in thinking, with Habermas, that boundaries can be both constraining and enabling. Because of this it is possible to distinguish better from worse forms of power relations and that
is what social critics should focus on. To do this, we must conceptualize power in a way which permits us to identify the full range of constraints on freedom, including significant social constraints that are structural, but also remediable (Hayward and Lukes 2008, 6).

This shift to de-facing power raises the question of what it means for social boundaries to be enabling. For students of power with a face freedom implies independence from social constraint. On this logic a boundary to action could only be enabling if it limits action as little as possible and does so by necessity, where this is instrumental to preserving the free space of unencumbered action. On Hayward’s theory, for those who de-face power, freedom becomes associated with ability to act upon social constraints (ibid. 31). On this view it appears that specific social boundaries are enabling to the degree that they foster, and work towards equalizing, our capacities to act on other boundaries. In her work the example of such a boundary is a contextual assessment of the authority of a teacher in the classroom, based on the social effects of the limits to action that the teacher enforces on the pupils.

I argue that students of power relations should conceptualize freedom as political freedom: a social capacity that enables actors, not to escape or to transcend power relations, but to participate effectively in shaping and re-shaping relationships defined by the practices and institutions that govern their action. (ibid. 31)

Although people can affect the social boundaries that exist, the boundaries themselves are a condition of social action (ibid. 31). Like other theorists, Hayward is interested in identifying patterned asymmetries in different agents’ capacities for action; however, instead of looking for a corresponding distribution between ‘powerful’ and ‘powerless’ agents and resultant differences in negative freedom, she suggests we ask: “How do power’s mechanisms define the (im)possible, the (im)probable, the natural, the normal, what counts as a ‘problem’?” (ibid. 35).
The task of critiquing power relations which erode political freedom shifts toward determining which are the power relations “that avoidably limit the ability of some or all participants to act in ways that affect their constitutive boundaries” (ibid. 35). (It is worth noting, however, that aside from classroom case studies, Hayward’s articulation of what it means to have the ability to act in a way that affects constitutive boundaries remains conceptually quite nebulous.)

In practice, those engaged in the analysis of power de-faced should focus on the nature of the actions and beliefs which constitute social practices, but do so especially in view of understanding how these practices are supported by institutional norms and mechanisms. This means exploring the convergence of different social boundaries on individual and collective behaviour, which together produce standards, aims, group memberships; and which are shaped and reinforced by institutional boundaries, such as rights, duties, distributive mechanisms, status. (ibid. 38) What configures the analysis of power de-faced is the goal of devising a full account of how power shapes freedom. This goal sets a high sociological standard, but is also thoroughly normative. In such an account theorists of power de-faced are not prioritizing the mapping of distribution and scope of available individual choices, but rather the differential impact which norms and practices have on their participants’ capacities to shape their individual and collective existence (ibid. 39).

De-facing power and non-domination

As discussed above, Hayward sees the virtue of de-facing power in terms of its contribution to a deeper understanding of freedom. An additional asset of her framing of power is that it makes it easier to conceptualize the legitimacy of power as a matter of degrees and domains.
Like many other theorists, Hayward construes power as inescapable – however, this is not because As will always attempt to influences Bs to do something that Bs wouldn’t otherwise do, but because social constraints are inescapable, in that they are inherent in human society. In this sense, power relations are also a necessary feature of creating and promoting social goods.

Theories of power’s ‘faces’ generally tend to typologize power relations as legitimate or illegitimate on the basis of carefully defined, morally salient features. Broadly speaking, Hayward’s approach is not qualitatively different, in as much as she is also concerned with the justifications and moral quality of power relations. However, she asserts that instead of distinguishing power relations in terms of dichotomies we should understand them in terms of a continuum between relations which approximate political freedom and relations which approximate domination. More specifically, on the first end are “boundaries that are knowable to all participants, and that allow the maximum possible space for effective transformative action” (ibid. 39). On the opposite end of the continuum are “power relations characterized by the avoidable exclusion of some participants from processes of shaping their constitutive norms, and/or by patterned and enduring restrictions on the scope of political freedom” (ibid. 162). In other words, the state of domination is characterized by only being able to act within pre-given constraints, and not being able to act upon them.

Why should this continuum be mapped on to our capacity to affect boundaries? Hayward explicitly states that there is one fundamental moral principle which underpins her distinction between political freedom and domination once power is de-faced: the democratic ideal that people should be the authors, as well as the subjects, of the norms which circumscribe their fields of action (ibid. 166). (Here Hayward seems to be referring directly to the principle of
self-determination, even though she does not name it. It is interesting that, perhaps inadvertently, she inverses the standard view that self-determination grounds democracy, by framing her theory in such a way that she identifies the democratic principle as grounding freedom).

By laying out the continuum of power relations in this way, Hayward in effect equates political freedom and non-domination. In this respect she has a good deal in common with Pettit. As she points out, however, Pettit operates with a ‘faced’ view of power relations – for him domination requires the intentional action of the dominating party, and non-domination is defined by security from interference from others (ibid. 166, ft.19). In contrast, the definition of non-domination which emerges from Hayward’s theory of de-facing power is this:

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\text{[P]ower relations approximate states of non-domination – that is, they promote participants’ freedom – to the extent that they enable all participants to effectively take part in making and re-making their terms, and enable participants to act upon all key standards, ends, and other boundaries comprising them. Power relations approximate states of domination to the extent that they avoidably exclude some actors whom they position from the processes through which they are made and re-made, and/or impose patterned and enduring restrictions on the scope of “action upon”.} \quad \text{“(ibid.166)}
\]

To clarify this abstract articulation Hayward returns to its democratic roots and to the analytical agenda of exposing patterned asymmetries. Non-/domination should be assessed along two main dimensions, along which asymmetries can form, both of which are drawn from the democratic ideal. The first is the inclusiveness of “action on” power. Social practices and institutions converge in ways which produce categories of identity, define worthwhile goals and activities, and establish schemes of distribution. In all these realms of social life domination can arise through the differential treatment of ‘insiders’ and ‘outsiders’ and between members of the same group through internal hierarchies. Exclusion is reinforced when it becomes codified in
state institutions, but it can be a significant political force even when formal inclusion confines it to the sphere of cultural and social practice. Formal inclusion can also coexist with seriously undermined capacities to act effectively (ibid. 170). Domination in this dimension occurs when the pattern of exclusion is avoidable and the extent of exclusion and its effects are severe. Of course, the avoidability and severity of such domination is always a matter of contextual and controversial judgment. This analysis is centered on asking: what sort of restrictions exist on the public deliberation of collective norms, what are the opportunities for contesting them, are all participants equally positioned to contest them, and how can the deliberation and decision-making processes be made more inclusive.

The second dimension along which asymmetries can be patterned is the scope of “action on” power. One aspect of this dimension is the weight placed on ‘difference’ and the treatment of those who ‘exceed the norms’ with their actions or attributes. A key question here is to what extent is difference seen as a social boundary that could be reconfigured differently. Power relations promote non-domination when they are acknowledged as mechanisms of power that could be ordered differently and do not seek to eradicate action that opposes convention. This is also informed by concern for the danger posed by the entrenchment of particular social constraints. Hayward is especially wary of power relations which de-politicize limits to action. Though not the most prevalent form of domination, such relations can become an especially enduring form of domination. Power relations realize such a state when they naturalize (“as divinely ordained or biologically given or sociologically necessary (ibid. 174)” key social limits to action to such an extent that even damaging sanctions are presumed to be legitimate because they restore what is good for their subjects. According to Hayward, “few, if
any, power relations realize domination in this sense. But relations that come close include those defined by ‘sex’. “(ibid. 174)

This democratic critique of domination, however, is not taken to imply that non-domination entails incessant contestation and re-making of social practices and conventions in daily life. Constant disruption and reinvention of social structure may seem reassuring as a possibility but would be unattainable in practice. Hayward adopts a nuanced view of the lived relationship between democratization and non-domination. Cooperation and the maintenance of institutions require some degree of stability of rules, and so the democratic dimensions of non-domination should not be treated as absolutes or trumps.

**Non-domination and the State**

There are many aspects of Hayward’s theory which raise questions about the power of the state in particular. She does not articulate explicitly what it would mean to be in a relation of non-domination vis-à-vis the state. Nevertheless it is clearly implied in her account of the continuum of power relations that the legitimacy of the state should be conceptualized along the same continuum, and in terms of non-domination. On her line of thought the authority of the state is no longer the characteristic of a singular agent, an A which stands in relation to every individual B, but is rather a complex network of boundaries sustained by institutions and affecting all Bs, which may be sliding along the domination continuum over time in a way which makes it difficult to theorize them in principle.

While cautious about the demandingness of the democratic ideal, Hayward is also adamant about its unlimited scope. One of the reasons why the state does not feature
prominently in her theory is precisely that she wants to unsettle political theorists’ focus on political/codified power. She takes care to distinguish herself from deliberative democrats, for example, first in rejecting the privileging of the deliberative process as the most important form of acting upon social boundaries; and second, in rejecting their emphasis on inclusion in law-making and governance. Since culture and social practices play “the key role” in constraining how people act, and how they are reacted to, in specific contexts, Hayward insists that inclusion is a requirement of non-domination not only vis. state institutions, “but also by economic, cultural, and other social institutions and practices” (ibid. 169). This raises interesting but difficult questions about the relationship between political and social institutions and practices, given that the former control a great deal of collective resources and are in a unique position to affect the latter. Power relations may not be dichotomized into strictly legitimate and illegitimate states, but still, legitimacy remains an exclusive feature of political institutions in a way that is directly linked to how these institutions behave with respect to various freedom enhancing or freedom subverting social practices.

In this regard, it is worth recalling Hayward’s brief but instructive treatment of the promotion of toleration. She understands toleration as encouraging individuals to abstain from interfering with conduct and expression which transgresses otherwise depoliticized social constraints, but going no further than that and so not demanding that such transgressions be actively engaged and addressed. This sort of task is, of course, associated with state institutions, and has been increasingly criticized for perpetuating the marginalization of the tolerated (e.g. Deveaux earlier). Hayward takes a nuanced position on toleration’s place in the power relations continuum. “Power relations tempered by toleration are not, by my view, equivalent to states
of domination.” But while holding this view, we can still maintain that there is a sizeable gap between toleration and political freedom/non-domination. Specifically, promoting freedom “requires a vigilance toward power’s mechanisms achieved only through active engagement with those who oppose them” (ibid. 175-176).

Importantly, the continuum between domination and political freedom, though it may be one of power relations, does not apply to all political principles and values. Thus Hayward recognizes that the normative commitment to maximize freedom is likely to come in conflict “with other valued social ends, such as efficiency, security, or community (ibid. 176)” . The trade-off in this conflict requires a richer, different theory, which can speak the tension between the democratic principles which inform critique of domination and the non-democratic or straightforwardly anti-democratic commitments which underpin other cherished social practices. In this regard, Hayward mentions specifically the case of many religious and traditional orderings of social life which discourage equal inclusion in all matters of defining boundaries to action (ibid. 176).

The most concrete normative claim which Hayward leaves us with regarding political authority is this: “Minimally, however, democratic political practices (that is, practices through which members of a polity act on the legal and other limits to action that govern it) and public institutions (collectively defined rights, duties, and distributions, which are backed by the state) should be structured such that their effects on other social practices and institutions are freedom-promoting. (ibid. 176-177)” Political power has crucial effects. The ability to distribute resources and opportunities can translate into decisive influence on how practices are configured, and even whether they can exist at all. At the same time, democratic states are
themselves embedded in social boundaries to action, such as moral norms and ideals of equality, inclusiveness and respect for self-determination. In this sense, for their effects to be freedom-promoting, it is also essential to expose the inconsistencies and gaps between these constitutive principles and the effects of their practical embodiment in existing institutions (ibid. 177).

In her more recent work Hayward underscores the crucial role that state laws and policies have specifically on identity construction (Hayward and Watson 2010, 31-34). Though not always intentionally or explicitly, the way states disperse rewards and sanctions for various roles and actions shapes significantly how people are motivated to identify and mobilize. Given the nature of overlapping social constraints on both identity and on how institutions operate, it is not a conceivable option for the state to be ‘withdrawn’ from these processes. Knowing this, Hayward and Watson ask, “how should states construct identity”? (ibid. 36) Not surprisingly, their answer is: democratically, in consistency with the state’s duty to promote non-domination, exemplified by “the state of power relations in which all participants are enabled, and equally so, to challenge and change, or alternatively to defend, their terms” (ibid.).

In the course of elaborating this thesis regarding identity, Hayward and Watson develop a structural, three-dimensional account of non-domination – an account which is of high significance to theorizing non-domination as a legitimacy principle. First of all, non-domination in a pluralistic society has an inter-group dimension. This reflects the fact that power relations both produce and follow group lines. Groups, however, are hardly ever homogenous, and their boundaries are controversial. They are typically characterized by strife, especially within identity conferring groups. To reflect the fact that social power within groups is often hierarchical, or at
the least unequal, non-domination can be viewed in a second, intra-group dimension.

Concurrent with these is the third dimension – systemic non-domination. By systemic Hayward and Watson mean the domination established by the power of social norms which are entrenched because they have become ‘naturalized or sacralized’. This is the dimension of domination which Foucaultians raise concern about. Again, an example of this dimension are gender norms. Norms of masculinity and femininity are pervasive and they define the field of action of both men and women. In this sense, men and women are systematically dominated, alongside the fact that men also dominate women interpersonally, or intra- the group of gendered subjects (ibid. 36-37, ft.113).

States, add Hayward and Watson, should be concerned with maximizing all three dimensions of non-domination. For example, promoting non-domination along the inter-group dimension may be achieved by some forms of accommodation and multi-culturalist policies, including group rights or local autonomy. Such measures may in effect be similar to those invoked to protect cultures, but their constitutive principle would be different – they would be contingent on positive results in mitigating the pattern of domination of some groups by others. Additionally, protecting intra-group non-domination may require provisions for strengthening individual rights. Interestingly, Hayward and Watson make special mention of political rights here, i.e. the democratizing effect of the state in ensuring that equal participation takes place in the affairs of groups. Furthermore, they underscore that the goal of eliminating the arbitrary exercise of power by some group members over others is a goal that is distinct from promoting individual autonomy. Non-domination here seems, then, to align more closely with Pettit’s articulation.
The third dimension of systemic domination seems to be the most difficult to pin down in terms of institutional actions towards dismantling it. In Hayward and Watson’s words, it “requires state action to ensure the malleability of group norms and group boundaries: to ensure their responsiveness, that is, to the human subjects whose lives they govern.” (ibid. 37) The idea here is to try to make naturalized norms, such as gender norms, open to challenge, at least in principle. In their view this entails “procedurally democratic institutions that foster contestatory forms of political engagement in which people critique and defend, and sometimes transform, the groups with which they identify” (ibid. 37-38). This sounds like a tall order, especially in the case of fostering the malleability of group boundaries, a task which may be beyond the tools of the state. On the other hand, analysis of the nature of various forms of systemic domination may itself be crucial, if nothing else then at least for isolating the courses of action which would certainly not aid non-domination, or which would increase the risk of entrenching systemic domination even further.

In spelling out the three dimensions of non-domination, Hayward and Watson argue for a wide range of action by political institutions that would fulfill their non-domination promoting mandate. They give full license, in particular, to state actions aimed at democratizing social practice. Here they converge in practice with Deveaux’s recommendations, which emphasize procedure aimed at inclusion, but are very weary of speculating what kind of outcome would be most consistent with non-domination. An illustration of this is Hayward and Watson’s example of the Santa Clara Pueblo case of disputed tribal membership. “The best way for the Supreme Court to promote nondomination in the Martinez case would have been for it to mandate that those significantly affected by membership rules – including not only tribal leaders and tribal
members, but also people excluded from membership, who contested their exclusion – engage one another politically to determine tribal membership rules. (ibid. 39)... The state might have mandated public deliberation on this proposed change, followed by a vote open to all affected. (ibid. 40)”. But what if the outcome of such a vote was still the same, would that give rise to other institutional actions to diminish domination? This type of question is left unanswered by the three-dimensional character of non-domination, as Hayward has not yet discussed the structural connection and the normative implications of the three dimensions of non-domination when they are placed differently on the power relations continuum.

Unresolved issues with Hayward-ian non-domination

One important aspect of Hayward’s theory of power de-faced which remains unresolved is the relationship between non-domination and what she calls “the basic democratic norm” (i.e that “people should be, not only the subjects, but also the architects of key boundaries that delimit and circumscribe their fields of action” (Hayward 2000, 166). Specifically, when Hayward states that the basic democratic norm is “the starting point” for her definition of non-domination17, it is not explicitly clear what conceptual link between the two concepts she means to establish.

17 “[P]ower relations fall along a continuum, one end-point of which is a state of domination. At the other end are relations that promote participants’ political freedom, that is, their capacity, enabled and constrained to varying degrees by particular relations of power, to act, not only within, but also upon, or in ways that affect, the mechanisms of power that shape their field of possibility. This definition takes as its starting point the basic democratic norm that people should be, not only the subjects, but also the architects of key boundaries that delimit and circumscribe their fields of action.”[emphasis added] (ibid.166)
Indeed, there are very few references in Hayward’s work to their ordering in the theory of power.

The most straightforward – and I think most plausible – way to interpret this link is that the basic democratic norm pre-defines the concept of non-domination – i.e., the basic democratic norm is not something derived from within Hayward’s own theory of power, but it is an independent standard for moral evaluation of power relations that we import from a different and separate moral argument. Once this norm is adopted, the continuum of power relations is set to its metric. The condition of domination is conceptualized as experiencing degrees and species of exclusion – exclusion from direct participation in social action and critical contestation, but also from identity categories, ‘sites of privilege’, etc. Non-domination/political freedom are correspondingly aligned with inclusion and effective action on social boundaries.

This interpretation of the relationship between the ‘basic democratic norm’ and (non)domination is credible, given the nature of Hayward’s project, which prioritizes identifying how differential social constraints operate over interpreting the moral significance of how they came about. Hayward puts a very high premium on the capacity of a structural theory of power to capture all dimensions of social constraint, and defends this against the model of theories of power that are driven by normative questions about responsibility or justice, and so eager to name the ‘powerful’ and ‘powerless’. Yet, at the same time, the reason she cares about capturing how social constraints operate is because they are morally and normatively significant – because “a critical analysis of power relations should focus on the ways in which these relationships affect people’s capacities to help shape the institutions and practices that govern their lives” (Hayward 2000). Specifically, the normative strength that she claims for her theory is
that it charts a critical distinction between more and less freedom promoting power relations (ibid. 6, 161-162). But as it happens, this distinction emerges precisely in the moment of theorizing the connection between (non)domination and democracy. If the nature of the connection between them is that the basic democratic norm essentially pre-defines non-domination, then the answer to what sort of human relation constitutes domination is externalized, presumably to the domain of democratic theory.

This, then, is a crucial moment for Hayward’s theory. In defining power as a network of social boundaries to action, Hayward attracts attention to the patterned asymmetries in these networks, making visible the different ways in which all agents are both constrained and enabled in a given instance. Her account of (non)domination, however, is not based on any facts about these asymmetries or about relations between agents, or on interpreting what dynamic these patterns signify. Instead, she posits a list of characteristics from which we can judge the democratic nature of social boundaries – their visibility, flexibility, revisability – and the democratic capacities of agents to push those boundaries in concert. However, Hayward does not specify why having these particular characteristics and capacities should be decisive in designating the power relations as desirable, and so constituting political freedom as non-domination. It is not specified what moral wrong relations of domination express – this answer implicitly lies in the moral justification for the ‘basic democratic norm’ itself. The implication of this is that de-facing power brings us only half way to charting the critical distinction between power relations. What does the work the other half of the way is the application of the democratic norm.
Consequently, even though Hayward’s primary interest is political freedom, and even though she recognizes and strives to retain the importance of the normative as well as the sociological aspect of the power project, the normative aspect in her innovative theory remains more modest. I believe Hayward acknowledges this, tacitly but at times almost directly, when she situates her theory. In Defacing Power she leaves this issue vague and open-ended: “Defacing power … draws attention to conceptual and normative links between theories of power and theories of democracy. (Hayward 2000, 161, emphasis added)”. In her reply to Lukes’ charge that structural approaches are “incapable of accounting for the relationship between power and responsibility” (Hayward 2006,156), she states that structural approaches, such as hers, are “fully compatible [emphasis added] with theories of political responsibility” (ibid). She continues to say that “my own approach has been to apply democratic, rather than libertarian, standards in evaluating power relations” (ibid. 161, emphasis added). Without further account of the conceptual link between (non)domination and the ‘basic democratic norm’, this last reference might capture her theory most aptly – it is a compelling theory of social power, in which normative democratic standards are infused as a matter of application towards critical purpose, and with which various other normative principles may be compatible. In this sense, it might be somewhat short of arriving at a robust theory of freedom, as Hayward wants.

This, of course, does not have to pose a serious problem for the analyses that her theory would produce, especially given that the basic democratic norm is not at all controversial. It may be that this depth of the account of freedom-promoting power relations is practically sufficient for most critical purposes. As I discussed earlier with regards to the sociological-normative tension, trade-offs are inevitable. There is no reason to think that having a normatively richer
account which works with an incomplete picture of relevant social constraints (as Hayward implies about Lukes’ and vice versa) would necessarily yield more productive analyses. From the perspective of structural theorists, the most important thing the concept of power can achieve is to reveal which social relations produce constraining effects, and what reproduces these relations. This is why Hayward is not particularly concerned with making constraint attributable to concrete institutions or agents at the conceptual level: “what normative studies of power should criticize and challenge, by this view, is not simply the choices agents make when they predictably and significantly constrain other agents, but more generally the preventable exclusion of some actors from processes of shaping social constraints on their action.” (Hayward 2000, 161).

There are indispensable insights in Hayward’s project of de-facing power, and as I will show a social constraint-based analysis which applies a democratic conception of non-domination (in its three dimensions) is valuable in addressing cases like the practice of polygyny. However, the normative ambitions of this theory can be strengthened if certain conceptual gaps are explored, and as I suggest, the concept of non-domination is given a more thorough reading and deployed in conjunction with a concept of relational individual autonomy.

In my view there are two hard problems which emerge from Hayward’s (perhaps purposefully) unspecified link between the ‘basic democratic norm’ and the non/domination continuum. The first is a conceptual problem, which comes to the surface once we consider that the ‘basic democratic norm’ itself already relies on a moral rejection of a particular social relation – namely, (to use Hayward’s terms) the relation of being only the subject without also being the architect of key boundaries that delimit people’s fields of action. The problem is that
this idea, although very basic, still has a particular lineage within political thought, and reflects philosophical claims about the nature of moral agency and equality, which are not preaced on the same account of social relations as boundaries that Hayward premises power on. The theories of power and democracy that she endeavours to merge are of different species, arguably with different social ontologies. This alone is not troublesome and it could be inconsequential if the democratic standard was just an elaboration on the theory of de-facing power, and it was simply found that democratization happens to promote the same sort of social relations that align with non-domination. (Indeed, it would be hard for anyone to disagree that we expect these to align, and I discuss the advantages of looking at it this way below.) However, the ‘basic democratic norm’ once imported by Hayward takes on a crucial role within the theory of power itself, so that its moral force (established elsewhere) suddenly grounds the distinction between more and less legitimate power relations. Now, it might be the case that the same reasoning which supports the basic democratic norm could be re-stated on Hayward’s social constructivist terms, just as compellingly. But we would expect this compatibility to be shown, given its central place, rather than just presumed. For example, the basic democratic norm might not mesh as well with the Foucauldian aspects of the theory and the questions they would raise about ‘subjects’; and vice versa, once we acknowledge the significance of agents being the architects of social boundaries, this might raise questions about the feasibility of de-facing power.

18 (A reference to the kind of reasoning that supports the ‘basic democratic norm’ was made earlier when discussing A. John Simmons’ and Allen Buchanan’s theories of political authority).
The second problem which emerges from the unspecified conceptual link between the basic democratic norm and non-domination is that although we might be able to criticize the legitimacy of social relations which preventably exclude some actors from shaping boundaries, it becomes difficult to speak to the legitimacy of institutions, and what legitimate institutions should look like as fixed networks of boundaries. This is ever more significant when Hayward also offers us intra-group, inter-group and systemic dimensions of non-domination. Both of these two problems are in my view important to the analysis of actual social practices like polygyny.

I would like to suggest that Hayward’s theorization of power and non-domination can address these issues to a considerable degree if the relationship between the democratic standards for evaluating power relations and the non/domination continuum are reconfigured slightly differently (ie so that the basic democratic norm does not pre-define non-domination). On this slightly reconfigured view, we could say: 1) that by the nature of the power de-faced view, there is a continuum between power relations that approximate domination and non-domination, and that, 2) because power is defined as a “network of social boundaries that shape fields of possible action”, the state of affairs where agents get to affect these boundaries – which is most desirable for independently specified reasons– becomes identified as coextensive with fulfillment of the democratic criteria. On this reformulation, the upshot is the same – power remains de-faced, the critical distinction of power relations on a continuum remains, and the same set of democratic inclusion questions would be asked to establish non-domination.

There would, however, be two additional implications:
a) non-domination, while still paralleling the basic democratic norm, acquires its own footing in a thesis about the moral quality of a relation between agents, rather than the relation between an agent and a social boundary. This does not betray the primacy of uncovering unnecessary social constraints. It is still consonant with the project of de-facing power, but it tries to root the moral objection to certain relations of power in the moral wrong of having moral agency subverted, particularly via patterns of constraint that reproduce subjugation and objectification. We could designate as ‘domination’ the state of power relations which entrenches an enduring asymmetry of social capacities, creating subordinate statuses and subverting moral agency. This entails a minor shift in analytical focus – it shifts patterns of dynamics between agent positions to the forefront and pushes the patterns of moving lines of boundaries-to-action to the second place (although these clearly still remain essential to the determination of domination). Non-domination logically denotes a shift on the continuum towards power relations characterized by more symmetrical patterns in social capacities and social statuses.

b) the list of analytical questions asked to establish (non)domination is expanded to include questions specifically targeting agent *capacities* to act upon boundaries.

The need for b) is highlighted if we incorporate insights from feminist accounts of relational autonomy. In the same way that non-domination tracks democratic social relations, it also tracks the development of relational autonomy in agents. For example, both track the formative role of social relationships, their inescapable power aspect, and the relational nature of freedom. More specifically, agents who find themselves in conditions approximating intra-group
non-domination on Hayward’s view are also bound to be relationally autonomous agents. I will elaborate on these stipulations shortly.

Given that, as discussed above, Hayward pre-defines non-domination with the basic democratic norm, the question naturally arises - has Hayward not just conflated non-domination with the democratic ideal, and if so, why is it necessary to inject both conceptions into her analysis, instead of using only democratization? We could operate with a de-faced account of what power is, and then assess different power relations on a simple democratic continuum. But this is not the route Hayward takes. The fact that Hayward retains (non)domination suggests that, on her own understanding, there is something contained in this notion that may be qualitatively different form its being (un)democratic. In order find out what that is Hayward would need to address a prior question for: what is the moral wrong of domination?

Fundamentally, if all social boundaries are shared and ubiquitous, what makes our ability to affect them morally significant?

In what ways do non-domination and the basic democratic norm seem conflated? One way, which runs consistently through her work, is that the Domination – Non-domination continuum seems to overlap with the Exclusion-Inclusion continuum. But, at the same time, throughout the same discussion, it comes across that her concern is not just with inclusion and its scope, but with agency – that people be able to act “in ways that affect the relations and processes in which they participate” (Hayward 2006,161). In that light it sounds like freedom is still in some important sense about action and spheres of action, about ‘being the author’ of one’s own actions upon, as much as having a share in the wider ‘authorship’ of the social boundary. Curiously, the ability to act in the context of social boundaries is referred to only in
structural terms by Hayward. The questions which interrogate this ability all refer to how much flexibility a boundary has and what the obstacles to affecting it are. There is no discussion of *what kinds of agents, with what agent-abilities are necessary in order affect the social constraints* that apply to them. Within the account of structural limitations on being able to act and affect boundaries, what seems most morally significant to Hayward is *avoidable* exclusion (ibid.166), and the dis-abling of agents. Thus a picture starts to emerge of the moral harm of domination. This could be construed as the fact that the relevant boundaries are being determined by others, and so one is being denied an equal authorship. The denial of such authorship, in its extreme dehumanizes, in that it subverts one’s moral agency, typically to one’s detriment. This is reminiscent of the notion of freedom as being empowered to be self-determining, taken from a different perspective. Importantly, in the perspective of power de-faced being self-determining could not be conceived in the sense of individuating control over one’s affairs or gaining independence from social constraint (since Hayward takes care to explain that these standard notions are not adequate). Within her theory, however, there might be room for a revised view of self-determination as a matter of degree to which one is acting upon the boundaries that affect oneself, even if one is not shifting the social boundary as such.

This brings up an important and closely related notion. On the picture of ubiquitous, collectively determined and constantly reconstituted boundaries, how far does inclusion actually get us to freedom? From a structural perspective, presumably, the answer is quite a bit. The social relations which are generally inclusive and open to change are not the ones we are worried about, not the ones we experience as constraining (even if they are still ‘constraints’ in ontological sense). On the other hand, the concept of political freedom advanced under the
rubric of non-domination is also meant to have an agentive, individual dimension. From this perspective, the answer is slightly murky. How free does being able to act upon boundaries make me? More importantly, does acting upon mean actually effecting change, and moving the boundary? Given that a social boundary would have to be moved socially, ie. collectively, it seems that if the boundary is indeed moving, then the hand that each individual had in effecting the change is likely negligible, and so it is questionable whether affecting the boundary can be meaningfully experienced as freedom by an individual agent. If this is to be the case, then we must have an agent who perceives the movement of social boundaries in a self-reflective and socially-reflective way. The condition of this agent, I want to suggest, is as interesting and important analytically in understanding non-domination as the analysis of social the boundaries at hand.

Alternatively to the above, one can easily imagine the adverse scenario of ‘acting upon’ and equally to others, but in the opposite direction to the majority. This is a typical scenario of formally inclusive political institutions, but arguably applicable to social power as well. Would this constitute an instance of domination, given that the action was still included and on equal terms, because the outcome was adverse? As with all democratic arguments, Hayward’s too has to face the question regarding outcomes – are there independent criteria for assessing domination in cases where we have democratic participation but no shift in constraints? In addition, if there is moral harm attached to preventable exclusions, does inclusion in and of itself remedy and eliminate the relation of domination of the one who was preventably excluded? It would be difficult to know how to interpret this situation, especially if we extend it to ‘social practices generally’ as Hayward wants to extend power. For example, nudists or
vegetarians in liberal societies are making efforts to affect boundaries, legal and social ones, but are not succeeding. Some of the reasons for their lack of success are attributable to specific instances of suppression, but on the whole it is difficult to say whether they are being dominated. The reason it is difficult is because they are not subjugated as groups, and also because it is not clear that social justice would be better served if everyone stopped wearing clothes (weather permitting) and stopped consuming meat of any kind (which might improve social justice vis. animals, but that still seems like a separate consideration as to relations of domination between humans). These are also things that are ‘naturalized’ and ‘normalized’ but they are not prevented from being challenged (unlike sexuality for example). The challenges made by nudists and vegetarians in liberal societies are direct and visible, and subject to formal and informal public discussion. The problem for them is that the rest of society is just not getting on board with pushing those boundaries in significant ways.

A further, and related, issue in using a Hayward-ian account of non-domination normatively is whether her conception can specify sufficiently the links between dominated and dominators. J.Hearn has argued that Lukes’ conception of domination does not do this sufficiently, because it focuses too much on the condition of being dominated, on identifying the harm over the power subject, and too little on the dynamic of the relationship between the dominated and dominators.

In a deep sense, of course, Hayward’s account of power is entirely relational, and she defines the condition of domination as relative lack of a social capacity, and as ‘exclusion’. Both agents and their fields of action are conceived ‘relationally’, with reference to how they are socially embedded. But we can still wonder – as an aspect of power de-faced, has domination
also become de-faced in Hayward’s theory? One of the advantages of de-facing power, Hayward argues, is precisely that it would allow us to capture more of the ways in which domination takes hold. Yet, once immersed into this view, it seems easier to describe the difference between dominated and dominators as a difference in position, based on being situated in such a way as to be able to affect social boundaries or not. However, the dynamic connection between dominator and dominated seems to fall out of view, and this is less normatively appealing, since there is certainly a moral significance to that dynamic. What are the reasons why we do not want anyone to be ‘dominated’ in avoidable ways? Of course, one reason is that we want everyone to experience the benefits of being able to affect norms and expand fields of possible action. But increasing benefits is not the sole reason – even if one were not likely to transform the social boundaries that affect her, we would still not want that person to be deprived of the position where she can do so. There is an aspect of being dominated that is inherently injurious. At the level of moral intuition, the notion of non-domination appeals because it promises emancipation from a dynamic that subordinates. This very dynamic is what Hayward’s theory should be developed to specify better, and her typology of inter-group, intra-group and systemic domination goes a long way towards doing so – however, at the conceptual level, she still has not articulated this dynamic in a general way.

How can relational autonomy figure within the Haywardian account of power and domination? Relational autonomy represents the same intuitions within the feminist and the broader autonomy literature as non-domination does, both in Hayward’s original and in my slightly reconstructed version of her theory. However, autonomy as a concept focuses more sharply on what can be said about an agent’s status in the power field, and gives a more
introspective view of that status because it also cares about how power plays out within the agent (eg. the question of oppressive socialization).

A simplified link between non-domination and relational autonomy can be formulated this way: domination and power are features of relationships. Autonomy is a feature of agents in relationships.

The logical question which arises from this formulation is what is the difference in saying that someone has autonomy, and that they ‘have’ power? Are we dragging ‘power-with-a-face’ back in by speaking of autonomy? If political freedom is understood as the capacity to shape one’s own field of action (as Hayward defines it), then introducing autonomy need not be any more disruptive than speaking about political freedom. In addition, the premise that power is not something one person ‘has’ has its own limitations. A concept of autonomy can be consistent with this view, while at the same time making it possible for us to speak about individual agents’ relative situation within an enduring pattern. ‘Autonomy’ can become the ‘face’ of the empowered in an analysis which otherwise de-faces power.

The next question is whether relational autonomy is sufficiently different from the definition of political freedom so as not to be redundant. In my view autonomy adds greater specificity to political freedom. Relational autonomy is conceived in the context of the individual’s normative authority and her capacity to achieve agent-relative ends. This can surely enrich an analysis of what it is to act upon the social constraints that affect her, and it is to this issue that the thesis now turns.
Chapter 6

Relational Moral Autonomy

The concept of autonomy has been to political philosophy what bouquets and reclined nudes have been to art. There are countless works devoted to establishing, refining or looking anew at what individual autonomy properly means. Many theorists take autonomy as a starting point to developing larger systems of ideas. And yet others who are not centrally concerned with autonomy still articulate their own conceptions tailored to their specific subject. In moral philosophy autonomy is indispensible to discussions of agency, rationality, moral responsibility, authenticity, and of course, applied ethics. Its significance is transferred into political theory, where conceptions of the autonomous agent are elemental to theorizing the status of persons with respect to equality, justice and rights, and by extension, the authority and scope of political institutions as well. Just like bouquets and reclined nudes, conceptualizing autonomy in contemporary political theory is about exposing the familiar in a new light, about perspectives, shades and subtleties.

In this chapter I outline the genesis of the relational approach to individual autonomy and argue that a conception of relational moral autonomy is a natural counterpart and an analytically useful complement to non-domination. This is because relational moral autonomy is a sophisticated conception in its own right, but also because it has more to contribute to understanding non-domination than any of the other standard conceptions. My criterion for assessing these conceptions is how helpful they are in developing a normative perspective on one of the hardest problems for the autonomy literature, namely individuals’ endorsement of
norms and practices that assign them subordinating roles and perpetuate domination. This criterion is especially salient for contested practices such as polygamy, but is also one of the most challenging to meet in the multiculturalism literature as well. An important part of my argument is that the relational approach to autonomy is underpinned by similar concerns and intuitions as those that motivate Clarissa Hayward’s account of non-domination. I illustrate this with examples from the debates and critiques - within feminist thought especially – which sparked the turn towards a relational approach. However, even though they share a central intuition, non-domination and relational autonomy differ in their analytical focus. If non-domination has a structural focus that highlights patterned asymmetries in social power, relational autonomy has an agentive focus and allows us to speak about how domination affects individual capacities and how it reproduces itself by undermining them. The final claim of the chapter is that by enhancing our understanding of non-domination relational moral autonomy also enhances our understanding of legitimacy.

I begin with a review of the various meanings commonly attributed to autonomy in political theory because these affect our understanding of what we should expect a conception of autonomy to achieve. I then outline the central divisions between moral and personal and procedural and substantive types of autonomy accounts, and juxtapose John Christman’s procedural view with Joseph Raz’s famous substantive personal autonomy view. The contrast between the two accounts brings into focus their shortcomings with respect to the problem of internalized oppression and the problem of legitimacy in a pluralistic democratic society. After this I turn to the procedural vs. substantive debates on the same two problems, in order to highlight a significant and ongoing impasse in that literature which tracks in analogous ways the
tensions between juridical and dialogical approaches to multicultural justice discussed in Chapter Two. The significance of the limitations of these strands of autonomy is clarified in the next section where I examine the initial call to reconceive autonomy in a relational way. Following this I come to a more concrete picture of the ‘relationality’ of the new approach, and its advantages in general terms. I explain in some detail the specific conception which I adopt for my project, namely Catriona Mackenzie’s articulation of a weakly substantive recognitional relational view of autonomy; and argue that it is appropriate and useful to think of this conception as ‘relational moral autonomy’. I conclude by discussing in what ways the latter complements non-domination.

**General distinctions**

The vastness and diversity of the autonomy literature make it difficult to situate a specific account of it. Some of the more famous theoretical turns in discussions of autonomy have become paradigmatic of types of approaches (such as those of Harry Frankfurt or Gerald Dworkin, or the feminist turn towards relational autonomy in Jennifer Nedelsky, Diana T. Meyers, Natalie Stoljar, etc). As a result various conceptions of autonomy have been clustered and mapped along their lines. The two main sets of common differentiations that I will focus on are the personal autonomy/ moral autonomy distinction and the procedural vs. substantive autonomy distinction. I will look at the latter in the most depth as it is the one most salient to feminist debates on autonomy from which the turn to relational autonomy has emerged. The proper classification of autonomy conceptions is not of itself particularly important. However,
critiques of autonomy and its place in political theory are often muddled by straw-man arguments – a problem compounded by the fact that autonomy is generally a porous, flexible and yet foundational concept. In this sense, and in keeping with the reclined nude metaphor, it is worth elaborating on the different angles from which autonomy can be viewed – some of which are always more flattering and more illuminating than others.

In my view, the most useful systematic review of traditional conceptions of individual autonomy is that developed by Joel Feinberg (Feinberg 1989, 27-49). Feinberg identifies four closely related meanings of ‘autonomy’, which different conceptions reflect in varying measure and intensity. First, autonomy means a *capacity* to govern oneself. As any capacity the capacity to govern oneself comes in degrees. Definitions of autonomy in this light tend to focus on the notion of threshold competence, of the kind that adults have in the legal sense (ibid.29). It usually involves some kind of thesis regarding moral agency or psychological development, but it can also imply a substantive capability requirement, such as minimum knowledge, etc. Autonomy can seem pretty narrow and unmoving if one is trying to read a lot into this meaning from the perspective of social and political theory, but it is clearly important that it is examined in areas such as law or bioethics.

Second, and perhaps most prominently, autonomy means the actual *condition of* being self-governing (ibid. 30-42). There are many angles from which this meaning is perceived and expressed. The metaphor of self-possession used to be particularly salient – e.g. to have no master or mediator, to have a say in one’s own affairs. Relatedly, it can also be used in the sense of self-identity – both having a sense of one’s own distinctness, and not being defined *exclusively or exhaustively* by one’s relation to another particular person (as in being Mrs. John
Smith). Similarly, and controversially, in some contexts autonomy also means being an authentic self, meaning acting on one’s true beliefs, values, goals and tastes. This typically implies being inner-directed and self-reflective, understood as opposed to being an automaton or being the subject to manipulation and coercion (and importantly, not as opposed to being a socialized/social being). The ways in which critical, rational reflection is embedded in the condition of being self-governing also include the following nuances on the meaning (sometimes contextually derived): self-legislation (the most literal meaning of auto nomos, especially in Kantian theories), moral authenticity (governing oneself according to moral principle where the endorsement of this principle is reflectively embraced by the self, and not a mindless reflex), integrity (being able to be faithful to one’s own principles), self-discipline, initiative (devising plans and personal projects), and last but not least, being responsible for oneself (ibid. 34-42).

The relationship between autonomy and responsibility is particularly complex, though as a general precept only those who are autonomous are considered responsible.

Thirdly, autonomy can refer to the **ideal of character** that denotes the cluster of traits entailed in self-government. This is perhaps the most contentious meaning with which autonomy is invested, not the least because as an ideal autonomy is typical of liberal political theories, and because it is thought to be infused with an individualist ethic, or downright synonymous with endorsing self-sufficiency and self-centeredness (the epitome of this being the infamous Gordon Gekko and his ‘greed is good’ speech). In any philosophical treatment of it, however, autonomy is by nature a partial ideal. The character traits related to autonomy do not constitute moral excellence unequivocally; rather, autonomy is a virtue in conjunction with other virtues, which it also works to enhance. In Feinberg’s words: “We can only hope to refine
a conception of ideal autonomy according to which other things being equal, it is better to be autonomous than not. ... Indeed “autonomy”, if we construct the ideal carefully, might even designate a necessary element in any full ideal of human character. But since it can coexist so comfortably with striking moral flaws, it cannot be the whole ideal” (ibid.44). The actual terrain of debate over autonomy as an ideal is thus more properly over whether autonomy is a necessary virtue (in ethics) or a necessary value (in politics) rather than whether it is a trump.

The fourth meaning that is conventionally associated with autonomy is that of sovereign authority to govern oneself (ibid.46-47). This is reflective of the concept of state sovereignty, a reflection due to the similar language of self-government. However, as Feinberg points out, the concept of individual autonomy is inherently different in an important way. On the established terminology, the sovereignty of a state is whole and undivided; when a state devolves authority to a region it does not thereby relinquish part of its sovereignty, since sovereignty itself is indelible. Autonomy, on the other hand, is partial and limited. Some conceptions of autonomy reflect this better than others, and some theories which refer to autonomy fail to theorize the implications of partial autonomy. However, precisely because of its varied meanings noted above, personal autonomy is generally not something that one wholly lacks or fully exemplifies.

There is one sense, however, in which autonomy is treated as a right, or something of the same order as a right. In liberal theory autonomy is treated as a ‘natural’ or moral right implicit in the equal moral worth of persons, in the sense that there is a presumption in favour of non-interference in individual life, an entitlement to make certain decisions unless there are moral reasons to the contrary. In this particular sense of moral right autonomy is like sovereignty – just as states’ sovereignty is not based on how well they govern themselves but on
their entitlement to do so without interference from other states, so is the autonomy right of persons not contingent on the degree to which they are personally autonomous (Hill 1989, 93).

In conjunction with this, liberal thought assumes that citizens have the capacity to make autonomous choices (an assumption especially important for those liberals who ground political authority in consent). The development of this capacity varies greatly across social positions. However, a relatively lower capacity does not negate autonomy as a moral right (even children have this right despite their lack of threshold competence in the first meaning of autonomy). For this reason, liberals have notoriously not paid sufficient attention to the implications of actual variation in capacities for their theoretical models. Rather, too much rests on the general potential of persons to develop autonomy capacities as moral agents, and the jump from this abstracted feature of individuals to justification of actual political institutions and policies. On the other hand, despite the appearance of inconsistency between holding autonomy as invariable in the sense of moral right and as variable in the sense of capacity, this structure of the liberal conception of autonomy is what gives thrust to liberal theory’s emancipatory mandate to eliminate political obstacles to the equal development of individual autonomy. Some liberal authors have recently argued that there is a positive duty to address structural sources of injustice in any legitimate form of political liberalism (for example Paula Droege 2008).

Finally, autonomy is neither a matter of ‘right’ nor a matter of degree in Kant’s particular conception. Kant also treats autonomy as invariable and grounding a basic respect to all human beings; and, concurrently believed in a robust right to self-determination. However, as Thomas Hill explains, these two notions were not co-extensive for Kant. Instead of being a
‘right’ autonomy on his conception was attributed a priori to all rational wills. It was not a right but a property (in the sense of feature), denoting the possessor’s acknowledgement of rational principles other than desire-satisfaction (Hill 1989, 93). “Thus, on the Kantian view, even those who are knowingly immoral and those whose most effective loyalties are to individuals rather than to impartial principles still have wills with the property of autonomy, though of course they fail to express their autonomy by living up to the commitments it entails” (Hill 1989, 93).

**Personal and Moral Autonomy distinction**

Meyers and Kittay summarize the distinction between personal and moral autonomy in the following way: “In the justice tradition, individual autonomy has two main dimensions: moral autonomy and personal autonomy. People gain moral autonomy when they use reason to discern which principles ought to be followed; personal autonomy is their entitlement to pursue their own visions of the good in their own way” (Meyers 1987). Broadly speaking, those who are concerned with personal autonomy tend to discuss the degree to which a person is in control of the course of her own life. The focus and value of personal autonomy is in the experience of being the conscious author and director of one’s life according to one’s own values and identity. Morality is relevant to personal autonomy in a variety of ways (for example in establishing one’s values and morally permissible courses of action), however it is not its subject. Moral autonomy, on the other hand, has to do with “choosing and living according to rules that one considers to be morally binding” (Friedman 2000, 37). It is concerned with how, and how far, one is able to relate one’s own interests to those of others. The focus and value of moral autonomy are in
determining and acting on sound moral principle (and not in whether a person is pursuing her own idea of happiness). As Jeremy Waldron has pointed out, the distinction between personal and moral autonomy is largely analytical, a matter of privileging one perspective over another (Waldron 2005,307-329). There is no discontinuity between these conceptions. Both entail similar capacities and both require similar kinds of deliberative engagement with the self, reflection on who the self is, and self-control (ibid. 317).

Personal autonomy is most often associated with the political philosophy of J.S.Mill and the view that a good social order is one which produces flourishing individuals. Human capacities are perfected through the exercise of choice, constant reflection and judgment, Mill says; and “among the works of man, which human life is rightly employed in perfecting, the first in importance is surely man himself.” (Mill 1859, 106) Autonomy is not always a guarantee, but it is a necessary condition for the perfection of capacities, and the more independently a life was chosen and led the more worthwhile its achievements are, both to the individual and to the society enriched by his individuality. Individuality as an ideal is accompanied by a requirement of sovereignty over one’s own affairs and a condition of non-interference with the private life plans of persons.

One of the most influential accounts of personal autonomy is the perfectionist account developed by Joseph Raz in “Morality of Freedom”. Raz identifies moral autonomy as capacity for self-government, and personal autonomy as both an ideal of wellbeing and an actual condition of sovereignty over oneself. As such personal autonomy is the basis of a substantive theory of freedom (Raz 1986, 390). The ideal of personal autonomy is the vision of people molding their own fates, as much as it is possible, through the course of their lives (ibid. 369). To
be an author of one’s life in this sense does not imply some sort of transcendence of the social forces that shape it, but is conceived in opposition to the condition of simply drifting through life and the condition of having one’s fate determined by the will of another (ibid. 371). Even though Razian personal autonomy is about freely chosen pursuits, it is not about fetishizing choice. Autonomy does require a range of (morally acceptable) alternatives; yet, choice in and of itself has no intrinsic value (Flikschuh 2007, 153). The autonomous person is not a shopper, but an architect - what the ideal comprises is not voluntarism plain and simple, nor an aggregate of preference satisfactions, but the opportunity to build on foundations that one has embraced, and to revise and restructure commitments.

This definition of personal autonomy says nothing about the content of decisions and reasons, and (unlike some of the conceptions discussed below) it does not require that they are always harmonious with each other or checked by a unified value system or personality. Furthermore, unlike Mill's notion, this definition is neutral regarding individuality. Raz denies that autonomy is coextensive with self-realization (understood as the perfecting of one’s distinctive qualities and talents) since being the architect of one’s own life does not imply that the life must be preoccupied with the development of the self (Raz 1986, 375). At the same time, however, Raz’s ideal of personal autonomy is very demanding in that it links personal autonomy to a specific set of political conditions. His theory outlines three prerequisites for the existence of autonomy. First, agents must be in possession of certain mental capacities. These include reasoning skills and the competencies necessary to understand the nature of the choices to be made. However, as Michael Blake has pointed out, they also include “the appropriate attitudes towards one’s own life necessary to see one’s self as an agent”, which are contingent
on the character of political institutions (Blake 2002, 267). Second, the range of options available to agents must be adequate. The meaning of adequate is contentious, but this condition does not protect or require any specific individual option. The third prerequisite is the absence of coercion or manipulation. These are incompatible with autonomy because they substitute the will of one agent with that of another, and even more so because they are a fundamental form of disrespect for persons (ibid. 268).

Raz’s account of the preconditions of autonomy is tied to a larger autonomy-based doctrine of freedom where personal autonomy figures as a social value. In this he diverges from common liberal accounts of the concept. As Katrin Flikschuh clarifies: “Personal autonomy is seen by Raz as indexed to individuals: only individual persons can be autonomous. Nevertheless, Raz contends that it is not possible for individuals to become personally autonomous outside societies that value personal autonomy socially and whose institutions and practices reflect that” (Flikschuh 2007. 143). In his theory the state, as well as individual persons, have a duty not merely to prevent denial of freedom, but also to promote freedom by securing the conditions of autonomy for everyone (Raz 1985 407-408, 425). This requires far more than toleration amongst individuals and non-interference by the state. Autonomy is rooted in respect for human agents’ ability to engage creatively with the world and develop valuable attachments and projects. As such human agents do more than practical reasoning about various courses of action, they constantly reassess what values and ideals should be endorsed. This means that institutions must a) accommodate a plurality of ways of life (that are themselves consistent with autonomy) and b) provide a baseline set of options that would render the notion of choice meaningful. So long as this latter baseline is met, it does not mandate the maximization of the number of
options open, as more options does not in and of itself equal more autonomy (Blake 2002, 269). However, for Raz, as for other personal autonomy theorists, the way in which options above the baseline of adequacy are altered does have separate moral significance. The nature of personal autonomy is such that one cannot *make* another person autonomous; yet, it is possible to undermine another’s autonomy by disregarding the duty to secure autonomy-related capacities and alternatives. What matters “is not simply what things I may realistically do or be; it is why that set of things looks the way it does, and whether or not it reflects a conscious human attempt to manipulate it so as to subsume my will under another’s” (ibid. 270).

The notion of moral autonomy is traditionally understood as apolitical and pertaining to the domain of ethics and moral philosophy. According to a generalized definition provided by Gerald Dworkin (1988), “A person is morally autonomous if and only if his moral principles are his own.” More specific versions of this definition break down its conditions to mean “only if he bears the responsibility for the moral theory he accepts”, and “only if he does not accept without independent consideration the judgment of others as to what is morally correct” (Dworkin 1988, 35). On these common understandings moral autonomy is characterized as something mostly introspective. The lines of analysis which this conceptualization invites are concerned with what constitutes authenticity of the will, selfhood, the formation and ordering of desires and the criteria of rational action, etc.

Within liberal theory, the inquiry into moral autonomy is usually undertaken as part of the bigger project of tracing the derivation of the ideal of personal autonomy. Amongst recent publications on this theme, Gerald Gaus’ investigation of the place of autonomy within liberal morality presents a clear distinction between the two notions (Gaus 2005). According to Gaus,
the fundamental liberal principle, which stipulates that interference with another’s actions always requires justification, presupposes a Kantian conception of morally autonomous agents. The case for personal autonomy is made as an extension of the requirements associated with moral autonomy. On his interpretation of the Kantian definition, moral autonomy is a property of the will which means “to have the capacity for one’s will to be determined by moral practical reason” (ibid. 282). The qualifications for what counts as moral practical reason are clearly key to this formulation; but above all importance is placed on it being non self-serving, non-instrumental reason. A distinctively Kantian feature here is that moral reasons confront us as “imperatival and categorical. Regardless of our end goals, they demand that we do the right thing” (ibid. 283). This implies that it is not morally neutral whether one decides for oneself what one is to do, or whether compliance with moral reason is imposed by someone else. In order to be guided by moral reason in the real sense one must be capable of conceiving of oneself as a self-directing being. Thus, according to Gaus, the fundamental liberal principle presupposes an “ultra-minimal conception of personal autonomy” (ibid. 293). The moral reasons given must be recognizable to everyone as rational agents – however, deliberation of the agent herself cannot be substituted. Particularly, agents must exercise the capacity to distinguish and reject desires, motives or reasons “alien to their conception of the good” – they must not simply be giving in to them (ibid. 295).

Rainer Forst does not develop a free-standing conception of moral autonomy, but in his work “The Contexts of Justice” he distinguishes it as one of five mutually complementing types of autonomy (along with ethical, legal, social and political autonomy). He assigns political, normative content to moral autonomy by stating that it consists in “having a basic right to
justification, in the sense that for every claim others make on them, and especially for every form of force to which they are subjected, persons must be given adequate reasons justifying these claims and the norms on which the force rests. Persons are regarded – and respected – as autonomous in the sense that they are morally independent addressees and authors of intersubjective claims “(Forst 1997, 65).

There are two conditions of justification which accompany this formulation – reciprocity and generality. The first one dictates that “reasons that justify specific normative claims must be reciprocally non-rejectable, i.e. the author of these claims may not demand any rights or privileges that he or she denies his or her addressee.” The second is to secure that “in moral contexts, the community of justification may not be arbitrarily restricted, but rather must include all those affected by actions or norms in morally relevant ways”(Forst 2001, 44). This more suitably political definition of moral autonomy has one important advantage over the Kantian one described by Gaus. Rather than turning on the opposition between instrumental and moral imperatives, the thrust of this conceptualization is the likely tension between different sets of moral reasons, both within and between individuals who encounter others in the public domain of justice. The autonomous agency of individuals as participants in moral reasoning is important to the validity of political norms, beyond or regardless of its impact on the personal development of their individuality and interests.

19 These conditions are meant to reflect the equal moral worth of persons, and that thus justification is due to all subjects of a norm by the same standards – not that the content of the norm being justified must produce equal effects for everyone.
**Procedural and Substantive Autonomy distinction**

Contemporary theories of autonomy are also broadly divided into procedural and substantive accounts of what it means to have the ability to be self-governing, to live life according to reasons and values that are truly one’s own. In general terms, a conception of autonomy is said to be ‘procedural’ when it is focused on what it means to live life from within, i.e. on the authenticity of decision-making. Substantive theories, by contrast, attach additional criteria external to the agent that have to be met, or suggest that there are constraints on the actual content of the preferences that are compatible with being autonomous (Christman 2009). In some cases the procedural/substantive distinction has overlap with the moral/personal distinction respectively, but they are far from co-extensive. For example, Jospeh Raz’s account of personal autonomy contains very substantive criteria but is also concerned with the ‘how’ of choice-making. In the two conceptions discussed below, Groarke’s substantive account straddles both the concerns of personal and moral autonomy, and John Christman’s procedural account shares a good deal with Gaus’, but is not focused strictly on moral reasoning. In the rest of this section I will take a brief look at Groarke’s account in order to highlight these variations, and then examine Christman’s conception in more depth before moving on to juxtapose it with the Razian view.

A very dynamic and poignant substantive view is presented by Louis Groarke. He offers the following conception of autonomy: “Autonomy is not an ideal of permissiveness (“anything

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20 The procedural/substantive distinction is also sometimes referred to as the ‘internalist’/ ‘externalist’ distinction. Very similarly, the internalist view is that autonomous agents must act in a manner that satisfies their own expectations and desires; and the externalist, normative conception, suggests that autonomous agents must act in a manner that satisfies objective criteria of rationality and morality that exist independently of the agent herself. (Susan Dimock 1997, 66-67)
goes”), nor an ideal of smug satisfaction (“I did what I thought I should do”), but an ideal of objective accomplishment (“I did of my own accord, what I was required to do”)” (Groarke 2002, 182). Autonomy must be identified with successful self-government, not merely self-direction.

Goarke sees his definition of autonomy as a defence of negative liberty as a means to positive liberty understood as moral self-realization. He qualifies it as an attempt to strike a balance between liberal insistence on neutrality of the state with regards to the good, and communitarian arguments that the state should be concerned with the moral realization of citizens. Rationality, morality and autonomy cannot be discussed as separable characteristics of human agency – a free person is rational and moral and autonomous at once. Groarke specifically distinguishes rationality from the “utility model”, defining it as “the operation of a fallible consistency that satisfies some kind of objective criterion”, in a process of evaluation of both facts and values (ibid. 77). Persons are not rational, moral and autonomous because and when they believe they are such, but because in some objective sense they succeed at human achievement. The paradigm case of autonomy, according to Groarke, is the “good rebel” – the person driven by dignity and moral integrity who stands up for the right thing to do, even when it directly threatens his interest.

Procedural theories are so named because they are concerned with the process of how a decision is made and not with evaluating what has been decided. To this extent they are content-neutral, so that autonomy denotes the way in which mental competencies are exercised, and not the presence or absence of specific content in a person’s beliefs, values and attitudes. The premium is on critical reflection and authenticity, and on the internal, subjective perspective of assessment.
Procedural theories generally focus on the motivational structure of individuals. Because they locate autonomy only with reference to the self, they are the most often accused of both methodological and normative individualism. Individualistic conceptions of autonomy are associated with the work of a number of liberal theorists in the 1970s, who identify autonomy as action in compliance with the (developmentally) highest part of the self. Gary Watson considers what constitutes a free will and develops an argument that free agency implies action motivated by what one values reflectively rather than what one desires impulsively (Watson 1975). The onus in understanding agency has to be on reflection – one can have wants induced by acculturation and the environment, but these are not rational in the full sense for Watson. Similarly, Harry Frankfurt discusses autonomy as a form of self-discipline, which enables one to act in accordance with what he calls “second-order desires”. Those are desires which come about as an evaluation of one’s “first order”, impulsive desires (Frankfurt 1971, 6). According to Frankfurt, this is the kind of desire which is uniquely human, and it is also the component of agency which gives rise to moral responsibility.

These accounts are vulnerable to several objections, one of which is the problem of manipulation (James Taylor 2008, 5). They take a snapshot view of autonomy where the determining factor is hierarchical endorsement, where the history of how a person comes to have their second order desires is not taken into account. In this sense it is possible to treat as autonomous people who are subject to deceit or inculcation.

The most notable proponent of procedural accounts in contemporary debates is perhaps John Christman, who advances an historically based version of the hierarchical approach to autonomy. When motivated to action, a person is autonomous if he does not resist
the development of the desire to act, if his resistance or lack of resistance is not affected by external factors which inhibit self-reflection, and if his self-reflection is minimally rational. In Christman’s, and other proceduralists’ views (to a limited degree, Marilyn Friedman’s view), a person may autonomously choose at some point to submit to influences and constraints that inhibit his or her self-reflection, and still be considered autonomous afterwards even if his actions no longer meet the original criteria – in other words, if from that point onwards his desires cease to be autonomous. James Taylor clarifies this with the example of someone who joins the monks of the order of St. Ignatius, and effectively subjugates himself to the Order, knowingly denouncing free choice and accepting the inhibition of self-reflection in any significant areas of his life (ibid. 11). Because Christman’s theory produces the counter-intuitive conclusion that such a person is still autonomous because he subjugated freely, his proceduralist view is widely criticized as insufficiently rigorous, or, paradigmatically wrong.

**Limits of standard views, especially Christman’s and Raz’s**

Individual autonomy is typically invoked in liberal theory, especially where the relationship between authority, law and morality is discussed. Not surprisingly it has also been central in prominent theories regarding state interference with cultural and religious social practices. Will Kymlicka draws on Raz’s conception of personal autonomy to ground group-differentiated rights in his theory of multicultural citizenship. The role of individual autonomy there is crucial, as only those practices that are consistent with it can be justifiably accommodated in a liberal-democratic society. By contrast, a more procedural view of autonomy is adopted by Chandran
Kukathas who famously argues against group rights in “The Liberal Archipelago” (Kukathas 2003). In his theory a fundamental principle of toleration is supplemented by a minimalist take on autonomy, which denies the legitimacy of any interference with un-coerced actions. As these and other theories have shown, the place of individual autonomy in answering these questions is very contentious. It has been treated as both indispensible to and in tension with the recognition of diversity and the value of pluralism. Some have suggested that it should be fully dispensed with, giving way to analyses rooted exclusively in principles of equality or structural explanations regarding the workings of social power. Proponents of non-domination like Pettit have also demoted autonomy to a secondary role. Yet the rubric of autonomy harnesses strong intuitions about the status of individuals which are difficult to ignore even where concerns with domination are central. Here I will point out some well established shortcomings of the procedural and Razian accounts of autonomy for the context of cultural practices. Then I will move on to outline the features of the relational approach to autonomy, which in my view can be fruitfully applied for a richer account of non-domination.

Procedural theories, at first glance, appear more conducive to a pluralist society, precisely because they strive to be content neutral and so not privilege one value system over another. They worry that substantive requirements limit the range of authentic choice. For their part, substantive theorists worry that, even when it is rigorous, the decision-making procedure cannot fully discount the effects of oppressive socialization. They wish to ensure that decisions which make individuals complicit in their own oppression are not considered autonomous. Instead, on this account the corresponding measure of respect for those decisions would be withheld (without of course diminishing respect for the persons themselves).
The main critique that procedural conceptions of autonomy face is that because they focus on occurrent mental states they are not capable of accounting for the ways in which successful socialization into subservient roles undermines an agent’s autonomy. More precisely, they fail to capture the moral intuition that a person is not autonomous if his or her action is the result of successful subjugating socialization. It is possible that someone authentically endorses a certain action and is not alienated from the values this endorsement represents, yet by the same action he or she is undermining one’s own exercise of self-government or one’s capacity for it.

In response, procedural models such as Christman’s view build in an additional procedural requirement that persons are autonomous with respect to a certain desire if, upon rational reflection, they do not reject the process by which they came to have that desire. This is certainly a very strict requirement that goes a considerable way to exclude decisions and beliefs acquired as a result of manipulation. Manipulation entails the skewing of information and bending of circumstances in order to influence someone to behave in a particular way, typically one that is not to their benefit. Presumably, once the process by which we came to have a desire is revealed to us we would be able to judge for ourselves whether that process was manipulative on our own terms. This kind of judgment is not uncommon. We could also reject a conviction if we come to see that we made an error in arriving at it, even if we were not manipulated. The important thing for Christman is that we recognize the error on our own terms. In my view it is not fair to say that procedural autonomy is simply about peeling away the layers until some authentic self or genuine moral agent surfaces. There is nothing in procedural accounts that absolutely requires that there is some such static entity - in fact, the concern with
process is a concern with dynamism, and critical reflection is at the root of growth and transformation.

However, procedural autonomy is not fully conducive to the complex view of agency that is raised by the problem of internalized oppression.\textsuperscript{21} It is true that oppressive socialization rests on ‘false’ beliefs about unequal roles and statuses of people. These beliefs are false in the sense that, as observers, we judge them to be empirically unfounded and/or morally wrong. However, the process by which we came to have a desire is much more obscured to us in the experience of oppression than it is in the experience of manipulation. Even when people have general knowledge about socialization, about the contingencies of their own situation and the existence of alternatives, re-examining the way in which they came to have a view or desire, or even a feeling, is much less likely to lead to its rejection if it is backed up by a whole system of beliefs that are mutually supporting. While manipulation usually involves a singularity (one event, one process, one decision, one idea) socialization entails cultivating a whole operating system, designating the ordering of objects and human relations themselves. Furthermore, unlike manipulation, socialization is of itself also value neutral. As Diana Meyers has pointed out, it is not the coerciveness of socialization that draws fire (since it is a general feature of human society). It is when people are harmed through the course of socialization that our concern is raised (Meyers 1991, 207). In this sense, Christman’s high threshold procedural requirement that we reflectively endorse the process by which we came to have a desire is advantageous and workable in cases where we have to discern between being manipulated and not being

\textsuperscript{21} Internalized norms and beliefs that lead to the endorsement of ideas and actions that perpetuate the oppressive position one is in.
manipulated. However, knowing that we have been socialized as all other humans have, in and of itself gives us little to go on in discerning which aspects of our socialization are oppressive and harmful to us. Moreover, what can be a harmful aspect in one context can be an empowering aspect in another. In fact, it is fair to say that, as centuries of philosophical and political endeavor attest, understanding and identifying pernicious forms of socialization is a mammoth task, and often a collective one too.

In this respect, procedural autonomy is problematic in at least two ways: first, it relies on a great level of self-transparency, so that it seems that only a person who was fully autonomous up to the point of assessing their own desires can actually be in a position to fulfill the procedural requirement; second, the way in which one assesses the process by which they came to have a desire is, for most people, by reference to other desires and values they believe they endorse. For both of these reasons even a rigorous procedural account fails to deal adequately with the problem of oppressive socialization. If people were able to transcend their socialization on a day-to-day basis we would not have to worry about it being oppressive.

The Razian conception of personal autonomy offers us a very different take on these issues. However, this take is problematic for different reasons. From the perspective of legitimacy, the autonomy-based doctrine of freedom is too ‘thick’ to be an appropriate political principle. As Raz explicitly states, the demands of autonomy as a social value operate as a restriction on what sort of institutions and practices are consistent with a free society. Though it does not require a liberal ethos of individuals as persons, it does require it of political institutions, and of individuals as citizens. On Raz’s view, moreover, there is a positive duty to secure the conditions of autonomy that applies not just to the state but to members of society
more broadly, including those espousing cultural, ideological and religious convictions which do not value autonomy. As mentioned earlier, people cannot be ‘made’ autonomous, and so the presence of Razian autonomy capacities does not compete with or impose any alien value or identity. However, as an organizing principle of social and political life, the development of personal autonomy capacities and attending plurality of valuable options does pose particular burdens on those who do not endorse it.

Despite being too demanding as a substantive doctrine of freedom, the Razian view is too weak in another respect. In the frame of reference of internalized oppression, this personal autonomy conception is insufficiently cognizant of how socialization can skew or subvert the preconditions of autonomy. For example, our perceptions of what counts as an adequate option will be shaped by what power relations we have come to expect. This is not corrected by the other elements of autonomy. As with the procedural view, the presence of critical reflective competencies provides no assurances, as these competencies test internalized values against each other. A social environment of value pluralism mitigates this effect, but this is the most that can be said for it. The third precondition specified by Raz specifically excludes coercion and manipulation. However, these do not exhaust all forms of subversion of individuals’ agencies and interests. They remain undetermined on forms of domination, such as internalized gender roles or subordinating norms. One of the main reasons for this is that although personal autonomy is conceived in opposition to subjection, this is usually expressed in terms of deliberate agency. The notion of self-rule is – perhaps not inherently but conventionally – meant to exclude rule only by a concrete other. The problem of the rule of norms is consequently harder to articulate from within that conception of personal autonomy, since what has to be
captured is neither the effects of socialization as such (which no conception of agency could single out in a comprehensible way), nor the effects of particular dominators, but specifically the effects of subordinating norms. The limitations of this standard substantive autonomy view are thus as serious as those of the standard procedural ones.

From Procedural/Substantive to Relational Autonomy

Feminist debates on and critiques of autonomy have operated mostly along the procedural/substantive distinction and the question of which kind of conception (if either) is best suited to address the oppressive socialization of women into gender roles (Stoljar 2000). The notion of relational autonomy also has its lineage in these debates, and so I will devote some more attention to its emergence below.

As mentioned earlier, from a feminist perspective autonomy has been a double-edged sword. For those who want to retain the critical opportunities contained in autonomy it has been widely debated what sort of approach to autonomy is best suited to addressing feminist concerns. At the heart of these concerns has been the issue of internalized gender roles. Though both procedural and substantive approaches have adherents, substantive approaches have been seen as more promising because they are better able to incorporate what Natalie Stoljar has termed ‘the feminist intuition’: the view that that “preferences influenced by oppressive norms of femininity cannot be autonomous” (ibid. 95).

In Autonomy, Gender, Politics Marilyn Friedman has elaborated a conception of procedural autonomy which strives to counteract the subordinating effects of feminine role
socialization all the while not excluding a priori any specific roles that women have reflectively embraced. She looks for example at the social expectations of women to make romantic love relationships – and eventually, marriage and a family - central to their lives. Despite the fact that women are socialized to prioritize in this way and devalue their independent goals, it must still be possible for women to be both in love and autonomous. Certainly, all other things being equal romantic love is a bigger threat to women’s autonomy than to men’s. However, for Friedman what autonomy denotes is precisely our ability to determine whether to be guided by the moral authority and preferences of others or not. Indeed, people never invent their own goals and values anyway, and sometimes what women do value is care for others. A critical reflection that results in adopting the preferences of others as truly our own is an instance of autonomy. What matters is that we are living lives where our commitments are wholeheartedly and reflectively endorsed – such a life, according to Friedman, is surely not an oppressive one, even if our commitments are aligned with social pressures. Thus, the woman in love who, upon critical reflection of her attachments and preferences, prioritizes her romantic relationship has not compromised her autonomy. “By acting in accordance with that commitment, a woman does not actually give up autonomy; instead she shows a significant degree of it. Thus a woman who values her relationships more than she values autonomy, and who acts to maintain her romantic relationship, becomes autonomous after all” (Friedman 2003, 132).

22 On this account autonomy entails “choosing and living according to standards or values that are, in some plausible sense, one’s ‘own’.” There are two dimension to ‘ownness’ specified by Friedman. The first involves reflection on guiding standards and values that is cognitively both rational and emotional. The second dimension requires that reflection must be relatively free from autonomy-impeding interferences (such as coercion, as well as certain aspects of socialization, but not socialization as such) (Friedman 2000, 37).
There are certainly many advantages to this conception, especially given that it places a premium on women’s fulfillment and softens an otherwise tragic opposition between romantic love and autonomy. It would also certainly be a perverse effect to decry all women who prioritize romantic love as non-autonomous in order to enhance their emancipation from socialized femininity. However, Friedman’s conception does not resolve this difficulty for feminism, it simply errs on one side of it. Theoretically, this version of autonomy does not clearly disarm the issue of internalized oppression, but rather demotes its significance.

As Sonya Charles has recently pointed out, these difficulties are more evident once we consider the classic case of the Deferential Wife described by Thomas Hill:

This is a woman who is utterly devoted to serving her husband. She buys the clothes he prefers, invites the guests he wants to entertain, and makes love whenever he is in the mood… She loves her husband, but her conduct is not simply an expression of love. She is happy, but she does not subordinate herself as a means of happiness. She does not simply defer to her husband in certain spheres as a trade-off for his deference in other spheres. On the contrary, she tends not to form her own interests, values and ideals; and, when she does, she counts them as less important than her husband’s. She readily responds to appeals from Women’s Liberation that she agrees that women are mentally and physically equal, if not superior, to men. She just believes that the proper role for a woman is to serve her family. As a matter of fact, much of her happiness derives from her belief that she fulfills this role very well. No one is trampling on her rights, she says; for she is quite glad, and proud, to serve her husband as she does. (Hill (1991), quoted in Sonya Charles 2010, 414)

The Deferential Wife (DW), socialized to value and perpetuate her deference, is a difficult case for autonomy. Marilyn Friedman’s case of the woman in love is more convincing when we envision her romantic relationship as non-deferential. A woman who chooses to prioritize in her life a relationship premised on actual equality between partners (whose values and ideas are equally valued, who enjoy equal respect, equal support and equal mutual care) may indeed be an empowered woman, even if the impetus to prioritize this relationship over other aspects of
life is socialized in an environment of profound gender inequalities. Importantly, this woman is making a choice to prioritize something that is in fact a valuable human experience. She might be perpetuating the stereotype of feminine goals with her actions, but she is not perpetuating the model of feminine subordination to male needs and authority. This of course is not a major distinction, but it illustrates that the strength of Freidman’s position derives some considerable force from the positive version of her example. If we were to imagine the woman in love as also being a Differential Wife, the autonomy of this subject becomes far more questionable.

In her argument for a strong substantive conception of autonomy, Sonya Charles claims that it is not possible to get at the problem with the DW unless we accept that her own endorsed beliefs undermine her autonomy. The problem with the DW, in other words, is not that she lacked critical competence or failed the process of self-reflection, but that it is the logic of the beliefs themselves that express an oppressive norm of femininity (Charles 2010, 416). Charles argues that “false beliefs that rely on subordinating reasoning and perpetuate oppressive systems are forms of internalized oppression, and therefore decisions that result from these beliefs should not count as autonomous” (ibid. 416-417). The emphasis in her thesis is on both conditions being necessary – forms of deference can be autonomous (for example, the deference to a mentor or leader), so long as they are not based on beliefs about subordination that perpetuate oppression (of self and other). This includes especially beliefs which de-value one’s worth as a moral being (ibid. 420). The forms of socialization that are most pernicious are those that undermine a person’s sense of self-worth thereby cultivating their complicity in their own oppression (ibid. 423). It does so by “indirectly skewing the process of critical reflection in a problematic way, because a person uses oppressive norms (that degrade
her status as a human being) to make certain decisions” (ibid. 424). The particular decisions made by an individual that can be traced to such beliefs should not be treated as autonomous.

This is indeed a demanding conception of autonomy, given that it is very difficult for anyone but the individual to know what her reasoning really is. Though we know such reasoning is pervasive, we rely on the interpretation of a person’s actions and stated views to infer it. This leads us into muddy waters. Even if the reasoning for a certain decision was known in some detail, we would still need some measure to judge the significance of internalized norms. To have internalized norms typically implies to not be aware that they are at work, but this may not necessarily be the case. It is possible to be quite aware that one is subject to a socially constructed norm that works to one’s disadvantage, yet still go along with it on the proverbial ‘path of least resistance’. Beauty standards can often be of this sort. Many women are aware of the double standard on physical appearance and of the way in which their bodies are objectified, yet continue to wear make-up and shave their legs for very pragmatic reasons –eg. that the social cost of non-compliance is too high. It might even be the case that autonomy is enhanced in other respects by complying with norms in this one, and/or that one’s energy is better spent resisting even more pernicious norms. In such instances, a woman is not lacking critical competence, nor reasoning from a perception of low self-worth. Yet the subordinating standard is perpetuated in her behavior and internal to her conduct. To determine whether such decisions are autonomous the substantive conception of autonomy proposed by Charles will need an ever more expansive, ever more concrete definition, and thus risks becoming more restrictive.
More importantly, however, the conception is demanding because people who hold subordinating beliefs tend to infuse them in a broad spectrum of views and decisions. This raises serious concern about the Deferential Wife. On Thomas Hill’s apt portrayal of her we could expect that a great many of her decisions would have to be disregarded as non-autonomous. Charles makes a point of emphasizing that substantive autonomy of this kind does not project a masculine norm of substantive independence, as more traditional conceptions of autonomy are seen to (ibid. 426). She elaborates that autonomy is something that attaches to specific acts and decisions, not entire lives. Consequently, judgment about the non-autonomous nature of a decision driven by internalized oppression is not equivalent to saying that the individual as such has no autonomy. In her example, a woman can display autonomy in deciding whether to marry or stay single, but exhibit lack of autonomy in getting cosmetic surgery. These qualifications, however, do not fully address the DW. Even if we thought that her deference to her husband was a thought-out decision taken at a particular moment, all her subsequent life decisions connected to her status in the marriage would be infected with the subordinating logic. Ultimately, this strong substantive version of autonomy poses a problem for the other side of the feminist intuition – namely, that we want a conception of autonomy that does not lead to diminishing respect of the DW as a person (an outcome which Charles explicitly does not want).

To my mind, Charles’s focus on subordinating reasoning in conjunction with oppressive practice is very much similar to saying that individuals are autonomous only when their beliefs and actions are consistent with non-domination. The agenda of feminist substantive autonomy is explicitly political – it is not interested in forbidding (if that were even possible) individual decisions which run afoul of the feminist intuition. The objective is critical – it is to advance the
understanding that internalized oppression violates autonomy-as-moral right. In my view, this is where this autonomy conception pushes up against, or makes contact with, the larger normative claim encompassed in non-domination. However, this is perhaps too big a task for the theoretical scope of individual autonomy. It illustrates that such conceptions can be viewed as attempts to derive, from within autonomy theory, a working answer to the same tension which afflicts the legitimate authority problem and the a priori and dialogical approaches to issues of multicultural justice (which I’ve discussed elsewhere).

As in those cases, the tension is not resolved by disentangling and separating the procedural from the substantive. Every conviction, including the feminist intuition, is arrived at by a process of questioning whether the things we are told are right and valuable are indeed such. The feminist intuition is not a revelation out of the blue. So, the proceduralist has a point in that it is unreservedly thinking minds - not right-thinking or finite-thinking minds – that an autonomy conception should safeguard. Critical reflection is, after all, the method of all emancipation. Seen in this light, the proceduralist conception of autonomy is in concert with the feminist intuition. However, though it is in concert, it does not lend it any power. In valuing the method, it de-values its ultimate purpose, which is to put us on a trajectory to better outcomes.

The difficulty of arriving at a satisfactory analysis of women’s disempowerment by gender norms via conceptions of autonomy, even when those conceptions are infused with feminist concerns, has led many to call for the abandonment of the concept altogether. This, however, may be a hasty conclusion. As I hope to show, a normative theory of non-domination stands to be enriched by an agent-centered concept like autonomy. Support for this view can be
found in the efforts of feminist scholars to restate the meaning of autonomy from a relational perspective.

Jennifer Nedelsky’s 1989 article “Reconceiving Autonomy: Sources, Thoughts and Possibilities” is thought to be one of the milestone works in the emergence of a relational approach to autonomy. Nedelsky is troubled by dominance of what she calls the ‘liberal incarnation’ of autonomy. In her view this incarnation both expresses and demands liberal individualism, and as such is deeply at odds with feminist aspirations and methodologies. At the same time, the ‘basic value of autonomy’ is endemic to its emancipatory project (Nedelsky 1989, 7). Thus, she argues, it is necessary to reconfigure autonomy to make it suitable to a theory that grapples with the social as well as the individual nature of human beings. Talk about people’s capacities for self-rule must be able to incorporate the centrality of relationships to the self, and more broadly, the recognition that human beings cannot be conceived outside of social context (ibid. 9). As she aptly puts it, the task is “to combine the claim of the constitutive-ness of social relations with the value of self-determination” (ibid.). Nedelsky further suggests that to do this feminist theorists need to overcome the dichotomy between autonomy and collectivity. In her view this dichotomy is perpetuated by liberal theory with the attendant notion that autonomy is achieved by drawing boundaries around the individual to create a space of non-interference that is further codified in the form of a list of rights. The symbol and materialization of this vision of the isolated autonomous man can be found in personal property. Nedelsky decries this image of autonomy as separation from the threatening other as a pathology of western societies (ibid. 12). In order to overcome it and retain the intuitive value of self-determination, we need to realize that in actuality what enables people to be autonomous are their relationships with
others. Instead of property, she suggests, the metaphor for fostering autonomy should be childrearing. Embedded in it is the notion that relatedness is constitutive of the self, that interdependence is a constant feature, and that structures of authority develop, but can also undermine, autonomy.

Nedelsky’s reconstructive platform is an inspired, adept and fruitful contribution. In my view her critique is compromised to a significant extent by her use of an already muddled, hyperbolic representation of autonomy; yet there are observations in this critique and insights in her constructive analysis which do apply to classic conceptions of autonomy in important ways. The regrettable aspect of her critique is that it bears no references to any modern autonomy theorists, and indeed to any specific liberal political theories. Her characterization of autonomy is rather attributed to ‘liberalism’ as political culture and substantiated by an analysis of “how the pathological conception of autonomy as boundaries against others has played itself out in some of the central public institutions of the United States” (ibid. 13). Thus, although her stated target is an individualist conception autonomy, what the actual critique addresses is a certain conceptualization of the nexus of autonomy, rights and the public/private divide. Piecing together the various agent abstractions at work in these contexts, she finds in the overlap the image of a detached, self-made, self-sufficient, rights-discharging agent, and extracts the idea of an inherent link between autonomy and property. Unsurprisingly, autonomy is conflated with independence in this image, and its various meanings are substituted with parallels – instead of capacity to govern oneself, capacity to support oneself (via property); instead of autonomy as actual self-government, separation and self-sufficiency; instead of autonomy as right, private sphere protected by rights (Feinberg 1989, 28).
This has bearing on the central claim of the critique that autonomy has been conceived as antithetical to the social nature of human beings. Nedelsky suggests that liberal theorists in particular understand the social nature of humans to consist in the fact that they are interactive beings who encounter each other like ‘atoms’ (Nedelsky 1989, 9), and that this is revealed in their preoccupation with governing the rules of these interactions. She wants to distinguish this from a properly social view of human beings, on which it is the persons’ identities that are socially constituted and not just their social transactions. “On this view, there is, in an important sense, no ‘person’ to protect within a sphere protected from all others, for there is no pre-existing, unitary self in isolation from relationships” (ibid.). The problem with this critical claim is that it rings true in how autonomy has been deployed on many issues, but not in how it is conceived, and Nedelsky offers little evidence to the view that autonomy ‘re-writes’ the individual as asocial. For example, at the same time as Nedelsky’s article, Joel Feinberg, who is a prominent liberal autonomy theorist, writes:

There is a danger in discussing, in the abstract, the ideal qualities of a human being. Our very way of posing the question can lead us to forget the most significant truth about ourselves, that we are social animals. No individual person selects “autonomously” his own genetic inheritance or early upbringing. ... And yet to be a human being is to be a part of community, to speak a language, to take one’s place in an already functioning group. We come into awareness of ourselves as part of ongoing social processes. ... Any conception of ideal human virtue must be consistent with this presupposition. What liberals have always rightly deplored has been the effects on individual character of social manipulation, the condition in which individuality is swallowed up by the collective mass, and persons are interchangeable parts in a great organic machine. ... The idea of the autonomous person is that of an authentic individual whose self-determination is as complete as is consistent with the requirement that he is, of course, a member of a community. (Feinberg 1989, 45)

There is, of course, one particular sense in which autonomy is specifically disconnected from social context. In the moral sense ‘autonomy as right’ attaches to persons by virtue of their
equal moral worth and not by virtue of their particular positions and their ‘relatedness’. It is wrong, however, to extrapolate that this makes the self pre-existing and unitary – what it does is that it simply marks the self as a moral subject. This subtlety is perhaps a significant source of confusion regarding the social nature of autonomy. The relevance of persons’ particular positions is excluded in ‘autonomy as right’. When this is detected, it is transformed into the understanding that by describing someone as autonomous we are describing them as dis-embedded. But this is clearly not the case, as Feinberg attests. What has been troubling to liberals at least since Berlin is not that individuals are constituted by their relations with others, but that it is a fact that speaks nothing about itself, that its normative implications are ambivalent and uncontained. For example, one could take the fact that people are constituted by their social context extremely seriously, and yet also maintain that the import of this fact is that individuals are by-products whose moral significance is contingent on these relationships being of some particular sort.

Thus the problem is not whether autonomy is antithetical to the social nature of persons, as on this question critics and supporters of autonomy are speaking past each other. The interesting issue is rather how this social nature is incorporated in the expansive articulations of various conceptions of autonomy, and in the shape of the analytical narratives they produce. Here Nedelsky’s point is more salient, and here is the first entry point of relationality. As her childrearing metaphor intuitively suggests, an important dimension of the analytical narrative must be how autonomy capacities in individuals develop through relationships, as well as how values and norms are found. This is indeed a weakness of standard conceptions. An exception here may be Raz, who shares with Nedelsky the presupposition that
“the capacity to find one’s own law can develop only in the context of relations with others (both intimate and broadly social) that nurture this capacity” (Nedelsky 1989, 11). Furthermore, there is something to be gained from the recognition that autonomy is not co-extensive with empowerment. Since standard accounts of personal autonomy put a lot of stock in the individuated experience of being in control of one’s own life they are liable to push aside the social context of that experience. As Nedelsky points out, control can come from learning to navigate our environment and generate the results we want from it. The notion of self-determination is nevertheless even more demanding. “Many people learn to ‘play the game’ effectively, to do what is wanted of them, and to confidently reap the rewards handed out for compliance. This counts as success and generates the feeling [of autonomy]. It is not autonomy. Playing someone else’s game well is not defining the path of one’s own life” (ibid. 24). The challenge for a refigured conception of autonomy is to account for the fact that the feeling of control can be misleading in this way, yet at the same time retain the centrality of subjective experience and ‘feeling autonomous’ as necessary components in the understanding of individual capacity for autonomy (ibid 25).

The origins of the relational approach to autonomy are thus found in a call to reclaim autonomy that mixes political and philosophical enterprise. These two dimensions have since become more nuanced and disentangled than they are in Nedelsky’s work, in order to arrive at a more meaningful critique and more clear focus for the emerging approach: namely, to analyze the implications of the social nature of selfhood for defining the necessary conditions of autonomy. On the political front, it has been recognized that the cultural understanding of autonomy needs to shift to make the concept more useful, not just to women but also more
generally to questions of power and social practice. This sort of shift entails battling the association of autonomy with stereotypically masculine traits, highlighting the image of autonomy in relationships, and casting women in the lead role in cultural metaphors of autonomy. It also entails contesting the caricature of individual autonomy in the image of the self-sufficient rugged individualist rational-maximizing his way through life where it is latent in political discourse (Mackenzie and Stoljar 2000, 5). On the philosophical front, the relational approach is not just about stripping away the purported ‘pathologies’ of this or that conception of autonomy, but about reconceiving it in a more textured way (see Linda Barclay 2000). Though standard theories of autonomy have many shortcomings, naïve lack of awareness of the social nature of individuals or misguided hostility towards it are hardly ever amongst them. The complexity of self-determination is great, and the strands of personal, moral, procedural, substantive, etc. autonomy do capture important aspects of it in different ways. Yet there is a constructive contribution to be made by the turn towards the relational. If we start from the precept that autonomy is the property of agents, cultivated by, and found in, the shape of their attachments with others, and if it is uncontroversial that the antonym of autonomy is subjugation, then the necessary conditions of autonomy can be looked at from the perspective of social standing. This captures something different and more encompassing than looking at whether social forces subvert critical reasoning a-la-Christman, or looking at whether autonomy

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23 These are also the recommendations of Marilyn Friedman, who captures the point of a cultural shift aptly: “Men are supposed to ‘stand up like a man’ for what they believe or value, including the simple assertion of their self-interests. Women are instead supposed to ‘stand by your man’. The maxim ‘stand up like a woman!’ has no serious meaning. It conjures imagery that is, at best, merely humorous. There is no doubt which model of behavior as exhibited by which gender receives the highest honors in Western public culture.” (Friedman 2000, 36)
is generally valued and adequate range of options provided in the social environment a-la-Raz. In a relational approach it must be factored as well that autonomy is affected not just by the intentional actions of others but also by the effects of the person’s social position.

**Relational autonomy**

In this vein, relational autonomy is in fact an umbrella term for a number of conceptions of autonomy that are interested in defining what it means to be self-determining with reference to interpersonal dependencies and relations in which the agent is situated and which hold a central place in the agent’s sense of self. To reiterate, this means analytically that how much autonomy a person has cannot be determined without reference to his or her social environment. Certain conditions which classic accounts of autonomy have defined as facilitative of autonomy are redefined as constitutive of autonomy.

The conceptions which fit under the umbrella of relational autonomy make *one or both of two* related claims. The first claim is that our account of autonomy must always keep in full view the understanding of moral agents as socially embedded. This is interpreted in various degrees of determinism, but the bottom line is that agents’ personal identities and beliefs are at least shaped (at most fully constituted) by social and interpersonal relationships. The significance of this is that an analysis of the capacities of the self must be able to tell us how to factor in this context of interdependence. This means that the characteristic of being rational is not the single relevant characteristic of agency; rather, when we refer to an agent as being autonomous we must be able to envision this agent as being autonomous while also “emotional, embodied, desiring, creative and feeling” (Mackenzie and Stoljar 2000, 21). A thesis
about what it means to reflect on something or identify with something should not and cannot meaningfully exclude these characteristics altogether.\textsuperscript{24} The second related claim is that \textit{autonomy itself} is socially constituted. This, too, has weak and strong versions, as to whether certain kinds of social relations are contributing factors for developing and sustaining autonomy or whether they are conceptually necessary. Depending on the version they endorse, relational autonomy theories are further referred to as weakly substantive or strongly substantive.

Autonomy is hardly ever treated as a ‘pass or fail’ concept (though in bioethics for example it may be necessary to have threshold accounts), in the sense that agents either totally lack or totally exemplify autonomy. However, in standard views, the gradation is an agent-relative gradation – people are autonomous rarely, sometimes or almost all of the time, as a sum of singular instances of choice or action in various areas of their lives (eg may be quite autonomous in family affairs but hardly at all with respect to mobility for example). One of the shifts that relational autonomy arguably makes possible is a structure-relative gradation, where people are autonomous relative to how they are situated relative to those around them, and especially to their ability to affect how they are situated (though this too can vary according to different aspects of life).

\textsuperscript{24} A potential trap in the genesis of the relational approach is that it can be read as suggesting that there is some correct defined understanding of the social self that should be the focus of autonomy that other autonomy theories just haven’t discovered. Though this might be implied to some degree in the critical starting point of most relational autonomy theorists, chasing this correct conception of the social self is bound to be counter-productive and likely to import the kind of rigidity in conceptualizing autonomy the relational approach attempts to overcome. As Christman rightly points out, both critiques and re-definitions of autonomy should work on the understanding that “no particular conception of self or the person can serve broadly as a model for normative thinking in a wide variety of contexts, for identity is variable according to the theoretical or practical setting in which it is asked to operate” (Christman 2004, 145).
In arguing for a certain relationship between relational autonomy and non-domination I will adopt one specific conception of relational autonomy, namely, Catriona Mackenzie’s weakly substantive conception. Hers is one of the most prominent amongst the most recently developed relational conceptions. It also one of the most fruitful to engage with because Mackenzie discusses the relational view specifically with regards to minority cultural and religious group norms (Mackenzie 2007, 2008).

Relational autonomy accounts require at least a weakly substantive account of what it means to be autonomous (in contrast to a purely procedural account). For example, Mackenzie (2008, 514) argues that

[N]ormative authority is both first personal and relational. On the view I develop, for an agent to have normative authority over her decisions and actions it is not sufficient that her reasons for action express her practical identity. In addition, she must also regard herself as the legitimate source of that authority – as able, and authorized to speak for herself. I argue that such attitudes toward oneself can only be sustained in relations of intersubjective recognition. On the basis of this view, I then defend the claim that respect for autonomy involves an obligation to promote autonomy.

Mackenzie roots her account in the question of what underpins the normative requirement to respect someone’s autonomy. The widely held view is that respect is due because autonomy is presumed to confirm normative authority over one’s life – that is, the authority to make decisions for oneself and to make them on the basis of one own’s reasons (Mackenzie 2008, 512). This normative authority flows from the connection between a person’s autonomy and their identity. But this intuitive presumption is precisely what is problematized by those concerned with oppressive socialization. The first worry is that our ‘practical identities’ – the description under which we value ourselves and which we determine what we ought to do on an ongoing basis – may have arisen mostly or in significant part from oppressive social
conditions. The second is the worry that the usual reasons to have epistemic humility are undermined. We think that we are obliged to recognize someone’s normative authority in no small part because they know best what it is like to be in their situation and experience what they are experiencing. But if we have reason to doubt that a person’s practical identity is actually grounded in their own reasons, then we tend to doubt their normative authority.

In Mackenzie’s view a relational account can speak to those worries by specifying relational features of normative authority. Only an agent who has a certain self-conception can actually have normative authority. To explain what this self-conception is, she borrows from Anderson and Honneth.

Anderson and Honneth’s account of autonomy is labeled ‘recognitional’. The rationale for shifting towards a social approach to autonomy is in the insight that autonomy can be eroded by the nature of our relationships to others. For Honneth and Anderson, this means that whether one is autonomous to lead one’s own life depends on whether they are supported by relations of recognition (Honneth and Anderson 2005, 130). On their view, being an autonomous agent entails being able to sustain certain affective attitudes toward oneself, and these attitudes are significantly dependent on support from others. These attitudes comprise self-trust, self-respect, and self-esteem. These are, however, not to be understood as just having a positive view of oneself.

Self-trust, self-respect, and self-esteem are thus neither purely beliefs about oneself nor emotional states, but are emergent properties of a dynamic process in which individuals come to experience themselves as having a certain status, be it as an object of concern, a responsible agent, a valid contributor to shared projects... One’s relationship to oneself, then, is not a matter of solitary ego reflecting on itself, but is the result of an ongoing intersubjective process, in which one’s attitude toward oneself emerges in one’s encounter with another’s attitude toward oneself. (ibid.131)
Along these lines, self-respect is conceived as the “affectively-laden self-conception” of oneself as the legitimate deliberator and source of practical reasoning (ibid.132). Self-trust denotes openness to critical engagement with one’s deepest feelings. And self-esteem is the ability to identify oneself with worthwhile roles, which depends on what Honneth and Anderson term ‘semantic resources’ (eg. cultural and symbolic resources to interpret what one does as meaningful) (ibid).

Developing and sustaining the attitudes of self-respect, self-trust, and self-esteem affords an individual the self-conception she needs to see herself as legitimate source of normative authority, as someone who can speak on her own behalf and who is an equal participant and source of what I called nomos and what Mackenzie dubs “intersubjective discursive norms and practices involving mutual expectations and governed by social standards” (Mackenzie 2008, 527). Since this self-conception is dependent on the recognition of others, normative authority can vary by degree in different spheres. For example, someone can enjoy more recognition from others at work than they receive at home and vice versa. Furthermore, in addition to granting recognition our relationships have a significant role in constructing our self-understanding. That is, they help form our sense of personal identity and what matters or should matter to us (Mackenzie 2008, 527). Different social roles and obligations can give rise to an inner conflict in a person’s self-understanding. Unlike classical procedural autonomy accounts (such as Frankfurt’s), which demand considerable transparency and a unified system of values and desires, autonomy on Mackenzie’s conception is not automatically undermined by
the advent of inner conflict. Rather it is when this conflict is related to roles that undermine our self-conception that normative authority is eroded.25

Encore - Relational Moral Autonomy

Mackenzie defines her own account of autonomy as a “weak substantive, recognition-based relational view” that is also centered on the notion of normative authority. It imposes criteria for autonomy that are external to the subject’s process of reasoning, and so falls on the substantive side of the substantive/procedural divide but it is ‘weak’ in the sense that its substantive conditions are weaker than passing the test of the feminist intuition. However, in my view, despite being weaker in this sense, Mackenzie’s relational conception goes a long way to serving that intuition. By positing ‘thick’ requirements for both normative authority and inter-subjective recognition of the subject, this conception in effect excludes a great deal of what Charles referred to as pernicious self-subordinating reasoning (and still permits the benign kind).

At the same time, along the lines of its recognitional and normative authority features Mackenzie’s conception bears similarity with Rainer Forst’s version of moral autonomy cited earlier. Specifically, Forst’s account of the right to justification contains similar – albeit ‘thinner’ versions of the normative authority and inter-subjective recognition requirement. In the first instance, Forst refers to individuals as morally autonomous when they are “morally independent addressees and authors of intersubjective claims” (Forst 1997, 65). This is not as explicitly linked to the subject’s perception of herself “as the legitimate source of that authority – as able, and

25 An excellent discussion of the significance of inner conflict to autonomy and to legitimacy is offered by Paula Droegue in “Life as an Adjunct: Theorizing Autonomy from the Personal to the Political” 2008.
authorized to speak for herself” (Mackenzie 2008, 514) as it is in Mackenzie’s account, especially on a broader reading of ‘authority’. However, being able to see oneself as a morally independent author of inter-subjective claims is conceptually linked to being a source of authority. It is also clear that Mackenzie’s normative authority criterion is related to moral reasoning, as she specifically excludes the kind of normative authority that consists simply in being authoritative on what is consistent with her particular identity.

Secondly, the first condition of the individual right to justification in Forst’s theory is that “reasons that justify specific normative claims must be reciprocally non-rejectable, i.e. the author of these claims may not demand any rights or privileges that he or she denies his or her addressee.” At its core this condition expresses the same requirement as Mackenzie’s inter-subjective recognition. Being supported by relations of recognition must entail at a minimum such a treatment of the person as of equal moral worth in the exchange of justifications for the norms to which all are subjected.

Thus, without wishing to misrepresent Mackenzie’s conception, instead of referring to it as ‘weak substantive recognitional relational autonomy’ in my mind it would not be a mis-characterization to refer to it as ‘relational moral autonomy’. Of course, it does not fall neatly on the personal/moral divide, since it is also concerned with whether people have a plausible degree of self-direction, etc. Centrally, however, Mackenzie’s treatment of inter-subjective recognition and normative authority highlights crucial connections between a person’s moral and personal autonomy, and in my view does this in a way that enriches our understanding of moral autonomy more. Forst’s conception elaborates on the meaning of ‘autonomy as right’ – e.g. a basic right to justification – with regard to our moral agency. He does this in a typically
abstracted way, for reasons mentioned earlier. From within the relational approach, Mackenzie develops a richer account of the requirements of ‘autonomy as right’, given that autonomy is a socially constituted capacity and that agents reason from socially constituted practical identities. Both of these conceptions have normative premises that are weakly substantive. Forst’s are oriented toward the terms of exchange of reasons, Mackenzie’s toward the agent’s socio-relational situation. Respect for moral agency demands normative authority which demands that certain interpersonal and social conditions be promoted.

Relational moral autonomy as best complement to non-domination

Mackenzie readily admits that such a recognition based conception of relational autonomy entails some form of moral and political perfectionism (Mackenzie 2008, 528). She even parallels this perfectionism to the one upheld by Raz. However, the different focus and thinner content of her conception of autonomy make this perfectionism much less contentious from the perspective of legitimacy (or at least my treatment of it). Indeed, it aligns with the minimal substantive overarching requirement of non-domination itself (e.g. that patterned asymmetries of power are illegitimate). The duty which Raz derives from his conception of autonomy is much more demanding than the duty Mackenzie derives, namely that “respect for agents whose autonomy is impaired entails an obligation on the part of others, for example, health-care providers, or state institutions, to promote the autonomy capacity of such agents” (Mackenzie 2008, 512). The upshot of this perfectionism in her view is that political institutions have a duty to foster the social conditions that are conducive to mutual recognition. This includes not
leaving individuals vulnerable to “social structures that impair or undermine the capacities and affective attitudes necessary for autonomy” (ibid. 530). The implications of this duty is that it also spells out limits to cultural pluralism, where the range of social practices which warrant respect is narrowed down to practices which are consistent with the sort of intersubjective recognition from which autonomy emerges. For Mackenzie, the reasons to respect cultural and religious identity are drawn from respect for individuals’ agency and for their first-person perspective. Thus, practices which undermine the normative authority of persons are themselves inconsistent with respect for identity (Mackenzie 2007, 105-109). At the same time, however, relational approaches do not associate autonomy with aspects of independence. Thus, arguably, they are still more inclusive than other autonomy conceptions. They are more inclusive than substantive versions of autonomy which equate it with self-mastery or with the availability of choices and opportunities to pursue one’s own projects; and they are more inclusive of procedural theories, in that a.) they do not hinge on self-transparency of motivations, and b.) their account of the agent as socially constituted makes more room for the role that group membership, interdependence and sense of belonging play in autonomy.

Earlier I discussed substantive versions of autonomy like Stoljar’s and Charles’s which are fully centered on the problem of internalized oppression and demand directly that individual decisions based on subordinating reasoning (of the kind that devalues reasoning) be defined as non-autonomous. A question that naturally arises is whether these conceptions are not the more obvious counterpart to an analysis of social practice from a non-domination principle. In my view they are not, for reasons that are two-fold. First, purely in terms of conceptualizing autonomy, they are faced with important limitations on what they can tell us about individual
capacities and about how subordinating reasoning affects them beyond the instances of specific
decisions and choices. I have already outlined these difficulties above. Second, these strongly
substantive conceptions of autonomy do contain the same idea that is expressed in non-
domination – that only certain ways of relating should be seen as legitimate and accorded
respect. But since they basically write this idea into a theory of autonomy rather than develop it
as a principle in its own right, they just do not express it quite as well. Thus, although they
parallel non-domination, they do not complement it in a fruitful way. They do not introduce
anything new to its structural component and they do not tell us as much as relational moral
autonomy does about the agentive component.

As a theorist committed to political liberalism Christman has expressed two related
concerns with the legitimacy implications of both weakly and strongly substantive views. In the
first instance, he has pointed out that there is an ironic tension between the perfectionist aspect
of relational autonomy and its anti-individualism. “Relational theorists who decry procedural
views on the grounds that they would allow voluntary slavery to masquerade as autonomy are
in fact supporting a conception of autonomy which is an ideal of individualized self-government,
an ideal that those who choose strict obedience or hierarchical power structures have decided
to reject” (Christman 2004, 151). This assessment certainly gives pause, but on second thought
it appears that it is not entirely right. There is some considerable distance between the two
ideas he juxtaposes as alternatives. Surely, it would be wrong to suggest in the reverse, that
those who reject the ideal of individualized self-government are in fact supporting slavery. It is
true that slavery is the antonym of any freedom-related concept, but there must be many ideals
from the perspective of which one can deplore slavery. More importantly, as I have tried to
show, the relational theorist’s worry about oppression masquerading as autonomy is driven by what is essentially a commitment to non-domination, rather than to individualized self-government. This is why relational theorists would be troubled by the case of the Differential Wife, but not so much by the case of the St. Ignatius monk. It is not only the subordinating reasoning itself (though we should always be suspicious of such reasoning) but the background relations of oppression that cause us to see the DW differently.

Relatively, Christman worries that the introduction of any substantive content to autonomy undermines the legitimacy of appeals to it because it rules out options a priori, and thereby sets up the problem of the normative privilege of the enlightened observer (which was already outlined elsewhere):

It is one thing to say that models of autonomy must acknowledge how we are all deeply related; it is another to say that we are autonomous only if related in certain idealized ways. ... Insofar as a person has authentically embraced even (what we might call) oppressive social status or subservient roles, that person deserves respect insofar as her judgment about those roles has the same formal features as our own judgment about our own lives. (Christman 2004, 151, 153)

There is no quick reply to this charge, and I have already discussed this type of concern within the rubric of dialogical and juridical approaches to multiculturalism. However, this issue is not threatening to the weakly substantive conception of relational autonomy I have adopted here from Mackenzie. Straightforwardly, the genesis of relational autonomy I outlined makes clear that respect for the person and for the judgment of the person who has authentically embraced a subservient role is never in question on that approach. Rather, what these theorists wish to reject is the interpretation of adherence to subservient roles as autonomous endorsement. The political system should not purposefully preserve (at the very least) the oppressive social status
as a matter of respect for the autonomy of those who have internalized it. Moreover, proceduralist accounts of autonomy too rely on the requirement that we be related in certain idealized ways, even if it does not build it into the definition of autonomy explicitly. Mackenzie’s account of relational autonomy is made weakly substantive rather than procedural by virtue of the acknowledgement of this fact. For we have every reason to think that the preconditions for normative authority of the person must be fulfilled for Christman’s procedurally autonomous person as well.

Last, but not least, it is an important analytical advantage of Mackenzie’s conception that it gives us a picture of autonomy as a matter of degrees and domains. This corresponds well to the notion outlined by Hayward that non-domination is a continuum and by extension so is legitimacy. Together these two concepts allow us to factor a great deal in the assessment of political authority. The latter has obligations to promote non-domination in its three dimensions (intra-group, inter-group and systemic), as well as an obligation to promote the autonomy capacities of those who lack normative authority in significant degrees and/or large domains of their lives. Virtually all accounts of autonomy, of course, allow that it varies. The variability itself, however, is morally significant but never factored into liberal justifications of political authority (Droege 2008). Non-domination factors the disparity of status between cross-sections of society in the inter-group and systemic dimension. But complemented with relational moral autonomy, it can also factor that there are vulnerabilities that arise from the complex identities of individuals that legitimate political authority should rectify.
**Conclusion**

In this chapter and the previous one, I have worked towards establishing that although non-domination and relational autonomy are in many ways very similar concepts, they are not co-extensive. An analysis driven by concern with oppressive socialization should employ both because they offer different insights, both of which are indispensable to addressing intra-group domination. More specifically, the argument I have been building is that although they have different philosophical roots, these two concepts can be integrated in a coherent way: namely, that having a full account of non-domination entails having a relational account of persons’ normative authority over their lives, which is one version of relational autonomy. As I stated in the introduction, non-domination is an essentially structural concept, concerned with the mitigation or elimination of patterned asymmetries in social power. Relational autonomy is essentially and agentive concept concerned with individually exercised capacities, but which also aims to incorporate the significance of structure, and is thus a useful complement to non-domination when looking at specific social practices. However, there is also an important normative implication stemming from this relationship between the two – just as exercising legitimate political authority requires instantiating and promoting non-domination, the advancement of non-domination in every context requires promoting the relational moral autonomy of agents, regardless of whether any more robust ideal of the autonomous life is culturally supported in either the majority or minority nomos. I elaborate on this thesis in the final chapter where I turn to an analysis of the central issues in the social practice of polygyny and its accommodation in Canadian law.
Chapter 7

Non-domination and Polygamy in Bountiful

Caller: What would happen if one or more of your wives took other husbands?
Blackmore: Well, they wouldn't be my wives if they did. Like -- you know, if they wanted to go and -- they'd have to leave our society.
King: Polygamy is only from the man's standpoint?
Blackmore: Yes, it is. I think that's biblically, you know, sound.
King: A little unfair, isn't it?
Blackmore: Well...
King: What if a woman wanted eight husbands?
Blackmore: I imagine they could have them. I think there's probably lots that have. Even an account in the Bible where Jesus talks to this woman and he says, you know, you've had five husbands.
King: But not in your church?
Blackmore: No. Not in our church.

(Winston Blackmore on CNN Larry King Live, December 8, 2006)

My goal in this chapter is to sketch in broad strokes the main features of the practice of polygyny in Bountiful, BC and to show how the non-domination framework that I have outlined so far applies to it. The central methodological premise of this framework is that questions of accommodation should be focused on the social and political effects of a given practice on the nomoi group, its members and other directly affected groups. This is in contrast to approaches where accommodation turns on assessing the identity claim or collective rights claim of a group, as is often the case in the multiculturalism literature. Such assessments are not excluded or in opposition to the non-domination framework – in fact, they can be central, especially where domination is rooted in the derogation of an identity or effected by trampling on rights, or both.

There are, however, two differences. The first is that things such as the ‘authenticity’ of an identity or the veracity of a right are not determinants of accommodation from the perspective
of non-domination - they are part of the wider analysis of social and political effects, and part of the institutional process of accommodation. The second difference is in relationality. As I mentioned previously, approaches centered on group identity and group rights have to attribute special status to the group in order to capture its justice claim, but this makes it harder to theorize internal minorities because in such frameworks groups and their members appear as having two different kinds of justice claims (one against the structures of political authority and one against the social power of sub-groups and factions) (see Jones 2010). The non-domination approach does not attribute special status to social groups beyond the necessity of identifying and naming the subjects of domination and their collective experience. As I claimed earlier, an advantage of this approach is that it brings continuity in applying a similar ‘metric’ across the fields of analysis that intersect within the political claim for accommodation – intra-group, inter-group and systemic.

This is the kind of analysis I look to arrive at in this chapter. The religious leadership of the FLDS church in Bountiful has made its formal claim (shaped of course by the nature of our political system) in terms of religious freedom – a rights claim attached to individuals in the legal sense but defended as a matter of equality between groups in the political sense. This claim raises the question of inter-group domination. The objections to the accommodation of polygamy made by members within the group and other affected parties outside the group are expressed formally as gender equality concerns. These concerns raise questions of intra-group and systemic domination. Thus, instead of focusing on the substance of freedom of religion and sexual equality provisions I will focus on those aspects of the practice of polygamy that are most salient to a non-domination driven analysis. I will give most attention to the dimension of intra-
group domination, partly because this is the most contentious dimension for public debates and institutions, but also in order to illustrate how the concept of relational moral autonomy complements non-domination and how the two are useful in thinking through this case.

An important caveat is that my analysis does not aim at deriving very specific recommendations. On the basis of the limited inquiry here, my view is that polygamy should be de-criminalized, but at the same time we should be wary of offering recognition or special accommodations of polygynous marriages such as those occurring in Bountiful, since it is not clear that this would advance non-domination. I agree with Monique Deveaux that the appropriate specific policies in such cases should be developed - as much as it is possible - through a deliberative democratic process, of the sort she proposes in her work. However, such processes can only occur if certain preconditions already obtain. Controlling for these conditions presupposes accommodative public policy actions on the part of the state. In reality the status quo of contested practices is already by definition not neutral – in the case of polygamy in Canada, the practice is formally banned. (This is one type of serious constraint on the deliberative process required for democratic resolution.) Thus, in my view, just as it is legitimate for public institutions to take steps to develop a democratic forum for the concerned parties, it is also legitimate for them to develop the public and social services that seem most consistent with non-domination. The problem with the existing range of solutions in most liberal democracies is not that they are state-centered, so much as that they are not guided by non-domination principles and that they fail to foster and respect democratic outcomes.

To clarify, in what follows, my objective is not to develop a full case study of polygyny and the law in Canada, or to synthesize the political and popular discourses surrounding
polygyny, or to develop a thorough ethnographic account of life in this community. The account I offer is not going to be fully adequate or representative of issues in Bountiful from any of these perspectives. Indeed, there is still very little scholarly work along those lines, and hardly any primary research conducted within this fairly insular group. On the other hand, I will also not put forward a heavily stylized or stereotyped account of polygyny for the sake of argument, as this would frame the case to fit the theory rather than demonstrate that the theory is useful in the case. Rather, I attempt to convey a plausible though incomplete view of the nomos of polygyny in Bountiful based on the limited evidence available from generally reliable sources, such as public documents and academic writings.

The most extensive published primary research published on Bountiful specifically is that of Angela Campbell, so I will rely on the material from interviews with Bountiful women that she has conducted. My analysis also relies on evidence from the proceedings and submissions related to the Supreme Court of British Columbia’s considerations of the constitutionality of the prohibition on polygamy in Canada. More specifically, I draw on documents (affidavits and intervener closing submissions) released from 2009 onwards in connection with the Reference by the Lieutenant Governor in Council set out in Order in Council NO 533 dated October 22, 2009 concerning the constitutionality of S.293 of the Criminal Code of Canada, R.S.C. 1985, c. C-46. From here on I shall refer to this in short as ‘the Reference’.26

Since the reassessment of polygamy laws is currently underway in Canada I will begin by framing the limits of my discussion in relation to the unfolding debate. I will then elaborate on

26 As of the date of submission of this dissertation the British Columbia Supreme Court has not made a ruling in the Reference.
aspects of the practice of polygyny in Bountiful under four general rubrics. The first discusses the route to marriage and the forms of marriage common amongst group members, which highlights the significance of polygamous marriage to the identity of the group and the significance of the nomos of polygyny to the individual lives of men and women. The second rubric is concerned with marriage, education and reproduction, issues which are commonly seen as central in assessing gender roles and male domination. The third rubric looks more specifically at relations between sister wives. These relations are important in understanding the wives’ perceptions about the benefits of polygamy and the forms of empowerment they associate with it, as well as understanding how this different type of relation affects the social standing of individuals within the family and the community. The last rubric covers some facts about the relationship of FLDS members to their wider local community and to the authority of the state – aspects which add context to the intra-group dimension of domination. Following this I return to one of the issues raised in the Reference, namely the connection between polygyny and harm, and I discuss the significance of establishing harm to establishing domination, while also pointing towards some conceptual differences between the two. Finally I return to the non-domination framework and articulate what an analysis of polygyny in Bountiful might look like along the three dimensions of domination. In my most extensive discussion – of intra-group domination – I also illustrate how the normative concept of relational moral autonomy allows us to combine respect for the moral agency of individuals with concern for their subjection to intra-group domination.
Framing and limits of the discussion

Bountiful is not the only site for the practice of polygyny in Canada, and the FLDS church is not the only source of religious justification for polygyny. The ban on plural marriages affects families in a much broader context, such as the families of immigrants from societies where religious polygyny is common and legal, the families of those who identify as polyamorous for religious and non-religious reasons, as well as individual persons who do not have plural families but pursue openly conjugal relationships that are plural and lasting, whose situation falls within those criminalized under S.293 of the Criminal Code. In this chapter I will leave aside the legal issue of the constitutionality of S.293 under the Charter. In order to bracket this debate I will start from an assumption in favour of the de-criminalization of all above mentioned forms of plural relationships – that is, in favour of their removal from the Criminal Code where they are identified as indictable offences liable to imprisonment for a term up to five years (Criminal Code of Canada, R.S.C. 1985, c. C-46, S.293). (It is noteworthy here that the existing text of Section 293 does not stipulate anything regarding abuse, manipulation or exploitation – it makes the fact of involvement in multiple consensual conjugal cohabitations sufficient to designate a person as an offender.) The view that s.293 is, at the very least, overly broad, is echoed in the opinions of legal scholars (Baines 2007, Drummond 2009), and it can be inferred to some extent from the fact that s.293 has hardly ever been enforced in Canada.

Though there is of course room for reasonable disagreement on de-criminalization for a variety of reasons, I believe that the case for treating mere participation in such relationships as a serious indictable offence is quite thin, both from an ethical and a constitutional perspective. To put it in perspective, in the Criminal Code of Canada other serious offences which carry
sentences of five years imprisonment include: hit-and-run acts, terrorist acts as defined by the National Defense Act, procuring sexual activity with children under 14, trafficking a minor, repeat drug and firearm trafficking, common assault, stalking and kidnapping. Even if we were to accept the premise that polygamy entails a “wrongful act that offends society as a whole” (i.e. the definitive premise for criminal law), it is in my view difficult to justify a parallel between it and such grievous acts. Some might argue that polygamy should remain in the criminal code but be treated as a less serious summary conviction offence (punishable by fine and up to six months in jail) instead of an indictable offence. I will not engage with this suggestion here since it entails a different kind of argument from both the constitutionality question that is currently in the courts and the domination question which I am more interested in.

In arguing for the constitutionality of S.293 the Attorney General (AG) of British Columbia acknowledges that the justification for criminalizing polygamy, in any modern interpretation of the Section, relies on the rationale of preventing harm. The harm in question is the harm associated specifically with polygyny. The AG also suggests that historically the intent of the ban on polygamy has been understood to refer to marriage relationships only and to polygyny only, since polyandry was so rare and individuated as an occurrence that it could not have motivated legislation (Para. 252-256 of the Closing Submissions of the AG of BC, March 2011). (This was the case even when the ban on polygamy was based on appeal to moralistic views rather than on the prevention of harm). The AG’s position raises the question of whether the social harms associated with polygyny are so great as to make its ban ‘demonstrably justifiable in a free and democratic society’ under the Charter. This is precisely the question that the Supreme Court of British Columbia is currently considering. In his Closing Submissions in the
Reference case, the AG describes evidence gathered from different societies where religious polygyny is practiced. This evidence links polygyny as a group practice to the increased incidence of the following harms to the welfare of women and children:

- physical and sexual abuse;
- sexual and reproductive health harms;
- psychological and emotional harms;
- physical health harms including increased mortality;
- economic deprivation; lower levels of education;
- sex ratio imbalance, inequality between men and the marginalization of young men;
- decreased political rights and civil liberties;
- commodification and objectification of women;
- increased discrimination (para.4 of Overview in the Closing Submissions of the AG in the Reference, March 4 2011).

I take seriously the evidence presented by the AG, as well as that presented by other parties to the Reference, and I will refer to some of it below. The experience of other societies with polygyny is, and should be, an important part of the public policy on marriage in Canada. For the purposes of my project here, however, I will adopt the position (which aligns with one possible outcome of the deliberations of the SC of BC) that, even if there is an increased probability of such harms where polygyny is practiced, this does not warrant the criminalization of polygyny on par with other acts treated as punishable by imprisonment. The social problems enumerated by the AG are, if taken as proven, the accrued effects of a collective practice in which individuals participate in good faith. S.293, if it were enforced, would thus assign criminal blame to persons for the structural effects of their actions, regardless of whether the person was directly linked to any harm to another person. This would put polygyny on par with other acts that are banned on account of their harmful social effects, such as bans on hate speech, certain kinds of pornography or the sale of human organs. There is an important sense, however, in which religious polygyny is different from these kinds of acts that tend to affect a single aspect of personal life or commercial activity. It is a social practice that affects the full scale of
participants’ lives and is rooted in the value system of the nomoi group. Unlike some of these other bans which require foregoing a benefit, the enforcement of a ban on polygyny is likely to entail tangible harms to the specific families affected.

The criminalization of polygamy targets explicitly the acts of consenting adults. When individuals cause direct harm to other individuals by abuse and exploitation in family life their acts are already covered by other parts of criminal law – for example, the criminalization of conjugal relations with under-age persons or their ‘grooming’ or solicitation with such purpose, the criminalization of physical and mental abuse and labour exploitation, as well as child welfare laws. Marginalization, patriarchal domination and objectification, however are dire but also broad structural and political problems. Some social practices perpetuate these problems more than others. However, the reform of social practice is generally within the realm of education, advocacy, policy change and attendant creation of incentive and disincentives for individual persons to act in certain ways. The criminalization of forming polygynous relationship thus seems to be the bluntest and most unfitting policy tool even for those who take a strong view of polygyny as inherently and gravely harmful. The experience of US authorities with persecuting polygyny in FLDS groups also speaks to its inefficiency.

There are, of course, instances where individuals participate knowingly and complicity in the oppression of others. Media reports on the charges laid against the two leaders of Bountiful – Winston Blackmore and James Oler – suggest that their arrests were grounded in precisely such a view of their actions in religious leadership. In such cases, however, it appears that the more profound moral wrong at play is the exploitation of women and children – something that ‘sect’ leaders of various kinds have been prosecuted for under other provisions of the law. If the
case against these men was taken at face value, then polygyny figures as the mechanism for exploitation they used, rather than as the primary wrongdoing for which they could and should be held criminally responsible.

Setting the question of de-criminalization aside in this way, my discussion of Bountiful is driven by what is in my view the more complex question in the case. This question has two facets: 1) whether, if polygamy were de-criminalized, there should be some social policy initiated to mitigate the social effects of polygyny specifically, or even to prevent certain aspects of the group practice of it, such as community isolationism; 2) whether, in concert with 1), there should be legal recognition of plural marriages. The latter, as I have explained earlier, would potentially involve a significant shift in marriage law and policy. The nature of the claims made by members of the Bountiful group, but also by other stakeholders in the Reference are varied on this matter – they range from mere de-criminalization (Winston Blackmore’s constitutional rights claim) to full accommodation of plural relationships in the law and social services of the state.

One final point of clarification remains. This is the conflation of the practice of polygyny in Bountiful with the practice of polygyny by other (mostly Muslim) families spread out across Canada. The issue of conflation is particularly salient for the Reference and the de-criminalization debate, but it is also relevant to my own treatment of the two questions above. On my theoretical approach, the best answers to 1) and 2) are those that are most consistent with promoting non-domination. Getting to a more concrete position requires furnishing the questions with a concrete picture of what the circumstances are of the actual plural relationships that would be recognized by a policy shift. Even though the focus of public
attention is on Bountiful alone, some of these circumstances will be different for the two sets of groups. Nevertheless, I will not be able to explore both cases of polygyny here. The framework of my analysis, however, will carry over in important respects, to the extent that there are significant parallels along the dimension of inter- and intra- group domination.

**Aspects of polygyny in Bountiful relevant to non-domination and autonomy**

In this section I sketch aspects of the practice of polygyny in Bountiful, focusing on what plural relationships entail, especially for women. My starting place is the work of Angela Campbell, whose account of life in Bountiful is based on field research and interviews, and whose qualitative assessment of polygyny draws a nuanced portrait of the FLDS wife. Campbell is particularly concerned with capturing the diversity and dynamic of the Bountiful community and moving beyond the sensationalized image of women there portrayed in journalistic reports.

Most of the information gathered by Campbell, as well as that cited in the court documents of the Reference, is from 2005 onwards. These accounts represent life in the community after it experienced a ‘split’ in two factions, triggered by the self-pronouncement of Warren Jeffs as leader of the FLDS in 2002. (American-based Jeffs is currently in prison in the US on a conviction for arranging under-aged marriage in an FLDS community in Utah, and awaiting trial on other similar charges). Bountiful is thus currently divided between those loyal to long-standing bishop Winston Blackmore and those following the directive of the American FLDS in recognizing Jeffs. This division often cuts across families, as Jeffs promotes extremely strict and conservative measures regarding contact with ‘outsiders’ and contact with ‘apostates’ within
the group who deny his authority. Thus characterizations that draw on Campbell’s set of interviews are representative mostly of the Blackmore-loyalist side of the community.

Selecting partners and forms of marriage

There is some variation in the paths to marriage in Bountiful, though most do not entail the conventional ‘dating’ process. For the most part of the history of the 65yr old community, partners were matched by fathers and notable men in leadership positions, or the Bishop himself, and then ‘sealed’ in ‘celestial marriage’ by a member of the priesthood (for which only men in good standing are eligible). There are no reports or documented cases of coerced arranged marriages, contrary to some speculation in the local media. However, in many instances the spouses were not acquainted before the marriage. Since the split in the community in recent years it is increasingly common for women to express a preference for a particular husband from the community – though this preference does not emerge from a process of courtship as might be typically assumed (Campbell 2009, 194). Thus, while in some cases the spouses meet only hours before the marriage, in others, and in more recent years, they spend more time getting to know each other.

According to Campbell, a number of the women she interviewed framed the selection of their spouses as a matter of choice, subject to family expectations and community norms. Though what constitutes ‘choice’ is a matter of debate, it seems unequivocal that most women in Bountiful have the opportunity to formally consent to marriage, and further to consent or ‘veto’ the addition of a new wife to the marriage subsequently (accounts of the latter, however, are varied). The significance of this formal consent can be questioned, given that frequently
there is also family and peer pressure to consent. However, these pressures vary from case to case, and there is no evidence to suggest that they are ever coercive, or any more coercive than the pressures to enter monogamous marriage (arranged or otherwise) in conservative religious communities broadly speaking. One of Campbell’s interviewees relays the following story of her marriage from the late 1990s:

Participant 10: Well, we had placement marriages. And so, when my father told me he said that, that he wanted me to marry a man from Canada, I just said “Why?” I’d never been to Canada. It’s so far away and... I didn’t really want to be a plural wife. But I didn’t want to disappoint my father, who was everything... I started screaming “I’m not gonna do it!” And I had that choice and he was just so disappointed and that was it. I had that choice. I didn’t have to. Then I decided that I didn’t want to disappoint him. I really respected him (Campbell 2009, 195).

One of the witnesses brought forward by the attorneys of the FLDS in the Reference testifies regarding her consent in a similar fashion:

I was married four months prior to turning 17. I believe that the church leaders will be inspired as to where people should be placed in marriage, and that everyone can divorce if they so choose. A few months before I married I talked to my father about wanting to go to college to become a nurse. He said he believed it wise to be married before college as he didn’t want worldly influences to pressure me from my faith, I decided that I would marry and then go to college. He gave me the name of the individual that the church leader had suggested, and said if I did not want to marry this man I did not have to. I told him that I did not know him well but that I believed he was a member in good standing in the church and I did want to marry him. We were married 3 months later. I can truly say I have enjoyed our life together. I have completed the Elderly Care Program, the RN program, and the Registered Midwifery Program. I attended college in Canada and in the United States. ... I don’t feel that there is an expectation that the girls marry at 16 the way I did. I have encouraged all my children to get an education and get a good job before getting married. (Affidavit Number 1 of Witness 2, para.5,8)

Although courting is limited, and courting an already married man is taboo, there is however much more opportunity for women to get to know potential sister wives. This is crucial for the
plural relationship, as it is seen as impermissible for a man to court a woman, and especially for an already married man to court a potential new wife that he may be interested in. The addition of new wives to a family is thus to a significant extent determined by the women involved (although it should be noted that testimonies on this issue are not in consensus). This is expressly so that they may develop a sense of their compatibility with each other. Fidelity on the part of the husband demands that he does not go ‘scouting’ for new wives.

A crucial aspect of polygyny in Bountiful is its religious significance. The doctrine of plural marriage is central to this branch of the FLDS, and is officially promoted by the Bishop and the church more broadly. As could be expected, there is variation in the degree to which community members embrace the importance of ‘The Principle’ of plural marriage to the fulfillment of their faith. There are also obvious demographic limitations to polygyny, since the group does not grow by recruitment from outside (even though there is migration in both directions between various FLDS polygamous communities in the US and Bountiful). Because of these two factors, monogamous marriages in Bountiful are not only ‘normal’ but also technically more numerous – in its Opening Statement for the Reference the FLDS claim that just over half of the married residents of Bountiful live in monogamy and half live in polygamy (Opening Statement by the FLDS Regarding Section 1 of the Charter, November 2010). In some cases this is also the preference of the spouses rather than lack of opportunity (Campbell 2009, 197). Campbell attests that “most participants indicated that a wife’s choice to live monogamously was not questioned or criticized by other women, nor did it alter the esteem in which she would be held by other community members who remained faithful to polygamy” (ibid.198). In this sense, it can be said that polygyny is not perceived as morally imperative in Bountiful, or as
absolutely necessary in order to be a member in good standing. Emphasizing the comfortable co-existence of monogamy and polygyny in Bountiful, Campbell characterizes this as tolerant marital pluralism (Campbell 2010, 348).

It is, however, also fair to say that this offshoot of the FLDS does promote the view amongst devout members that there is a tight connection between being a polygynyst or plural wife and getting into ‘the highest kingdom of heaven’. This is reflected in the affidavit submitted in the Reference case by Mary Batchelor, founder of an advocacy group to educate people about polygamy called ‘Principle Voices’. Batchelor grew up in the non-polygamist strand of the FLDS faith, but came to belief in plural marriage by herself through studying the three books she considered foundational in the scripture of the Mormon faith (The Book of Mormon, Doctrine of Covenants and the Pearl of Great Price). Batchelor testifies:

I came to a personal belief that plural marriage is not only a true principle but an eternal principle, and it was not stopped by divine revelation when the LDS Church abandoned the practice. ... I believe that living plural marriage affords many additional blessings, including the potential for exaltation, or achieving the highest degree of eternal glory and dwelling eternally with God and Jesus Christ. If I choose not to live it, I am not denied salvation through Jesus Christ, or the opportunity to go to heaven, but I cannot receive the fullness of blessings that are associated with the living of celestial plural marriage. (para. 9 of Affidavit#1 of M.Batchelor)

Campbell’s research corroborates that this view is echoed by the majority of men and women in Bountiful, who thus see monogamy as perfectly respectable but polygyny as an ideal, made all the more important because it affects the soul in eternity.

One of the most publicized and controversial aspects of FLDS polygyny has been the religious authority that this doctrine confers on men over women, and some men over other men. The interpretation of religious texts appears to be restricted to men who hold a
‘testimony’ or ‘priesthood’, and all evidence suggests that women have never held these roles.

The religious experience of women is thus mediated first through their fathers and Prophet, and later through their husbands. For devout women the authority of husbands can become especially important, as their prospects in eternity depend not just on their virtue generally conceived, but on their fulfillment of a particular gender role. John Llewellyn, a former polygamist from the US testifies regarding the drastic implications of this for some families when he describes his own position of power:

As a Mormon fundamentalist with two or more wives, I was the patriarch over my family, i.e. the king and surrogate god of my wives and children. Their salvation was contingent upon the priesthood I held. In turn, I was expected to be subservient to and obedient to the prophet or leader of the group, and his priesthood council. It was by the authority of the prophet that the wives were sealed to men. However, what the prophet gives, he can take away if he feels the man is no longer worthy to have plural wives. … Further, it is the husband who resurrects the wife. If she is disobedient he may threaten to leave her in the grave while he resurrects the other wives. (paras. 17-18 of Llewellyn affidavit).

The description of patriarchal authority offered by Llewellyn is echoed in the testimony of Lorna Blackmore about her experience with it in Bountiful. Lorna moved to Bountiful in early childhood after her father converted to the FLDS faith and took on a second wife – his first wife’s sister. Lorna became a plural wife at the age of 18 on the instruction of then Prophet Leroy Johnson. On Lorna’s account, she consented to become a second wife to a 41 year old man, who was also married to Lorna’s great aunt (para.11 of Lorna Blackmore affidavit). She was not pleased about this match but accepted it as a matter of faith in the Prophet. In later years her husband married two more women. Lorna raised three daughters and one son in Bountiful. Her first daughter was married at age 16 to James Oler – a prominent member of the community who was charged with polygamy alongside Winston Blackmore in 2009, and was
also under investigation for the alleged trafficking of women to the US (two of his sisters and one of his daughters) (Vancouver Sun, March 28, 2011). She has ten children with him. Lorna’s second daughter was married at age 17, to Oler’s half-brother Allen, with whom she has 11 children (para 18 of Lorna Blackmore affidavit). Unlike their sisters, Lorna’s third daughter and her son attended public school in the town of Creston, and left Bountiful soon afterwards.

Following their departure in the late 1980s, Lorna moved out of her home and into a neighboring area just outside of Bountiful. She continues to reside there even though she testifies that she is estranged from her first two daughters and has been told by James Oler that she is no longer welcome on Bountiful property. Finally, Lorna states in her affidavit that she has on occasion offered temporary housing to young men who are in the process of leaving the community and have no means and support in the transition (para 21-23 of Lorna Blackmore affidavit).

Lorna Blackmore’s affidavit in the Reference expresses her conviction that polygamy is harmful to women and to residents of Bountiful in particular. There are a number of similar life stories that have emerged from women dissenters who have had negative experiences with polygyny. The most publicized of these are the stories recounting physical and sexual abuse – such as perhaps most famously, Debbie Palmer’s story on CBC’s Fifth Estate (2003). The latter however, represent a marginal number of extreme cases of abuse which makes it inappropriate to generalize from them regarding polygyny more broadly, especially given the evidence of positive experiences in plural families cited by Campbell and various parties to the Reference. Lorna Blackmore’s case is thus interesting because it does not draw on experiences of individual coercion, abuse or secretive dealings. It draws on those elements of polygyny which are
practiced openly in the group, and so represent negative systemic effects, not aberrations of its norms.

One of the most interrogated aspects of polygamy is the freedom of ‘exit’ from marriage and the community as a whole. While it is a small and remote rural community, Bountiful is not a compound and its members are not physically isolated. The socio-economic status of residents of Bountiful is somewhat lower than that of their neighbours, but there is generally no deprivation in the community and there are no restrictions on movement or communications of any sort. The group is situated near a town which provides a range of health and social services. This is not to say that exit does not entail hardship, but rather that there is nothing to suggest this hardship is so great as to make exit completely unfeasible for those who would be seriously motivated to leave. The main obstacles to exit would be those stemming from socialization and a different ‘culture’. However, it is notable that exit from a marriage in Bountiful is relatively more difficult than it would be for an otherwise similarly situated community. Wives who are unhappy in their marriages might be expected to be ‘placed’ (with the blessing of church priesthood) with new families, and thus face some social pressure to remain attached to a husband rather than become single. The cases of divorce without re-placement seem to result in exiting the community altogether (Campbell 2009, 202), even though individuals are never formally ostracized. As Lorna Blackmore’s experiences suggest, those who leave face hostility and separation from family members. Moreover, this is true for both men and women, as indicated in the testimony of Truman Oler (one of James Oler’s brothers who left Bountiful several years ago at age 21):

Truman Oler: “I went through a party phase which involved lots of drinking after I left Bountiful. One reason for this was that I felt I had nothing to lose as I was doomed and
going to hell so what could it hurt. ... It has been very hard, even now, to leave my family behind. Initially, one of the hardest things was thinking that there was nowhere to go. With the partying I went from one extreme to another. If you leave the FLDS you are told you can never go back even to visit your family unless you want to return and follow all the teachings. ... My mother very rarely tries to contact me. I sometimes go to Canyon to see her. If I show up, she will come out of the house to talk to me but I am not welcomed into the house.” (para.20-22 of Oler affidavit)

Marriage age, education and reproduction:

One of the main questions raised regarding the socialization of children in Bountiful is about the quality and accessibility of education. There are two schools in that area which are almost exclusively attended by FLDS students – Mormon Hills and Bountiful Elementary and Secondary school (B.E.S.S). Both are maintained and staffed by local residents. The British Columbia Teachers’ Federation (BCTF) has expressed multiple concerns with the rigor of the curriculum that these schools are able to offer (BCTF news release April 1,2011). Even though there have been recent reports of high testing scores (The Canadian Press, Feb 8, 2011) the BCTF submission in the Reference claimed that the instruction there is inadequate in comparison to the average received by children in the rest of BC (BCTF Closing submission, para 45-59). For example, B.E.S.S. has been in existence since 1959, and has been certified to offer schooling at Grade 10-12 level since 1991 (Affidavit of school inspector E.Vanderboom, para. 25). However, inspections from 1994 onwards have consistently concluded that this school does not meet Graduation Program Order requirements, as a result of which it cannot issue the high school diploma equivalent that students would need in order to continue with any further studies. The Mormon Hills school, in its turn, has only recently acquired the certification necessary to issue
such diplomas (Affidavit of E.Vanderboom, para 35). Mormon Hills came into existence in 2003 as a result of the leadership conflict and resultant split in the FLDS church membership.

Most significant perhaps is the trend of decreasing enrollments in the upper grades in both schools. For instance, since the 2003/2004 academic year B.E.S.S. has had a total of 59 students enrolled in Grade 10, 40 enrolled in Grade 11, and only 11 students who reached Grade 12. This is a very significant drop out rate. Similarly, in the case of Mormon Hills data shows that since 2007/2008 the school has had 31 students registered in grade 10, 21 registered in grade 11, and only 7 registered in grade 12. Although there is no direct evidence of it, several parties in the Reference have speculated that early marriage for girls and early employment or ousting of the boys account for these drop-outs. In fact, in the 8 years of Mormon Hills’ existence only 11 students in total have received graduation diplomas. Given that Bountiful is fairly insular, this suggests that education opportunities for both girls and boys there are seriously limited.

The quality of instruction and content of school curriculum also appears to be adversely affected. According to one of FLDS’s own witnesses in the Reference, as recently as 2005 only some of the teachers at B.E.S.S. were university educated. Yet all teachers, the principal and other staff were FLDS members (BCTF Closing Submissions, para. 58). Additionally, the courses offered did not include a sexual education component, and no career planning instruction was available. One of the witnesses for the Attorney General – Truman Oler – recounts:

I went to school in Bountiful from kindergarten through grade 9. I do not remember getting any practical education at Bountiful that would have prepared me for life as an adult. When I was growing up, the boys were encouraged to leave school early to work. The girls were taught that their role was to have lots of children and to obey the men. I do remember that we were taught religion for 1-2 hours per day. We were taught that the boys should follow their priesthood duty, obey everything you were told by the prophet or the bishop and in this way show that you were worthy to have one or more
wives assigned to you. This was a lesson the boys and girls were taught every day, not just at school but also at home. (para. 8 of Truman Oler affidavit)

The affidavit of the Provincial Health Officer of BC, Perry Kendall, presents data suggesting that teenage pregnancy rates are abnormally high in Bountiful – double those for the rest of British Columbia. Kendall’s report is based on numbers gathered between 1986 and 2004 in the Creston Local Health Area - an area with a population of approximately 12,000, out of which the estimated number of residents of Bountiful is between 1,000-3,000 (BC Stats, 2006 Census). The Provincial Health Office narrowed down its inquiry to recorded births to mothers with home addresses in the area who also had one of 5 most common last names associated with the Bountiful group.27 It found that those 5 Bountiful families accounted for 38% of the Area’s live births to mothers aged 14-18, where Bountiful accounts for 8-24% of the total population. Furthermore, in 28% of those cases the declared fathers are more than 10 years older than the teenage mothers (para.8 of affidavit). As an overall comparison, in the rest of the province of BC the live births to mothers aged 14-18 accounted for approximately 3% of all live births, whereas in the Creston Local Health Area they accounted for 7.1% (Exhibit B of affidavit). These numbers do not link an increase in teenage pregnancy directly and conclusively to the practice of polygyny. However, given the religiosity of the population of Bountiful and the nature of FLDS beliefs, which condemn sex before marriage, it seems reasonable to suspect that there is strong correlation between the rate of teenage pregnancies and the rate of teenage marriages in that group.

27 It is important to note that, as Kendall explains in his affidavit, there is very limited demographic data on Bountiful specifically, and the statistics gathered in this inquiry into teenage pregnancy are tentative but not conclusive – they represent a best estimate in the absence of some of the data necessary to establish the exact rate of teenage pregnancy in this group.
community. If more reliable evidence became available to make this claim then it would confirm that polygyny as a social norm does indeed create demographic pressure towards the recruitment of younger and younger brides for polygynous husbands, and towards early reproduction.

Campbell also reports finding that it is common for Bountiful women to have been married at age 16 and 17. However, her interviewees frequently pointed out that this was more typical for the older generations of women (Campbell 2009, 200-201). They note that perceptions about appropriate marriage age in the group have been changing, and that the trend in the last decade has been for girls to avoid underage marriage. This trend is related to placing an increasing importance on completing high school - and in some cases post-secondary qualifications - before starting a family. The stated significance of this trend for Campbell is that it speaks to the dynamic nature of social norms in Bountiful, attesting to the possibility of change driven by women, by the reflections of mothers about their own experiences and the expectations they impart on their daughters (Campbell 2009, 202). The narratives of many of the interviewees suggest that these issues are openly discussed within the group, and that while there still is social pressure to marry young, there is also acceptance of resistance to such pressure. A number of women from the group have also been openly engaged in social activism, advocating for the age of sexual consent to be raised from 14 to 16 (ibid. ft.39). In this sense, there is enough to suggest that there is general awareness that marriage before full adulthood is problematic, and that where norms operate in this way the legitimation of underage marriage is contested. Campbell summarizes that “respondents portrayed expectations within spousal relationships as shifting over time, due to a range of forces. These forces included the claimed
liberalization of the FLDS Church in recent years, the difficulties with adolescent marriage that participants suggested are now more fully recognized in their community, and the demographic reality that makes universal polygamy impracticable” (ibid. 202).

In terms of reproduction, the norms in Bountiful are similar to those in other conservative religious communities but with the added dimension of family planning in a plural relationship. The use of contraception is frowned upon as a violation of religious principle, which places a premium on fertility and the role of the woman as a mother. On Campbell’s account, “it appeared that most of the women interviewed in the twenty to thirty-five-year-old range had between two and five children”. As her inquiry with both mothers and midwives reveals, however, many women do resort to forms of contraception, such as the rhythm method or forms of contraception that can be concealed from their husbands. Thus, though few felt that they have no control over reproduction, Campbell comments that many indicated a need for secrecy such that contraception was in effect a taboo that they could not comfortably discuss with their husbands.

Participant #9: I have never had anyone say to me, “You shouldn’t use birth control.” But it’s definitely implied. And it’s, I don’t think, I mean talking to my own husband, he would never feel like that was appropriate. Because of, I guess it’s just not the natural thing. It’s not what, I guess, we were designed to use or whatever. At the same time though, I think a lot of women are not really able to communicate their feelings when it comes to [saying], “Okay, I’ve had ten children, and I probably, have what I can take care of...”. (Campbell 2009, 204)

Contrary to popular perception, most women in Bountiful are not confined to the sole role of stay-at-home mother. Most are employed outside the home in the nearby towns – though typically in ‘feminine’ occupations such as school teaching, elderly care and midwifery. Such employment facilitates movement outside the group, as well as a degree of financial
independence and security. “Emotional independence and strength was also linked to the value of work, as women now saw this as something that should yield a particular benefit for them, whereas traditionally, work was understood as serving to promote a common (patriarchal) good” (Campbell 2009, 207). Some of these occupations require pursuing post-secondary education, which group members do in the surrounding area on both sides of the Canada-US border. The choice of educational institution is in effect limited to places that are traditionally welcoming to FLDS members and accepting of openly plural wives. The hostility and dormant threat of prosecution that is associated with mainstream public institutions de facto restricts educational opportunities to such kin groups. This is especially salient for those women who wear the traditional dress and hairstyle that is distinctive of Mormon polygamous groups in North America (e.g. loose, ankle-length, long-sleeve, prairie dresses and long braided hair, coiffed at the front) (Campbell 2009, 210). The stigma faced by these women sets the boundaries to their interaction with the mainstream society and even to their ability to access public services such as health care. Exchanges with outsiders in this context are always couched in fear that negative attention will be drawn to Bountiful itself that may result in charges against their husbands. Notably, there is no corresponding traditional dress for FLDS men (beyond a Mid-Western fashion). As a result men are less likely to stand out and thus less restricted in their education and employment potential. They are also less apprehensive about accessing public services and resources outside of Bountiful.

There is also a further reason why proximity to the community is very significant for women pursuing post-secondary education. Remaining close by is not urged by the leadership, but it is tied to the pattern of family life that defines women’s interests. “Since marriage in
Bountiful still seems to take place when spouses are young – at least by current Canadian standards – it appears that women who want both marriage and scholarship would have to pursue these things in chronological order” (Campbell 2009, 209).

**Relations between sister-wives:**

Sororal support and companionship is the most often cited benefit of plural marriage for women. The relationship between sister wives is not merely incidental to their individual relationships with the husband. Rather it is a marriage in its own right, vested with the same expectations of care and trust as that between husband and wife. It is not unusual for women to experience greater closeness and emotional intimacy with their sister wives than with their husbands (Campbell 2009). This is fully consistent with the nomos of polygyny in Bountiful, which advocates a harmonious close partnership between women that extends to all aspects of family life, except for sexual relations. In this sense, when wives get along with each other their relationship becomes a main source of support and fulfillment in their lives. It is different from an ordinary friendship in that the familial bond cannot be easily dissolved, and consequently the stakes are much higher for all involved – a conflict between sister-wives affects all their children, domestic life, and conjugal life. Unlike casual friends, sister-wives are committed and motivated to sustain their relationships in the face of strife and to make sacrifices despite deep differences. This is reflected in the term ‘sister-wife’ itself – the bond between wives is meant to be as strong as the bond between ‘flesh and blood’ sisters. At the same time, the bond is different from that between relatives because there is something more to it. As wives they are chosen, and share the goal of building a common life together. With sorority and marital partnership thus
intertwined, it is not surprising that one of the arguments women put forward in favour of polygamy is that there is a distinctive kind of valuable human connection that can only be derived from the experience of being a plural wife. In other words, the potential for a happy relationship between sister-wives offers something that women have reason to cherish, and that they could not otherwise find within the confines of monogamous marriage.

Participant 5: It’s kind of like in a monogamous relationship where you and your husband are really close. Well, a lot of us get actually that closeness with each other that you would have with your husband. ... We know everything about the other person. Feel what they feel; we think what they think.” (Campbell 2009, 214)

“Participant 17: You’re best friends forever and ever and ever and ever. And, and when you have weathered as much as you have weathered by the time you get to that point... the kids know that they have always been loved by everybody.” (Campbell 2009, 215)

The importance of the support network between sister-wives is of course heightened by the challenges of sustaining a large and perpetually growing family. In this sense, polygamy creates a positive feedback loop where the size of the family unit increases the demand for care labour and makes the cooperation between wives indispensible and the addition of new wives potentially advantageous. The corresponding pledge of care between wives in turn increases their confidence in the family and its structure. The challenges of pregnancy in early adulthood, for example, are naturally better faced with the support of other mothers than without. Upon becoming a mother, the pursuit of employment or further studies is likely out of reach unless reliable and affordable child- care can be found. The uncertainties of the labor market are easier to bear if financial backup is available from pooled family resources. Domestic work is less burdensome if others are willing to pitch in or cover errands when schedules are tight. These are precisely the sort of advantages which Campbell’s interviewees cite.
“Participant 2: I go to school and I’ve got a babysitter, right there at home. He [my son] doesn’t have to go anywhere. They’re already home. They’re in their own environment. And they are already cared for by their own family. You know and, myself, I can stay home and babysit for someone else who has to go to work.” (Campbell 2009, 213)

“Participant 6: We [i.e. the wives] will sit together with him and figure out which bills have to be paid, and who can help out at that time. We do a big camping trip every summer as a family. Each mother donates towards that. But it’s easier if each mother worries about her own children’s needs. I mean, it’s too big for the whole family to worry about every child. ... But then for the big things like bills, like the power bill for the whole house, then we get together and worry about that.” (Campbell 2009, 214-215)

An important aspect of sororal companionship is that solidarity among wives can become empowering in the relationship with the husband. The most significant factor in curbing the authority of the husband is the administration of the family budget by the wives. Though husbands may at times participate in family meetings concerning finance, the management of household expenses is determined through discussion between wives. Notably, this is not to suggest that each individual wife is financially independent. Rather, as a wife she has an independent voice and a say on spending that affects the family as a whole.

Participant 2: We get together and decide. The guy doesn’t figure it out; he goes to work. The moms figure it out at night. (Campbell 2009. 213)

Participant 17: When we want something [it’s] pretty hard for him to stand up to two of us so, if we could afford it, we can make it happen. And if it’s something you know we want to do to the house. We say, honey, we’re doin’ this, right, okay. And so, it happens. (Campbell 2009, 214).

However, there are no guarantees of easy collaboration between sister-wives. Deep commitment and sorority can also be accompanied by competition, especially competition for the attention and affection of the husband and for finite resources where household
management ideas are not aligned. The potential for acrimony is especially exacerbated in poorer families, or where different wives share one domestic space. In the worst case scenario, wives who do not get along and thus do not experience the benefits of sorority, also face the stresses of jealousy and complex organization of domestic life that accompany cohabitation with multiple partners. Differences in parenting practices can be another potent source of frustration, and also affect the dynamics between children in the relationship. Since responsibilities for their upbringing are often shared, different approaches to discipline can be interfering and mutually undermining. Relatedly, while solidarity between sister-wives can be empowering, competition could lead to more frequent resort to authoritative solutions by the husband, as well as to vulnerability to exploitation and distress.

It is also worth noting that the difficulties women face in adjusting to married life as a plural wife are discussed as their problems, issues which each has to figure out individually how to deal with. They are not discussed as affecting or pertaining to the husband, or requiring adjustment on his part. The experience of jealousy, for example, is couched as a weakness of the wife which she has to tackle within herself.

Participant 10: It’s hard when your husband is with another woman you know, you just try to not think about it. I just don’t think about it. And I just have to think, you know, that I’m his favourite. You have to think that, too. (Campbell, 2009, 216)

Community relations with law and wider society

There are three main social pressures that frame Bountiful’s relationship to the state and to mainstream society – stigmatization, the ever so slowly increasing threat of criminal prosecution, and the conscious effort to insulate from the ‘corrupting influences’ of the more
liberal facets of the majority culture. These pressures are not of equal significance and have varied greatly, especially in the last decade which saw a split in the FLDS church and a surge in media attention and government scrutiny.

As various parties to the Reference have found, the criminalization of polygamy has not been a deterrent to its practice in Bountiful. One obvious reason for this could be s.293 has virtually never been enforced. However, the experience of the US suggests that criminal prosecution has not had any decisive effect on religious polygamy. Many of the first-person accounts in the Reference reveal that residents of Bountiful see little presence or room for formal law in their lives. To the extent that plural marriage is linked to religious devotion, the illegality of polygamy has been a pragmatic hurdle to be carefully managed, rather than an ethical consideration (Campbell 2009, 219; para.18 of Affidavit #1 of Witness#2; para.20 of Affidavit of Mary Batchelor; Affidavit #1 of Witness #8). Attempts to detain and investigate men in Bountiful have been experienced as threatening and traumatizing (Campbell 2009, 223), and to some degree eliciting mobilizing in defense of the faith.28

As is often the case with minority practices, there is some indication that the stigmatization of polygamy in wider society and the prospect of state interference in Bountiful have the adverse effect of fortifying the authority of patriarchal figures. For example, polygamist families cannot seek marriage counseling from any outsiders and typically turn to the Bishop or other elders to arbitrate serious conflicts. The same is true for guidance on individual mental

28 “Participant 1: It [i.e., a criminal prosecution] would be very, very hard on the community. ... I think back to when I was a little kid and every time there was talk about police, or the RCMP vehicle would drive around the community, and we were just all so terrified, you know, we just ran and hid and, certainly the kids aren’t as afraid at this time, I don’t think. ... But it would, it certainly would terrify the children and it would, you know, traumatize of course.” (Campbell 2009, 223)
health issues. There are similarly no avenues for any legal resolution to disputes about family assets within a plural marriage. Second and subsequent wives are also more dependent on internal authorities to assist them with immigration issues and more likely to become ineligible for forms of social assistance that would otherwise be available to them. For example, some have been classified as living common-law and cut off from child tax benefit for failing to report the father’s income, which is already being claimed by his first legal wife (para.14 of Affidavit of Witness #2).

Of the three social pressures listed above, stigmatization is the one at the forefront of most testimonies of Bountiful women. What they seem to hope for the most is that the decriminalization of polygamy will lead to a change in public attitudes towards them. Many feel that the illegality of polygamy gives license to expressions of prejudice and hostility towards them. This is also immediately related to concerns about the confidence of their children, and the expectation to constantly have to justify their involvement in polygamy as an aberration.

I work outside the community. I feel I have to keep my life secret from every co-worker that is not of my faith and every government official. My children feel like if they say the wrong thing to a dentist or doctor their father could go to jail. My children don’t know how to respond if asked how many brothers and sisters they have. One nurse thought my child must be suffering from brain damage as he told her he had 17 brothers and sisters. (para 10-11 of Affidavit of Witness #2)

The expectation is that decriminalization will go some way towards legitimizing their lifestyle as one of the many forms of diversity which majority culture appears to embrace, or at least tolerate. Bountiful residents refer to adultery or same-sex relationships as parallels (only in this strict sense of course). The comparison with adultery is a common theme in Campbell’s interviews and some of the Reference affidavits (Oler affidavit). The view espoused by many
plural wives is that the law prohibiting polygamy is unjust because it is arbitrary. This notion of arbitrariness is interestingly rooted not so much in questioning the privilege of monogamy, but in the perceived inconsistency between the prosecution of polygamist men and the acceptance of adulterers.

Participant 17: My biggest fear isn’t that they’ll take my kids away from me, but they’ll put my husband in jail for polygamy because he’s married to more than one wife. ... All he did is just beak the same rule as every other man in the world that has no [legal] relationship with their ... wife. If so, can they put him in jail for that? He’s the same as all those other guys, except he takes care of me. He takes care of the kids.

Participant 13: You could say ... every guy in the whole nation is living in polygamy, because you hear all the time about people taking on other wives and stuff like that. Is that ... different? The only difference is, I know about it, in my opinion.

Participant 16: We choose to put ourselves in situations and the law can’t change that, the law can’t tell me I can’t go back to an abusive situation. And that’s how polygamy is; like, the law can’t tell me who I can and can’t sleep with. Because adultery is viewed as negative but there’s no criminal [results]. You couldn’t prosecute me for adultery. So that’s, I guess that’s kind of how I view polygamy except I view it in the light of this is a situation that I agreed to and I know who my husband is sleeping with, you know, and I’ve agreed to that. So if you’re going to prosecute polygamy, well, prosecute adultery.

It is clear from these and other comments that Bountiful women perceive the prohibition on polygamy as a moralistic law, the purpose of which is to punish infidelity. The focus is on the behavior of the husband, and not on the structural difference in husband-wife relations between monogamy and polygamy. The implicit benefit of polygamy is that husbands take responsibility for the effects of their sexual relations with multiple partners. These views of the law are in some ways inconsistent with the same women’s accounts of polygamous marriage in a different context, where the focus shifts to the family as a whole. In light of this we can wonder whether this popular but awkward parallel between polygamy and adultery is driven by
actual reflections on polygamy or by the influence of Bountiful elders who deploy similar arguments in a political context (CBC News Fifth Estate, January 15, 2003).

Nevertheless, such considerations aside, Campbell’s own assessment of the position of women in Bountiful leads her to conclude: “After meeting and interviewing some of these women, however, I have reservations about the way in which they are configured in the popular, political, and academic imagination, and especially about criminalizing their spousal relationships. Participants presented themselves as thoughtful, articulate, and alive to the distinctions and parallels between their lives and those of women beyond Bountiful. Today, their choices about marriage, reproduction, residence, work and education might be characterized as active, deliberated, and in the service of their own interests. Their stories are nuanced and dynamic.” (Campbell 2009, 227)

Different Approaches to Bountiful

Harm approaches emerging from the Reference

I begin my discussion of various approaches to Bountiful with two opposing, distinctly political arguments that have been prominent in the Reference and that are both centered on harm. The first one is presented by the British Columbia Civil Liberties Association, arguing for decriminalization, and the second is developed by West Coast Women’s Legal Education and Action Fund (LEAF), arguing for the interpretation of s.293 in a manner which narrows its content significantly and continues to criminalize polygyny specifically. In this section I will briefly outline the political reasoning contained within the legal submissions of these two
parties, and then comment on the implications of their accounts of harm. My goal here is to show that although limiting harm is the most obvious type of guiding principle for law and public policy, it has various limitations in capturing the political concerns with the implications of polygyny. Within political theory, it is useful to differentiate the concept of harm from the concept of domination, even if, or precisely because, both imply each other.

**Harm and the BCCLA argument**

The Closing Submissions of the British Columbia Civil Liberties Association in the Reference case encapsulate the position of many commentators on polygamy (Campbell 2010, Beaman 2006), including that of many women in Bountiful: “Harm may sometimes occur in plural relationships, as it does in monogamous ones. But the mountain of evidence before the Court simply does not establish that there are any harms specific to plural relationships. Where harms do occur in plural relationships, they warrant treatment no different from the harms that occur in monogamous relationships” (para.5-6 of BCCLA Closing Submissions)

There are two chief components to this position in the Reference. The first argument of the BCCLA against the AG’s evidence regarding the harmful effects of polygamy is that this evidence is drawn from “places and cultures far removed from the Canadian experience” (para.57 of BCCLA Closing Submissions). The presence of harmful effects should be assessed relative to the prevailing conditions of Canadian society. The second, and related component is the claim that on the whole the practice of polygamy is statistically insignificant in Canada, and there is no reason to suggest that it would increase if it were legalized. If the existence of
polygyny specifically is a marginal phenomenon, then any purported negative effects on the status of women overall would be negligible.

Harm in this context is taken to mean observable negative effects on individuals’ welfare, as well as perceived impact on the social standing of women as a group. In advancing its argument the BCCLA adopts the perspective of the individual participant in polygyny as a lone agent being penalized for living at odds with the majority lifestyle. From this angle the BCCLA makes no contextual distinction between the effects of polygyny on individuals practicing it in insular communities, and the effects of polygyny on individuals in polygynous relationships in wider society. In the absence of this distinction, the focus is on harms accrued to an individual in a polygynous family, that are also attributable to the internal dynamics of that family unit. Thus conceived, the generalized harm of polygyny is represented as the averaged harm and the averaged probability of harm to an individual participant. (While the BCCLA claims that data on polygynous relationships is inconclusive, it is worth noting that some of the social science studies which focus on questions of harm also follow this model. Most recently, Al-Krenawi et al present results from a Jordanian study which compares the mental health, marital satisfaction and self-esteem of women in monogamous marriages to first wives in polygynous marriages. The latter fared worse than the former in all three categories, especially with respect to mental health measures on depression, hostility and somatization disorder (Al-Krenawi et al. 2011)).

In its Closing Submissions to the Reference, the BCCLA emphasizes their assessment that there are no established “inherent risks to participants and their families” (para. 67-71 of BCCLA Closing Submissions) related to polygyny. For this reason, polygamy and monogamy should be treated equally, as instances of the diversity of marital relationships against the general
background of a reasonably pluralistic society. Implicit in this logic is the view that the configuration of marriage itself is not an appropriate object of concern because where harms occur they are attributable to other social factors or to other personal circumstances. Broadly speaking, it is true that there are lots of serious harms that can arise within inter-personal relationships - e.g. as a result of having a spiteful co-worker, a selfish sibling, an irresponsible friend - which are not inherent in the structure of those relationship. It is simply the nature of inter-personal relationships that they can sometimes turn sour and have severe impact on persons. In trying to forge lasting and deep connections individuals make themselves vulnerable to others, and in this sense this is just a general feature of human sociality. The BCCLA argument treats the configuration of marriage on par with this general condition.

One reason this view is unconvincing is because the microcosm of the family is both an inter-personal and a socio-political site, in a way that sibling rivalries and poor friend choices are not. And so to the extent that the family occupies both of these dimensions, there is something more at stake if families are structured to make some members more vulnerable than others. There is a long history of feminist scholarship making this point with regard to traditional monogamous marriage. In its most abstracted form, taken as a (dissoluble) life partnership between two individuals, monogamous marriage has no ‘inherent risks’. The oppressive character of traditional heterosexual monogamy came from the substantive norms of gender inequality and hetero-normativity that were codified in formal and common law, and which are still not completely extinguished in many liberal democracies. In light of this it is not clear why we should view polygamy in its most abstracted form rather than its substantive configuration. One supporting reason given by the BCCLA is that polygamy is not the prevailing structure but
the exception to the rule, and so is presumably much more malleable and much less compelling. Since people must already be empowered in a certain way to opt out of the mainstream in the first place, then we should see them as empowered vis-à-vis the alternatives they are pursuing. The existence of non-conventional family units amongst the monogamous nuclear model of the majority simply falls within the realm of inter-personal choices, which, if they turn out to be harmful, could be seen as ‘misadventures’. This thinking relies on the vision of the polygynous family as the occasional ‘odd ball’, where individuals are not any more or less vulnerable then anyone else in their environment and just happen to have made a different choice. Though the abstracted version of polygamy and perhaps the lived experiences of polyamory may come closer to this libertarian vision, religious polygyny is as inseparable from the context of gender as the traditional version of monogamy. When polygyny is a community practice, which it tends to be, the socio-political significance of the vulnerabilities created by this family structure is brought back into consideration, just as the vulnerability of women in mainstream monogamy has been in the last several decades of reform to family law and social security. This is because these vulnerabilities acquire a structuring character. What converges on the individual is not just the effects of chance circumstance and personal beliefs, but the social effects of norms. This casts the occurrence of harms in a different light – e.g. in the light of domination.

**Harm as Exploitation - West Coast LEAF’s position:**

A different, more complex account of harm is found in West Coast LEAF’s position in the Reference. Here harm is understood in systemic rather than in individual terms, and identified specifically with exploitation. West Coast LEAF does not dispute that s.293 was originally enacted for moralistic reasons and with ‘unjust objective’ (to deter the immigration of
polygamists in the 1890s), and that as such it is arbitrary, in addition to being overbroad (para. 24 of WCLEAF Opening Submissions). However, they suggest that s. 293 has two possible readings: one which could be reasonably rejected in contemporary Canada but would leave legitimate interests unprotected; and one which is informed by principles consistent with the Charter, consistent with judicial restraint, and consistent with the legitimate objective of protecting women’s equality. WCLEAF advances the complex argument that the court should adopt a very narrow reading of the text and interpret the ban on polygamy on the basis of a harm-based justification. This would significantly limit the scenarios for potential prosecution - “Section 293 must be read down such that the prohibition applies to polygamists who exploit women and girls” (para 3-7 of WCLEAF Opening Submissions).  

The brunt of the argument is that there is sufficient connection between the practice of polygamy and harm (in the form of exploitation and abuse) of women and girls. Freedom of religion must incorporate - and is thus limited by – equality protection. S.15 of the Charter accords substantive equality rights to women, which in turn gives rise to a positive obligation on the part of the state to protect them from social practices which make them vulnerable and undermine their status.

Crucially, WCLEAF’s argument for the reading down of s. 293 is grounded in a normative distinction between polygamy and polyamory. WCLEAF adopts the definition of polyamory advanced by the Canadian Polyamory Advocacy Association (CPAA) (also an intervenor in the Reference):

29 ‘Reading down’ is a term which refers to “giving a statute a narrow interpretation in order to avoid a constitutional problem that would arise if the statute were given a broad interpretation” (Peter Hogg Constitutional law of Canada 1998 cited in WCLEAF Opening Submission).
Polyamory is the practice of having emotionally intimate, sexual relationships within groups of three or more people, where at least one person in the group has more than one emotionally intimate, sexual relationship at a time and where all members of the group formally or informally adopt these principles:

a) men and women have equal rights in establishing the configurations of the groups; no gender has privileges with respect to intimate relationships that the other gender lacks; and

b) no sexual orientation is regarded as superior to any other.

Conjugal polyamory refers to polyamorous relationships where three or more of the parties in the relationship live in the same household. (paras. 13 and 14, CPAA Statement on Breach).

Going on this definition, WCLEAF submits that when s.293 is read down polyamory is not unduly criminalized. This is because it “concerns relationships based on equality and self-realization” (para. 12 of WCLEAF Opening Submissions) and as such is not exploitative of anyone. In contrast, the prohibition on polygamy should be thought of along the same lines as the prohibition on obscenity. (This is the prohibition of pornographic material which depicts undue exploitation, generally understood to imply degrading and dehumanizing sexual acts in the Butler case (R. v. Butler [1992] 1 S.C.R. 452). Interestingly, WCLEAF states that “the prohibition on the practice of polygamy and the prohibition on obscenity both concern activities that are not inherently harmful but are harmful when practiced in an exploitative manner. Both activities contain a spectrum spanning from healthy human sexuality to exploitative power relationships.

The criminal law plays an important role in prohibiting the exploitative forms of what might otherwise be an acceptable activity.” (para 13 of WCLEAF Opening Submissions)

In this, WCLEAF effectively identifies polygyny as polygamy being practiced in an exploitative manner. When it comes to the application of the law in actual cases WCLEAF advocates that “the determination of whether a particular polygamous relationship is exploitative will depend on a contextual analysis of all of the circumstances” (para. 47 of
WCLEAF Closing Submissions. It is clear from the contrast between polygamy and polyamory that an important aspect of exploitation in this account is the presence of norms which spoil the balance of gender equality. This component is independent from the material effects on women’s welfare that can be associated with the form of marriage. However, in outlining the method by which it would be determined whether a polygamous relationship is exploitative, the concepts of harm and exploitation become blurred. WCLEAF takes special care to discuss the vulnerability of women under polygamy as a nexus of several aspects of the social practice. But within this nexus, exploitation seems to acquire a broad meaning, encompassing much more than benefitting disproportionately from the marriage or taking sexual advantage. The list of factors for gauging exploitation presented by WCLEAF is a list of social factors pertaining more to the environment of the marriage than to the marriage itself. They include: whether it is in a community which practices only polygyny and not polyandry; whether marriageable age is pushed down to address the shortage of wives; whether there are wide age differences between husbands and wives; whether the female is underage; whether the marriage structure concentrates power in the central male figure; whether reproductive autonomy is curtailed, gauged by the age of first pregnancy; whether there was courtship, or the union was arranged and on short notice; whether the female is economically dependent and vulnerable; whether the community is insular, and so forth (para.48 of WCLEAF Closing Submissions). Although these factors show that WCLEAF is rightly looking to focus on relationality and socialization, there is no principled account of exploitation here per se. Similarly, the extensive list of harms of polygyny offered in the Closing Submissions contains almost identical items – the patriarchal structure of households permits control of women by men, premium is placed on obedience, women are
used as commodities or resources, early sexualization, etc. Harm, as an effect, is analytically collapsed into exploitation (para. 51 of WCLEAF Closing Submissions). Because of this it seems reasonable to suspect that the concept of harm is perhaps deployed strategically in this legal setting, but ultimately what WCLEAF is attempting to furnish is an argument rooted in exploitation. In my view the same concerns are even better explored through the concept of (non)domination.

Although ‘harm’ and ‘domination’ can be parallel in many ways, they are conceptually distinct. Harm carries the meaning of “injury, actual or potential ill effect or danger” (New Oxford American Dictionary). Analyses based on harm face a significant setback – they can become bogged down in the problem of determining what an ‘ill effect’ is, given that there is some subjectivity as to what is necessary for human well-being. There are certainly things that we can say are objectively harmful, but the list is not very long and because it is very basic (torture, disease, addiction, etc) it cannot inform us well about some important harms that are revealed only in context. The question of what is an ill effect is complicated not just by what counts as ‘ill’ but also by what counts as an effect. For example, devout members of the FLDS like Mary Batchelor (cited above) might be concerned about harm to their souls and their prospects of achieving exaltation - something which has no verifiable effect. Relatedly, the concept of harm also invites questions about the offsetting of ill effects by perceived benefits and opportunities (for instance, enduring suffering is a harm but it could build discipline or confidence or adaptive skill, etc). This in turn requires a further conceptualization of the content of the interests of the harmed parties, and so forth.
Non-domination, on the other hand, posits that subordination, as a socio-political effect, is a wrong, because it undermines the dignity and respect of moral subjects. (The caveat ‘socio-political’ here is to exclude personal subordination, such as that of the pious monk). Those who are committed to the concept of harm might view domination as an inherent harm. This redescription might be accurate in some sense, but in my view it would be less useful because ‘harm’ is a static, end-state notion, and because it is difficult to bridge ‘inherent harm’ to a wider theory such as freedom or legitimacy. As I have discussed earlier, non-domination is a minimalist premise. It requires that we look at the social standing of a subject relative to others, but is not contingent on defining any concrete interests of the subject, as is the case for ‘harm’.

Other perspectives on Bountiful

There is insufficient room here to explore all the ways in which the accommodation of polygyny could be framed within standard approaches in multiculturalism theory. However, before moving on to discuss the non-domination approach I will briefly sketch how the case of Bountiful might appear from several prominent perspectives.

Liberal multiculturalism

Will Kymlicka’s autonomy based theory of group rights and multicultural citizenship contains the most well-known thesis about the accommodation of ‘illiberal’ minorities within the liberal state (Kymlicka 1995). Kymlicka’s innovative assertion was that classical liberalism had failed to recognize the significance of culture as the context in which the fundamental liberal ideas of
individual autonomy, choice and tolerance gain substance (Kymlicka 1995, 75-93). The cultural environment into which any person is born does not only supply the list of alternative life plans, but also develops her ability to attach value to them as “good” or “bad”. “Freedom involves making choices amongst various options, and our societal culture not only provides these options but makes them meaningful to us.” (Kymlicka 1995, 83) In order to protect minority members’ access to their own societal cultures the liberal state should recognize group-differentiated rights. These rights can entail degrees of self-government, special representation in public institutions, or special provisions or exemptions from laws which unfairly disadvantage ethno-cultural and religious groups. At the same time, the primary function of the liberal state remains the protection and enhancement of individual rights and autonomy. To this end, Kymlicka charts a distinction between what he calls external protections – policies of defending groups from external factors threatening their existence by granting them group-differentiated rights - and internal restrictions – limitations on rights which groups impose on their members in order to maintain group identity (Kymlicka 1995, 34-48). Kymlicka’s position, and the crux of his theory, is that “liberals can and should endorse certain external protections, where they promote fairness between groups, but should reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices.” (Kymlicka 1995, 37) The main criticism surrounding this conclusion is that it effectively requires minority cultures to assimilate into some version of liberalism by imposing individual choice as the foremost value, and that as a consequence the net effect of granting group rights in the first place is lost (Parekh 1997).
On this liberal approach the concept of personal autonomy operates as a marker for the limits of toleration and accommodation. The way of life in Bountiful offers an alternative conception of the ‘good life’ and in this sense it boosts critical reflection for individual members of society. The value system of FLDS religious polygyny does not prioritize individual autonomy and the practice of it does not aim to maximize the range of valuable options to choose from. As such it does not promote personal autonomy. At the same time, it is inconclusive whether it actually suppresses personal autonomy. On the one hand there are aspects of polygynous marriage which suggest that women’s control over their own lives is curbed (for example by very early marriage or norms regarding reproductive health). On the other hand, the women who endorse polygyny appear to be living their lives ‘from within’, following a conception of the good life that they identify with and doing so in their own way. Importantly for this model, there are no specific rules which limit the right of individuals. This has a lot of bearing because Kymlicka’s approach is concerned with whether the specific accommodation that is being sought is likely to operate as an internal restriction. In this particular case, decriminalization or legalization on their own are unlikely to act as a restriction, since they add formal recognition of what is already practiced, and practiced only by some members consensually. This approach does not invite analysis of patterns within the social practice, and so it is the direct restrictive or unrestrictive properties of the specific measures proposed that determine whether they can be tolerated.
Freedom of ‘exit’

The most widely employed standard on which multiculturalism thinkers converge is that of “exit rights”, or the ability of members to leave the groups in which they experience treatment unacceptable to them. Exit rights have been interpreted to constitute conditions as minimal as the lack of objective physical impediment to exit (as is in the theory of Chandran Kukathas, 1992, 2003), and as substantial as the means enabling exit, such as education and access to diverse worldviews. The exit rights approach thus espouses that the duty of the state to dispense justice is satisfied when it has been established whether robust exit rights exist and if not, to pressure groups to alter their practices to the extent necessary for securing these rights. A number of authors have criticized the exit rights test on the basis that it fails to incorporate an understanding of the cost associated with abandoning identity-conferring groups, and is thus inadequate to reflect the nature of the very groups to which it most often applies, i.e. ethno-cultural and religious groups, in which membership is usually based on belonging by birth (Weinstock 2005, Swaine 2005, Bader 2005, Deveaux 2005).

The analysis from exit rights hinges on what sort of standard for capacity to exit is taken as baseline. Despite Bountiful being relatively secluded and entirely homogenous, FLDS members are likely to meet all minimalist standards, and most substantive standards. Judging from testimony in the Reference the most significant obstacles to exit are poor education, cultural difference from the majority and the risk of facing some degree of ostracization by

30 Weinstock has argued that the strictness of practices in such groups is in large part a reaction to the threats of the liberal political environment and the failed neutrality of the state, and therefore theorists should cease to be preoccupied with the notion of exit and search for policy options which alleviate on a larger scale the social and political pressures responsible for rigid norms (Weinstock 2005, 238-246).
remaining family members. Though these factors - where they are applicable – function to deter exit, they are not debilitating, as demonstrated by the examples of dissenting individuals who have exited or distanced themselves from the community in certain respects. In order to be a meaningful criterion freedom of exit cannot require as much as easy exit or seamless transition, since most forms of association impose some costs on members. Thus the significance of the obstacles to exit that do exist in Bountiful is dubious. On the exit rights model none of the analytical questions to ask engage with the substance to norms. The focus is on how one would go about exit and not on why persons might be motivated to exit. This is because the freedom of exit approach is predicated on the understanding that exit functions as a litmus test for whether group members themselves consider their situation tolerable. The appeal of freedom of exit is that it circumvents the most difficult problems of a priori and dialogical approaches, trading them in for the narrow and more contextual issue of assessing what meaningful freedom of exit means. At the same time, however, the logic of freedom of exit ignores what is arguably at the heart of the problem, which is that a person’s standard for what is tolerable is itself relational and a function of socialization. The only way to tackle this is to admit that gauging the capacity to exit must entail gauging not just obstacles to exit but also some degree of individual autonomy in those who would resort to exit. In this case, however, it is autonomy that does the work of addressing the problem, and the freedom of exit approach becomes a variation or an elaboration of an autonomy based approach.
**Monique Deveaux’s democratic approach**

From another perspective, Monique Deveaux has developed the thesis that the state should go beyond exit and actively steer groups towards democratization and the self-interpretation of cultural norms through inclusive public deliberation; thus the outcome of such deliberations remains open-ended, and the state must honour such democratically reinforced norms as legitimate without treating liberal principles as trumps (Deveaux, 2005, 347-362).

The formal deliberation which Deveaux argues for is strategically focused (and ideally accompanied by informal democratic contestation)(Deveaux 2006, 6). This means that the task of the deliberative process is not to arrive at overlapping moral consensus or to agree on mutually acceptable regulative principles (Deveaux 2006, 95). Rather the practical task is to engage the specific interests and needs of group members in a transparent negotiation and yield a political compromise between controversial norms and sexual equality. The objective of this model is not to diminish the significance of moral reasoning but to expand the scope of political deliberation so as to bring to the forefront what interests are served and affected by the social practice (Deveaux 2006, 90, 101). The questions that organize such deliberation also aim to interrogate power relations – whose authority is at stake in the practice, who supports what form of the practice, what is the distribution of benefits and burdens. Importantly, the reasons exchanged, as well as the decisive reasons in the outcome of deliberation, need not privilege normative claims and reasons (Deveaux 2006, 105-106).

As I discussed earlier in Chapter 2, there are three principles which construct the space of Deveaux’s strategically focused deliberation: non-domination, political inclusion, and revisability. The purpose of these principles is to eliminate internal domination and the silencing
of some participants by others, as may occur otherwise in group affairs. In this scheme non-domination has a safeguard function, understood in the minimal sense of preventing the coercion of participants within the dialogue space (Deveaux 2006, 114). In the case of Bountiful, the threat of prosecution under s.293 might have such a coercive effect, and thus a public forum must guarantee that participants from the majority respect FLDS members confidence within the deliberation process. Correspondingly, in the atmosphere of conflict between two leaders and two factions within Bountiful, this condition would require priesthood holders on both sides exercise restraint in any pressure tactics.

The second principle of political inclusion would demand that deliberation on polygyny be opened up to a wide range of participants, including dissenters and former members who might not be seen as having a legitimate say by current members but who have clearly been impacted by the practice. In her formulation, however, Deveaux appears to go beyond the all-affected principle and suggest not only expansive but more substantive inclusion. Thus the political inclusion principle entails not just access but effort to ensure that preexisting inequalities in influence and resources have no real impact on the process and outcome of deliberations. Moreover, those included must not only be heard, but must be taken into serious consideration, as the principle mandates “guaranteeing wherever possible that participants have equal access to formal political deliberation and that their contributions count” [emphasis in original] (Deveaux 2006, 115). Alongside this Deveaux recommends a fairly significant level of involvement from the state in supporting informal sites of debate through measures such government funding to empower women, social services and politically diverse media sources (ibid. 116). These aspects of political inclusion make it significantly more demanding. Finally,
strategically focused deliberation should be informed by a principle of revisability. This principle reflects the democratic premium on gradual and continuous change. It also facilitates compromise since deliberation on a given issue can be re-opened (ibid). Taken together, these three principles shape a process of what Deveaux calls self-interpretation. On this process traditional cultural and religious practices are effectively democratized within the space of deliberation, while also being democratized in their civic life.

As mentioned earlier, on my view a non-domination principle of legitimacy requires a democratic method of assessment of specific claims, and this method should have the same components as those prescribed in Deveaux’s framework for a deliberative setting. Our visions are parallel with respect to the idea that for legitimacy reasons the democratic setting should not be preoccupied with the search for overlapping consensus regarding the norms in question. We also share the idea that the state is warranted in taking on certain kinds of initiatives which counteract the effects that power relations within the group have on the process through which its nomos is assessed and revised. However, our approaches and frameworks are different in a few respects.

First, as I argued in previous chapters, on my account the democratic method is informed by a non-domination principle, instead of non-domination being just a criterion in a process underwritten by a democratic principle. Second, while we both suggest that the deliberative process should not simply look to rehearse liberal moral universalism, on my approach it matters whether the outcomes of that process results in advancing non-domination. This difference thins out if Deveaux’s three deliberative principles are entirely fulfilled in actual deliberation, since the possibility of negotiations that completely reinforce existing
subordination without alteration under such conditions is very remote. However, since the probability of non-coercion, inclusion and revisability being perfectly fulfilled in negotiations is also remote, the non-domination principle licenses a check on deliberative outcomes. For example, based on information from the Reference in the case of the FLDS, it is possible to imagine that the full breadth of the requirements of the political inclusion principle might not be easy to fulfill. It is not clear how devout members would be compelled to not just hear but to give serious consideration to dissenters and former members, especially if the latter are seen as having abandoned the faith. More significantly perhaps, it might be a challenge to ensure that the power differential between priesthood holders and the rest of the group can be avoided, given that they are the recognized interpreters of the religious creed. Particularly for women whose beliefs incorporate the doctrine of salvation it would be difficult to abstract from this differential within the artificial setting of public deliberation. One implication of these considerations is that on my account the notion of strategically focused deliberation would have to be qualified by the idea that the overarching strategic goal is maximal plausible improvement on the status quo of domination.

The third significant difference, which emerges from our frameworks, relates to the state’s intervening-but-not-interfering presence. In my view, in order for the deliberative setting to emerge in such a form some non-domination driven initiatives must already be taken. Like Deveaux, I see these as going beyond a strict procedural arbiter function. However, in my approach the variety of social policy responses that the non-domination principle elicits are warranted in their own right as promoting what non-domination minimally requires. In this sense they are aimed at counteracting effects of social power and not at promoting the
democratization of nomos and civic relations on the basis of a notion of the inherent value of democracy. Of course, the most authoritative assessment of what form of accommodation can advance non-domination remains that forged through democratic engagement. However, this is not the only source of assessment; this is in no small part because only public institutions have the resources and responsiveness required to take on the responsibility for moving these processes along, as well as the ultimate responsibility for preventing individual rights violations where this might be at issue. My hope is that an approach which complements democratic deliberation with social policy will reduce the probability of political ‘error’ or failure of justice to which both of these sites are prone. The question of what considerations a non-domination analysis should entail at both of these sites is taken up shortly.

Critical – the “diversionary effect” thesis

The term “diversionary effect” is borrowed from Sarah Song, and I use it here to refer to the position of scholars for whom the focal point of analysis is the effect that public discourse surrounding multicultural accommodations has on inter-cultural dynamics and the social status of minority groups. From this perspective, what needs to come to the forefront in cases like Bountiful is “how critique of minority norms and practices, even by well-intentioned reformers, can divert attention from the majority culture’s own inequalities, shielding them from criticism and perhaps even fueling discourses of cultural superiority within the dominant culture” (Song 2007, 142).

According to Song, the history of anti-polygamy laws in the United States reveals just such a diversionary effect. Since its inception as a religious principle of group practice in the
1850s, polygyny was met with much hostility, grounded in the belief that it violated Christian public morals and treated women like chattel. However, according to Song, both government institutions and campaign movements against polygamy had vested interests in curbing the political power of the fast growing Mormon church and in deflecting critical attention from the traditional Christian monogamous marriage form (ibid, 143). The latter was coming under attack from feminist intellectuals in that period, who raised questions about the legal and social status of women and their inequality under marriage law. These early feminist efforts were linked directly to the growth of the suffragist movement. The opponents of Mormonism decried it as a subversive sexual practice and a form of ‘barbarism’ adopted from non-European peoples, thus also tapping into popular racist beliefs and anxieties (ibid. 148). There were two aspects of Mormonism that were singled out especially as posing a threat to the institution of marriage, both of which were in today’s term progressive. First were the relatively more relaxed rules of divorce from polygynous marriages, which according to some historians were also much more favorable to women than any others in the US at the time (ibid. 150). Second was Mormonism’s association with women’s suffrage. In the 1870s the Mormon dominated legislature of Utah enfranchised all women over the age of 21 - a very controversial act for the period which was repealed seventeen years later. The enfranchisement of women had significant strategic advantage for Mormon leaders who more than doubled their constituencies and gained a larger political base mobilized in defense of polygamy (ibid. 151). Yet, these changes were reviled particularly as threats to the patriarchal form of marriage of the wider Christian majority. This made anti-polygamists’ outspoken concern with women’s inequality appear especially disingenuous. As Song observes “women’s rights activists, including Elizabeth Cady Stanton and
Susan B. Anthony, recognized that polygamy and these other ‘subversive’ Mormon measures served as a handy foil that deflected criticism of monogamy and downplayed the limited but not inconsequential improvements in women’s status brought about by Mormon-led reforms on divorce and suffrage” (ibid. 152).

The relationship between the state and polygynous communities continued to be characterized by this diversionary effect into the 20th century. Though the FLDS has had a permanent presence in Canada only since the 1950s, its relationship to the Canadian state is shaped by this history. Moreover, a number of feminist scholars have suggested that the diversionary effect is what characterizes the current debate about polygamy, especially at its height in relation to the Reference. In discussing law’s approach to polygamy Angela Campbell expresses the fear that “flatly casting plural marriage as a misogynist practice serves as a foil to monogamy in a way that clouds the experience of monogamous wives” (Campbell 2009, 190-191). Taking this even further, in response to West Coast LEAF’s submission in the Reference Michelle Chan has argued:

LEAF’s position is problematic when considered from an intersectional and postcolonial feminist perspective because it supports a law that singles out a practice associated with religious and cultural minorities for special condemnation while leaving the mainstream practice of monogamy criminally un-interrogated. LEAF’s position implicitly yet effectively harnesses and reinforces a civilizational discourse that works to racialize and culturalize minority practices as uniquely oppressive to women, and thus indicative of that culture’s ‘backwardness’, while rendering dominant Western practices invisible as the ‘norm’. In doing this, LEAF’s position contributes to creating the cultural ‘Other’ and permits feminist concerns about gender equality to be co-opted by neo-colonial forces (Chan 2011, 23).

Much of this worry about the diversionary effect is caused by the focus on cases of abuse and violence in the portrayal of polygynist communities by public media, who often seek to
sensationalize stories of criminal charges against FLDS men – a portrayal which fuels stereotypes and stigmatization. Lori Beaman elaborates on this as the tendency to zero in on the bad marriages within the group and treat those as indicative of what they endorse (Beaman 2006).

These scholars make the fair and weighty point that the diversionary effect entailed in critical public scrutiny of minority practices works to perpetuate subordinating stereotypes about minority identities. The appeal of this analytical focus is in exposing the existence of double standards in public policies and popular opinion as a mechanism of inter-group domination. However, the troubling implication of this perspective is that there is in effect no way to interrogate intra-group domination without therein inflaming inter-group domination, since majority norms are by definition those ones which are most widely and firmly entrenched as standards. Such an implication suggests an inevitable impasse for state institutions faced with specific claims that they cannot refuse to engage with. In this sense discourses of cultural superiority are a problem, but it is far from clear that this problem should be resolved by remaining silent and passive on the host of issues that could fuel such discourses. Indeed, at the end of her critique of the diversionary effect Song defaults to an already familiar, and cautious, normative position – “If Mormon women maintain that they have freely chosen to remain in polygamous marriage in accordance with their religious convictions, the state should respect their choices but on the condition that they are free to exit” (Song 2007, 160).

It is not the case that all forms of marriage are equivalent from the perspective of gender equality. This became clear from the shifts in the nomos of monogamous marriage itself. What this tells us is that we cannot avoid the question of whether a given practice gets us closer to an ideal of gender equality (given that all will fall short of that ideal). The non-domination
perspective shares with the ‘diversionary effect’ perspective the notion that there are no superior identity groups, and therefore processes which contribute to instantiating superiority in actuality (and not just in popular discourse) are inherently wrong. However it differs in that it maintains that social practices should be interrogated in all three dimensions. The reality of inter-group domination does not ‘trump’ and discredit questions about intra-group domination. Likewise, the elimination of systemic domination from social life cannot plausibly be a requirement that has to be fulfilled before we can address critique to the inter-personal forms of domination. Majority norms will never come to exemplify any justice ideal fully, and more importantly, in a democratic society to be vigilant about social justice implies to maintain a critical attitude toward any claims that inequality has been eradicated.

The chief concern of my analysis of the practice of polygyny in Bountiful is to suggest what contribution a non-domination and relational autonomy perspective can make to a principled framework for dealing with this type of case. Embedded in this perspective is the idea that such social practices should be examined in a contextual and relational way. In itself, this idea is certainly well rehearsed in both the feminist and multiculturalism literature. In the small body of legal scholarship specifically dedicated to Bountiful the ‘contextual’ and ‘relational’ have taken on the form of contrasting various aspects of polygyny with (presumably) corresponding aspects of monogamy in its ‘mainstream’ (e.g. relative to contemporary Canada) form. These comparisons are essential, because they challenge and open up conventional understandings of what the two kinds of relationships entail, and because they feature strongly in moral reasoning regarding these relationships. However, critically interrogating monogamy in relation to polygamy is not equivalent to, and does not supplant, a relational analysis of the situation of
women in polygamy. This is an important difference worth exploring. What must be avoided is the confusion where critical effort to highlight the *relativity* and frequent arbitrariness of social norms is treated as coextensive with a *relational* account of the status of those engaged in these norms. In the case of Bountiful, this confusion often turns on a false parallel between mainstream (monogamy) and minority (polygamy) norms in the form of the objection ‘it is hypocritical to condemn plural relationships while tolerating adultery because for law and the broader society they are the same’.

The parallel between adultery and polygamy seems plausible because it is drawn on the surface of existing legislation, some of which is at the same time critiqued by those citing the parallel as relying on a very superficial view of relationships. This makes the parallel relevant only to the issue of de-criminalization – if adultery is not criminalized (even when the harm of adultery is more personalized than structural) and *de facto* both adultery and polygyny consist in conjugal plurality, then, it is said, polygyny should not be criminalized. There is some validity to this point, supplementary to the reasoning I discussed earlier for de-criminalization. However, the parallel loses critical purchase when carried into the more substantive realm of assessing domination. From this perspective this parallel is false because it compares the *nomos* of polygyny with the *infringement* of the *nomos* of mainstream monogamy. An important implication for those who draw this parallel is that majority attitudes towards polygyny are revealed to be hypocritical through the parallel, and thus further revealed as prejudiced. While it may be true that sheer prejudice towards polygamy (and polyamory for that matter) is a powerful determinant of popular attitudes, this point is neither substantiated nor helped by this parallel. There are legitimate reasons to be concerned about polygyny, and these reasons
become muffled by the overplaying of majority prejudices. If anything, this constitutes a reason not to encourage the parallel in the legal or the popular imagination.

First, and most obviously, adultery in mainstream monogamy is tolerated both amongst men and women. It is not tolerated to exactly the same extent – historically, and to some limited degree in contemporary society, women’s adultery is seen as more ‘grave’, and the adultery of men is seen as more ‘natural’ to their sexuality. This equality gap, however, even if one thought it was large, has no parallel in the nomos of polygyny, which does not view the having of multiple partners as somewhat more natural to men and somewhat less morally hazardous. Instead, it treats the having of multiple conjugal partners as legitimate only for men, in absolute terms, and this as not only fully natural but laudable. Relatedly, save for cultural icons like James Bond, men’s and women’s adultery in the mainstream tends to entail shame and secrecy on the part of the participants. Polygyny, on the other hand, is described by many participants as indicative of character strength in all the parties involved, but in addition to this also signifying a particular masculine virtue as the role of polygamous husband is also invested with the role of spiritual leadership.

For these reasons, it should be clear that although from the perspective of criminal law an adulterer and a polygamist man might appear the same, from the perspective of analyzing social practice there is no immediate reason to adopt such a parallel. Though mainstream liberal culture creates conditions where adultery is possible, the nomos of this culture is (still typically hetero-) monogamous. The motivations for adultery are not generalizable within that nomos even if some of the social and material factors related to it are (e.g. permissibility of sexual expression, the existence of contraception, and such like). The motivations for polygyny on the
other hand are inextricable from its nomos. Furthermore, there is a narrative of gender roles intrinsic to polygyny (e.g. there are ‘sister-wives’ but no ‘brother-husbands’), which has no intrinsic counterpart in adultery (one spouse unfaithful to another spouse). Indeed, this is what makes polygyny a truly differentiated nomos from that of the secular libertarian nomos of polyamory (in the Reference this contrast becomes apparent from the affidavits of polyamorous individuals and group submissions (Affidavit of Karen Detillieux, Affidavit of Zoe Duff). Thus, the parallel between polygyny and adultery is exhausted at the early stage of appeal to equal toleration for the adulterer and the polygynist in criminal law, despite the popular moral disapproval of both.

As I mentioned above, an analysis of social practice driven by concern with domination must do more than compare and contrast majority and minority norms. As I hope to show in the following discussion, an analysis within the framework of non-domination and relational autonomy goes this extra distance. My starting place is the abstract but nevertheless contentious issue of whether domination inheres in the nomos of polygyny. From there I turn to the three analytical dimensions of domination outlined by Hayward, and I focus more extensively on the systemic and intra-group dimension in order to link back to the question of internalized oppression from the previous chapter. I conclude by reiterating the contribution of relational moral autonomy to theorizing what non-domination requires.
Non-domination and Relational moral autonomy perspective

Three Dimensions

My argument has been that normatively social practices should be viewed through a non-domination framework. I have pursued this argument in the domain of normative reasoning, e.g. by considering what the important moral and political considerations are that should shape our thinking about what ought to be done in such cases. I take the measure of this argument to be how it fares relative to competing normative frameworks. In this context I have defended the usefulness of Hayward’s three-dimensional model of domination as an analytical tool for getting from the is to the ought, and not as a device for deconstructing the is. My main objective now is to show what sort of considerations this model allows us to take into account along each of the three dimensions.

In all three dimensions, the decisive question is whether there is a convergence of factors that can be reasonably designated as constituting domination. Convergence is the operative notion here. Though in general there may be singular events or features of a public practice that are sufficiently compelling in and of themselves to ground the conclusion that domination is at issue (such as denial of access to education, or formal segregation, or unequal pay for equal work), this is not always the case. In this sense, it is not appropriate to list different aspects of polygyny and then ask whether each single aspect causes or manifests domination. If domination is to be understood as a structural concept, the proper object of analysis is the structuring of various aspects. Correspondingly, it is also not appropriate to list single examples of female agency or single domains of female authority and treat them as emblematic of
women’s empowerment and autonomy. Even though autonomy varies in degrees and domains, it is after all an agentive concept that expresses something about the condition and standing of agents, not just the presence of their agency.

Hayward’s three-dimensional account of non-domination distinguishes systemic, intra-group and inter-group domination. The intra-group and inter-group dimensions are similar in kind in that they are both forms of inter-agentive domination. They entail an asymmetry in social capacities such that some agents get much better opportunity than others to set the terms of their collective affairs (Hayward 2011, 453). They pertain to the domain of decision-making, the imposing and interpreting of norms and other aspects of established political and social relations. Inter-group and intra-group are labels that further specify the relevant agents in inter-agentive domination, whether they are structurally disadvantaged minority groups or members of groups. On the individual level of course, there are multiple identifications and positions and all three dimensions will be analytically applicable. Indeed, they are termed ‘dimensions’ rather than categories, levels or types, precisely in order to emphasize that they are distinct but not mutually exclusive.

I will begin with the systemic dimension and follow it up with the inter- and intra-group dimensions. In general terms, promoting systemic non-domination involves enabling the challenge of group boundaries and the collective revision of norms (ibid. 458). Promoting non-domination on the inter-agentive dimension may require different institutional tools that provide political recognition and protections of the group from subordinated status, such as group representation, rights and accommodations. As Hayward points out, the object of such measures is not to cement the identity of the group but to ameliorate the hierarchical relations
of power that already define the group and the status quo (Hayward 2011, 451-460). Finally, the promotion of intra-group non-domination generally is taken to imply the promotion of individual rights (including by Hayward, in Hayward 2010, 37). As I argue, a careful consideration of this dimension of domination suggests that it requires the promotion of relational moral autonomy of persons.

1: Systemic dimension

The systemic dimension of domination is both an important and an elusive one. “People can be unfree when they are subjected to social, yet impersonal forms of power, like the power of deeply entrenched constitutional arrangements, or unquestioned principles, or norms that have been sacralized or naturalized or otherwise universalized.” (Hayward 2011, 454) To worry about systemic domination means to worry “not only about the distribution in (and beyond) a given political society of the capacity to challenge and to change institutions, laws, and norms, but also about the overall or the social level of that capacity” (ibid). Patriarchy and sexuality norms are paradigmatic of this kind of domination and also most salient to the case at hand. What characterizes systemic domination is that it affects all participants in a power relation equally. They are dominated in the sense that they have not achieved collective agency vis-à-vis the terms of that power relation because they regard them as ‘natural’ and unalterable (Hayward 2011, 441,454). On those terms, men and women are dominated systematically by norms of masculinity, femininity and heterosexuality, alongside the fact that the patriarchal nature of these norms enables the inter-group domination of men over women, and of heterosexuals over homosexuals. What makes it useful analytically is that it allows us to separate out social
boundaries that are not clearly attributable or sustained through the devices of any one group of agents.

The two most salient sources of systemic domination in the consideration of polygyny are perhaps the most obvious ones. In the first place are those norms which permeate the mainstream culture and also have an effect on communities like Bountiful where they form the background against which group nomos is conceived. Those we should consider here are patriarchal norms regarding gender-specific roles in the family and the workplace, heterosexuality and monogamy. These are norms that are ‘naturalized’ to varying but significant degrees. The collective social capacity of Canadians to revise those norms has arguably been slowly improving, gaining strength from various formal changes in marriage and labour law that aim to redress inter-agentive domination. Nevertheless, at their core those norms persist in the cultural and institutional settings of the majority. Monogamy, especially, is very deeply entrenched.

From this perspective it appears that decriminalizing practices like polygamy and polyamory would indeed be a boost for systemic non-domination, as it reduces the risks for those who want to maintain such relationships openly, and consequently increases the majority’s exposure to views and practices which challenge its nomos. This is not to imply that undermining monogamy is good from the perspective of social justice or some other evaluative position. All practices have social costs and social benefits, and all societies face dilemmas about how these are distributed and how they are balanced against each other on the whole. Rather, what is flagged from the analytical perspective of systemic non-domination is that monogamy persists not because it is critically reaffirmed but because it has become sacralized to a
significant degree, and the asymmetries of power relations associated with it are moved further out of reach.

On the other hand, the actual practice of polygyny in Bountiful aligns with and reinforces many other aspects of systemic gender domination that are found in the majority culture. For example, these include the distribution of care labour, the association of femininity with submissiveness, the presumption that marriage and reproduction are the most defining moments and accomplishments of a woman’s life, and the expectation that the male figure defines the identity of family (e.g. their shared name). These norms become even more pronounced and sacralized in polygyny when supplemented by its particular religious doctrine and narrative of gender relations. Thus, if promoting systemic non-domination entails enabling people to revise the boundaries of social groups and identities and the norms which are embroiled in them, then it is at odds with the recognition and accommodation of the polygynous form of marriage. If we take this together with the previous consideration regarding monogamy above, then we can reasonably conclude that systemic non-domination is best served by a law which differentiates between polyamory and polygyny, opening up the space to question monogamy as well as the space to question patriarchy.

The second systemic source of domination which needs to be addressed is the status of “the Principle” of plural marriage within Bountiful itself, which sacralizes a view of polygyny as natural and virtuous and a view of polyandry as morally impermissible. Such domination would be systemic in the sense that it would structure the fields of social action of both men and women in a way that produces a particular pattern, even if that pattern were porous. I will
briefly discuss this dimension of domination by confronting one of the more controversial questions raised in the Reference and in academic debate: is domination inherent in polygyny?

The Reference case is concerned with the question of harm, and much turns on the issue of whether harm is attributable to polygyny as such. One of the premises of interrogating evidence of harm is that, in order to warrant interference, harm should be specific to plural relationships. The ‘currency’ of harm is observable and specific effect (such as discrimination, lower socio-economic status, physical or mental distress, etc). What I am concerned with here is domination, which is different from harm in that, among other things, it is not contingent on establishing the causality of a specific negative effect. What should be asked instead is whether domination inhereis in the actual structure of polygyny, where the important facts become the facts about the structure and not just the facts about specific harms to specific members. In addressing this question I will refer to the ‘norm’ of polygyny as the general principle that only a man can have multiple wives, and still reserve the term ‘nomos’ for the broader package of typically religious norms that accompany this general principle but are not directly implied in its definition.

The more tangible dimension of the structure of polygyny is the demographic dimension. There are two main demographic trends built into polygyny. The first is the trend towards lowering marriage age for women. This is due to the convergence of the biological fact that in the human species the ratio of males to females is roughly equal with the social fact that as a general trend men tend to marry women of their own age or younger. This trend is compounded by the traditional understanding of the marital relationship as aimed at fulfilling the purpose of procreation. Where this is the prevalent understanding, marriage is seen as
meaningful between men and women of child-bearing age (e.g. women between 15-45 years of age). If the occurrence of polygyny in a small community is frequent, then the only way to increase the overall pool of marriageable females to marriageable males is to recruit brides as soon as they reach child-bearing age while increasing the average marriage age of men. Second, as a corollary trend, the existence of polygynous marriages within a community necessarily increases the number of men without any marriage prospects. Since multiple wives tend to be the same age or younger than their husbands, young men are especially affected by this disproportionality. As a result, in a community like Bountiful the demographic restrictions create pressure to increase the female membership of the group through immigration, at the same time as it creates pressure for men to be excluded or driven to exit.

These demographic pressures flow directly from the central norm of polygyny, which is distinct from polygamy specifically in that it permits and values only the marriage of one man to multiple wives. If women could also be married to multiple men, these demographic pressures would be alleviated or even eliminated. Even more so if both men and women could also be married to persons of the same sex, as is the case for polyamory.

According to its own adherents, the nomos of polygyny is seen as completely incompatible with polyandry. The reason for this is that the latter violates the norms of moral

31 According to Mormonism founder Joseph Smith’s 1842 revelation: “as pertaining to the law of the priesthood - if any man espouse a virgin, and desire to espouse another, and the first gave her consent, and if he espouse the second, and they are virgins, and have vowed to no other man, than he is justified: he cannot commit adultery for they are given unto him; for he cannot commit adultery with that that belongeth unto him and no one else. And if he have ten virgins given unto him by this law, he cannot commit adultery, for they belong unto him, and they are given unto him; therefore he is justified. But if one or either of the ten virgins, after she is espoused, shall be with another man, she has committed adultery, and shall be destroyed; for they are given unto him to multiply and replenish the earth,
behavior which underpin the vision of the polygynous family. This is an explicitly patriarchal vision. However, its patriarchal nature comes not just from the nomos, but from the very form of polygyny as a general principle. The institution of monogamous marriage is of course also historically imbued with patriarchal norms – however, in principle at least the definition of monogamy does not designate a dominant party (nor does it designate opposite or same-sex partnership). The abstracted egalitarian form of monogamy is what contemporary law is supposedly moving towards. Polygamy, in its definition of having more than one spouse, does not designate these roles and sexes either. Polygyny, on the other hand, designates a patriarchal configuration to the marriage, in that its very meaning is centered on the figure of the husband. Without the husband there is no marriage, his presence is the defining feature of the family relationship. By contrast, none of the wives is strictly necessary to the marriage. The death of the husband signals the end of the marriage, regardless of whether the bond between the remaining women may continue to exist on a practical and/or emotional level. By definition, their bond is mediated by the unifying figure of the man.

The nomos of polygyny in practice tracks and reinforces the configuration set out in its abstracted form. For example, it is unheard of for two or three women to become engaged to each other first and then find a husband together. This scenario would be perfectly consistent with the pattern prescribed by polygyny, but it would be by all accounts unimaginable in Bountiful. Of course, in the monogamous majority patriarchy perpetuates the custom whereby marriage has to be initiated by the man while women await to be ‘proposed’ to. Although this

according to my commandment, and to fulfill the promise which was given by my Father before the foundation of the world, and for their exaltation in the eternal worlds, that they may bear the souls of men;” (The Doctrine and Covenants of the Church of Jesus Christ of Latter-day Saints 132:61-63).
custom is rapidly losing its formal significance with the growing predominance of premarital conjugal relationships and common-law arrangements, its lineage is in the notion that women are attached to men who then become heads of households, and not vice versa. But if anything such effects are magnified in a setting where the asymmetry of attachment is already presupposed in the form of the marriage. The fact that it is not a woman’s place to be the primary figure in the creation of a marriage is compounded by the fact that once she is attached to a man as a plural wife his attachment to her is not equivalent. As well, her relationships to the other members of the marriage are mediated through the relationship to the husband while his relationships are independently validated.

A further aspect of the norm of polygyny is that it must entail internal justification as to why polyandry is not equally permissible. If one man can fulfill the role of husband for multiple women at once then the question arises as to why one woman can not fulfill the role of wife for multiple men. The potential answers to this question can only come from gendered differentiations in the roles of husband and wife or in the nature of the sexes. The need for such differentiations is built into polygyny. It is important to note that polygyny does not just exclude the possibility of one woman having multiple husbands committed only to her. It excludes any configurations in which men share partners, such as for example a two men-three women marriage. The norm that there can be only one male head of the plural family even in its abstract form implies the existence of an entitlement for men not to have to share partners that women do not enjoy reciprocally. The reasons that the actual nomos of polygyny furnishes echo this entitlement.
To reiterate, when asking whether domination is inherent in the idea of polygyny it is important to maintain the distinctive meaning of the term. Polygyny can be one form of practicing polygamy. Domination is not inherent in the idea of polygamy, just as it is not inherent in the idea of monogamy (despite the fact that the actual nomos of monogamy has been steeped in domination). However, to be committed in principle to polygyny while rejecting its counterpart polyandry in effect amounts to rejecting polygamy generally. (And this is precisely the case when it is practiced by whole groups for religious reasons). Once this is acknowledged polygyny takes on a more specific normative meaning because it casts only one other pattern (in addition to monogamy) of relationships as morally legitimate within the community. In this case, the concept of polygyny is already structuring relations between genders in some way, and there is a trend towards domination that does seem to inhere in it.

To conclude, as I mentioned, the demographic implications of polygyny push in the direction of creating a constantly renewable group of vulnerable persons. These demographic implications are reinforced by the patriarchal implications found within the concept itself, specifically in the centrality of the male figure. The possible justifications of the centrality of the male in turn imply that, whatever the actual experience of polygyny entails, its nomos must be rooted in differentiating between sexes in a way that forecloses certain options to one sex that are open to another. Knowing these aspects of the idea of polygyny cannot yet tell us whether domination is occurring. This can only be determined on the basis of the specific nomos and specific practice. However, knowing these aspects of polygyny does tell us that a trend towards domination is inherent in it, and that unless actual nomos and practice somehow counteract to balance or eliminate this trend it is likely to develop.
2: Inter-group dimension

The size of the FLDS minority and its relative seclusion are significant but not decisive features in assessing its vulnerability to inter-group domination. There are a number of other factors in its relationship to wider society that are revealing in that regard. As it becomes clear from the testimonies of Bountiful residents reviewed earlier in the chapter, FLDS members do not participate and are not represented in the civic and political life of their region. This is partly self-imposed, since the fairly liberal character of the majority culture is perceived as a potential source of moral corruption. The principally secular political vision that animates political debate and public institutions in Canada is deeply at odds with the FLDS vision of what the fundamental principles government should be. There are two seemingly contradictory positions espoused by FLDS leaders in the US and Canada. On the one hand there is a strongly libertarian view, defending maximum toleration for religious difference and a rejection of any sort of interference with religious life as illegitimate. On the other hand, there is also a distinctly theocratic vision of how social life should be organized, where religion can and should permeate family life, but also education and economic life.

Of course there are many other religious groups who favour a different relationship between church and state but yet enjoy a vocal presence in the political life of the country. Part of the reason for FLDS marginalization is the stigmatization of both men and women, associated with both polygamy and polyamory, as involved in ‘deviance’ or criminality. In the case of Bountiful it is clear that the organization of communal life is shaped to a very great extent by the sometimes real, sometimes perceived, threat of prosecution. What is important from the
perspective of inter-group domination is that history shows that the real threat of prosecution has not been determined by concern with the practice or with the welfare of the individuals involved, since polygyny went without much attention for decades. The Canadian government’s stance towards Bountiful has been determined by largely political factors, and varied according to spikes in media attention and popular interest in the issue. It could be said of course that this is true of many policy issues, as it is also true that prosecutorial restraint can be partially attributed to a progressive concern with the moralistic origins of s.293 and acknowledgement that the requirements of justice on this issue are murky. Yet this progressive concern is clearly muffled in the Reference, as public authorities (in the face of the Attorney General of BC) put forward an aggressive argument for the continued criminalization of the practice which they effectively ignored to for years. Since the practice itself seems to have undergone only moderate changes, and in the direction of liberalization, the motivation of this stance can only be attributed to the changing landscape of ‘big-P’ politics. Though this is hard to claim definitively without special study, it is not unreasonable to say that to some noticeable degree the legal status of Bountiful is subject to shifts in the public opinion of the majority electorate over anything else. Moreover, this dynamic is acutely felt by FLDS members. As it stands, in 2011 the public opinion of the majority of Canadians is very strongly in favour of a continued ban on polygamy. More specifically, when asked about their views on the Reference 68% of Canadians and 72% of British Columbians agreed that polygamy should remain banned; and 56% and 57% respectively were in support of “the federal government using all means necessary to fight the ruling” if the BC Supreme Court determined that s.293 is unconstitutional (Abacus Data National Poll, April 15 2011).
In addition to this the inter-group dimension must take into account the long history of mistrust and tension between the FLDS and the public institutions of the US and Canada. As mentioned above, the prohibition of polygamy in the late 19th century in both countries was couched in a moralistic rationale and openly targeted polygynist Mormons specifically. The political pressure that criminalization brought on the Mormon church was the chief cause of its reform and the split which eventually gave birth to the FLDS. In this sense, the very identity of this religious group was forged in a dynamic of asymmetric power relations. The historical context of this relationship, combined with the contingent and incoherent position on the part of the state in contemporary times, suggests that the legitimacy of political institutions vis-à-vis the FLDS religious community is weakened. The lack of a principled approach to polygyny carries the implication that political power has been exercised arbitrarily, targeting not the practice but the suppression of that particular faith itself. As I discussed earlier in relation to the diversionary effect thesis, this does not imply that restraint on the critical interrogation of polygyny is the only possible response consistent with non-domination. Rather, advancing non-domination in this dimension requires the advancement of transparency in the relations between the group and the state and their motivations, as well as moving the debate on polygyny out of the courts and into a more democratic setting. Moreover, in addition to a debate centered on polygyny, polygyny and polyamory need to be brought into debates centered on other aspects of marriage policy, where they can serve a critical function with respect to majority nomos. In other words, in addition to forming a distinct policy issue, polygyny and polygamy need to also become part of policy discussions on gender equality in divorce law, tax law, immigration and welfare.
3: Intra-group dimension

In this dimension we have to consider what specific aspects of the nomos of polygyny converge on differently positioned members of the group in a way that produces a subordinate status. As is the case in every hierarchical system, there are multiple positions of subordination, but not all of them entail domination. In other words, although both entail inequalities in power, there is a difference between organizational hierarchies and hierarchies of social status. These of course are bound to overlap and reinforce each other, and one of the telling signs of social hierarchy is the patterning of organizational hierarchy. In Bountiful, for example, there are hierarchies of authority between priesthood holders and between sister-wives. These hierarchies produce their own dynamics of power, but they are functional in nature. On the other hand, there are status hierarchies between men and women and between older and younger men. These status hierarchies designate those who happen to be women and younger men to the bottom organizational hierarchies, or leave them completely out. Moreover, in addition to functional positions in social organization, the gender status hierarchy also accords women lower normative authority in the making and re-making of both functional rules and governing norms.

This inter-personal domination is underpinned by the systemic domination discussed earlier. Thus, all leadership positions in the FLDS in the US and Canada are occupied by men, but also defined as designated for men, further naturalizing the association of decision-making authority with maleness. The interpretation of religious text is reserved for the Prophet and priesthood council. The succession of the Prophet is also determined and contested between men, and particularly between senior polygynous men. To the extent that the vast majority of marriages are arranged by fathers and the Prophet, men have special privileges in determining
whether and what marriage can take place. Since marriage is seen to be the most significant moment of a woman’s life (it should be added, in majority popular culture as well as in Bountiful), men’s social standing is elevated over women’s in that respect. This is inextricable from the privileges of older men over younger men and favored men and council members over others in the community. The pressure to consent to marriage correlates with an age gap between men and women, so that men enjoy authority both on account of maleness and on account of seniority and experience.

This last issue is one of the most contentious aspects in discussions of polygyny. Putting emphasis on allowing young women to choose whether to accept or reject a match has a double function. First, it makes the giving of consent formalized and clear, (and thus legally unquestionable). Second, it reinforces for them the sense of having made a choice, a sense of responsibility for that choice, and an added legitimacy to their own marriage. The structure of this process of entering into celestial marriage makes consent seem dubious, because it combines the factors of youth, perceived expectations and desire to fit in with established norms, together with the lack of socially acceptable alternatives for forming relationships and finding mates. This situation is hardly unique to Bountiful, as there are other conservative religious communities where similar structural constraints exist regarding arranged monogamous marriages. However, it appears the form of the marriages might amplify these constraints, given the greater need for marriageable women than men. Nevertheless, it is very important that there is evidence that the age of marriage has been rising since the split in the FLDS church and that there is acceptance of this trend. This suggests that the structure of these norms is not too rigid and that there may be increasing room for women’s agency in affecting
the boundaries of these norms. It is of course important to learn what the causes of this liberalization are and to what extent they represent a shift in the ethos of the practice and to what extent they are attributable to politicking amongst the men and between the leadership and public authority.

In addition to this, status hierarchy is reflected in the fact that polygyny privileges marriage as the ‘natural’ source and site of camaraderie between women. None of the interviewees discussed close friendships or support network with women outside the marriage – the need for emotional closeness and sense of community with one’s peers is directed to the marriage for women in a way that it is not for men. Men have greater opportunity to revise their network of supportive relationships with peers; the cost of inter-personal conflict is much higher for women. Moreover, when discussing experiences of jealousy the interviewees framed such feelings as ‘their’ problem, an issue for individual wives to cope with, removed from the husband himself who has no responsibility for helping to resolve it as a family. Within the marriage, even the best relationships between sister-wives remain contingent on the figure of the husband which validates them and, depending on the circumstances, also mediates them. This is most obvious when we consider the fact that any potential for sexual intimacy between wives is strictly prohibited and reviled as sinful. Of course, as Campbell’s interviewees indicate,

32 Angela Campbell informs about the existence of one legal same-sex marriage between two women in Bountiful. These women are the two youngest wives in a plural marriage, who bonded over disagreement with senior wives and decided to live separately as a couple. They married each other formally once this became legal in BC, and after several years of domestic partnership. Their same-sex marriage is known and tolerated within Bountiful. However, it is not clear that this indicates any tolerance towards homosexuality as such. The women have not indicated any conjugal intimacy to their relationship. They claim to be committed to the Principle and they continue to be married to their celestial husband with whom they have several children and close relations. They also wear the wedding bands given to them by
good relationships between sister-wives can be rewarding and empowering and present a special kind of human bond that cannot be found between friends. However, this does not mean a positive experience makes those social boundaries less rigid or the capacity of women to affect them any greater.

Finally, the issue of reproductive choices and contraception also indicates a domain of intra-group domination. The women in this example acknowledged that fear of disapproval from husbands and peers was the chief determinant in their asserting control over their own reproductive health covertly. They displayed regret about having to break a child-bearing norm even when they had compelling reasons to do so. What is instructive here is not just the power dynamic within the home, but also the fact that none of the women viewed herself as source of normative authority regarding such important questions in their lives. None of the interviewees suggested that they could have a say in re-examining this norm. The significance of these features becomes clear when we consider what relational moral autonomy has to contribute.

**Relational moral autonomy**

In liberal political thought one of the functions of the concept of an autonomous person is to serve as a model of a perspective from which to formulate principles of justice. (As I discussed in the previous chapter, this is partly why the charges of a masculinist individualist perspective in an autonomy conception are so serious.) By analogy, if we adopt a concept of relational moral

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the husband, adhere to the traditional dress and hairstyle of FLDS, and espouse conservative views on femininity (Campbell 2010, 354-356). Thus the existence of their same-sex marriage does not suggest a break with the trend discussed here (e.g. where women’s relationships in marriage remain legitimated exclusively via their relationship to the husband).
autonomy, we might gain a model perspective from which to formulate a fuller account of non-domination.

Hayward defined power as a “network of social boundaries that shape fields of possible action” and suggested that inter-agentive domination obtains in power relations when some of the participants are disproportionately socially enabled to set the terms of those relations (Hayward 2011, 441). In Chapter 5 I suggested a slightly reformulated view where focus is broadened to include not just how agents are positioned vis-à-vis norms and boundaries to action, but also - and relatedly – whether there are enduring asymmetries in the development of agentive capacities to act upon these boundaries.

A question which arises logically out of the intra-group analytical dimension is why should these aspects of domination have any normative significance when individuals’ participation is voluntary? Does advancing non-domination not require respecting individual freedom of association?

Many theorists place great emphasis on recognizing women’s exercises of agency which may be easily overlooked by analysis centered on domination. Special significance must be posed on instances of resistance in circumstances of oppressive socialization. Campbell has suggested for example that under the surface many of the stories of Bountiful women “suggest possibilities for crafting a sense of identity and meaningful solutions against a backdrop that might otherwise result in exhaustion and powerlessness. ... [A] polygamous relationship that may appear difficult and taxing ‘from the outside’ might be viewed by the women within it as a veritable choice driven by sincere affection and love for a husband, and for his other wives” (Campbell 2010, 352). In terms of agentive capacities, an image which eludes the portrayal of
Bountiful is that of a plural wife who is “confident, resourceful, decisive and capable of articulating clear reasons for her decision to accept and live in a plural marriage” (ibid). The upshot, as Beaman puts it, is that “within the research on FLDS women there is evidence that women make choices in the context of their lives and communities. ... To portray women in these contexts as ‘victims’ denies their agency or decision-making capacity.” (para.47 of Lori Beaman Affidavit).

The fear is that paternalistic interventions in the name of rescuing women from domination are in fact depriving those women of agency. Having agency however seems perfectly consistent with living in a position of continued subordination. Promoting non-domination requires more than just having an adaptive capacity to endure domination. If non-domination entails a symmetry in social capacity to act upon norms then we must promote the capacities of agents to perceive themselves as sources of the movement of social boundaries and to perceive the boundaries themselves in a self-reflective and socially-reflective way.

The feminist concern with oppressive socialization is that the ways in which women are dominated through cultural and religious norms remain unaccounted for in analyses that focus on women’s un-coerced participation. An equally strong worry, however, is that respect for women’s agency can be undermined by paternalistic interventions. A non-domination approach would take both of these concerns seriously.

One of the reasons why oppressive socialization is a difficult case is because normally accounts of domination rely on the presence of resistance and suppression; or, like Pettit, they assume that domination is likely to be common knowledge, which includes knowledge amongst the dominated. But it does not automatically follow that if there is no active resistance or no
common knowledge there is also no domination. Relational moral autonomy addresses this issue and enriches the analysis of what might constitute oppressive socialization. Relational moral autonomy highlights the importance of a socially constituted normative authority based on inter-subjective recognition.

Relational moral autonomy entails having a kind of normative authority rooted in intersubjective recognition. An agent has relational moral autonomy when two conditions are fulfilled: when her reasons for action are consistent with her practical identity, and when she also regards herself as a legitimate source of authority. Promoting non-domination across all three dimensions requires taking measures to counter-act those aspects of social practice that subvert the equal development of relational moral autonomy. In the case of systemic gender domination this entails the same sorts of measures as are warranted across all of society – equal access to education and support for education, a compulsory sexual health component to school curriculum, promoting awareness of women’s issues and women’s support organizations, promoting women’s civic and political involvement, creating and promoting opportunities for women in careers outside the traditionally feminine occupations, making health and social services locally available, etc. In the case of intra-group domination this entails a stronger presence – though not necessarily interference - of public services within the community. This might include recruiting school teachers who are not already members of the group, doing everything possible to reduce high-school drop out rates, publicizing information on sexual health and contraception, offering mental health and marital counseling specialized for polygamous families, etc.
Not all social structures are consistent with non-domination. Promoting non-domination makes it necessary to promote people’s capacities to become aware of, question and resist domination. However, here non-domination runs up against its limits. The threat of oppressive socialization is that it renders domination invisible, including and especially to the dominated. As normative analytical tools, neither non-domination nor relational autonomy are sufficient on their own to address this invisibility. Pettit’s conception of non-domination overtly requires that the parameters of domination be commonly known as such. If that is the case, internalized oppressive norms are excluded from analysis by fiat. Hayward’s conception of non-domination does not have this effect, but it still leaves some questions unanswered. For example, acting upon norms and social boundaries can be done both consciously and unconsciously. But if certain norms are not being ‘acted upon’ because they have been internalized, how can non-domination be promoted without promoting awareness and conscious resistance to domination?

Of course, autonomy is a matter of degree and domain (Mackenzie 2008, 527). If an analysis of oppressive socialization was undertaken purely from a relational autonomy perspective, it would yield a richer account of the intersubjective experiences that constitute women’s normative authority in different domains of life in Bountiful. However, a relational autonomy theorist would have a harder time interpreting what it adds up to when a woman has various degrees of autonomy in various domains. It is the framework of non-domination which allows us to contextualize these domains in a larger picture of a power dynamic. Namely, having normative authority in defining the group’s distinctive norms and values, and having normative authority to re-interpret those for oneself is a much more significant domain of autonomy than,
say, running a household. A worrisome aspect of life in Bountiful is that girls are socialized with little normative authority, relative to that of men, to interpret the religious tenets which they follow. The logic of non-domination informs us that this fact must bear more weight in how we see the status of women there than the fact that most wives enjoy great normative authority over the family budgets (as satisfactory as such authority may be).

The way in which non-domination and relational moral autonomy complement each other is clarified if we return to an example from the previous chapter. Thomas Hill’s portrait of the Deferential Wife seems especially salient in the case of Bountiful. Since there is no direct coercion taking place there, the inequality and harm to women that various interveners have referred to suggest that women in Bountiful are in the same position as the Deferential Wife or worse – the norms of their community arguably openly legitimate and endorse the deferential status and ensure its enforcement through the form of marriage itself.

While the feminist perspective on the DW is clear, it is not clear whether deference to the husband in particular has special importance for autonomy. What about deference to fathers, bishops, sister wives, or even children? Is deference to these others also inconsistent with autonomy? This question has interesting implications for Bountiful because while deference based on gender and familial relations is not difficult to establish as undermining autonomy, deference to religious authority is usually seen as consistent with it. In Bountiful these forms of deference are mutually reinforcing. But for many the difficulty in the polygyny question stems from the tension between the public commitment to reject and condemn women’s deferent role in the family and the desire to respect individuals’ deference to religious authority. In this sense, if a conception of individual autonomy would allow deference to
religious authority, in this instance it would also have to allow as autonomous deference within the family. Thus the substantive conception of autonomy of Stoljar and Charles would either have to reject deference writ large, including deference to the moral authority of religion, or it would have to relinquish its defining feature, the appeal to the feminist intuition.

The most likely answer to this challenge might be that autonomy is, of course, a matter of degrees and domains, and so women in Bountiful are autonomous in some respects and not others. This move, however, does disarm the strong imperative of the feminist intuition. The instructive aspect of the portrait of the DW is that she does not appear as having made one or two non-autonomous decisions in one or two domains. Her deference seems to affect her life across the board. She is also not conflicted between different parts of her identity. Deference absolves her of such conflicts. This shows that a conception of autonomy, however sophisticated, cannot capture the whole story about deference. But it could do so, as I have argued, in conjunction with domination. The problem cannot be with servility as such, when acts of servility are self-reflective. The problem is that the role of servility is being presumptively assigned to some, who are being socialized into servility, and not to others. This can explain why an inverted example of a Differential Husband, while morally wrong in itself, would not raise the same concern as the DW – it is the implicit context of gender inequality and domination that makes her deference particularly politically objectionable.

**Conclusion**

As evidence from the debate on polygamy in the courts suggests, despite sensationalized media accounts of life in polygyny, for FLDS women the social practice is complex and contested. There
are multiple perspectives from which the claim for decriminalization, and potentially legalization, of polygamy could be viewed. Within the public domain the debate plays out as a clash between individual rights to freedom of religion on the one hand and to gender equality on the other. Within public policy and the legal system the operative arguments evoke the concepts of harm and exploitation. Inevitably they are forced to consider difficult political questions about the balancing of public good and private freedom. These positions are framed by the structure of the public domain and thus capture only a narrow understanding of what the political dimensions of this question are. However, within political theory as well there are competing theories of how to look at such issues. Liberal multiculturalism, freedom of exit theorists, democratic theorists and critical theories all make significant contribution to understanding the problem of doing justice to socio-historic groups while also not compromising individual rights. The non-domination approach developed here shares the most in common with the democratic theorist; yet nevertheless there are significant differences between the two. A non-domination analysis unfolds in three dimensions – systemic, inter-group and intragroup. This allows us to explore multiple aspects of the social practice as inter-related, giving it a significant advantage. Although ultimately this approach calls for a democratic resolution, it is possible to consider what this sort of three-dimenisional analysis would suggest about the case at hand.

Decriminalization clearly goes a long way towards non-domination. On the inter-group dimension, removing the threat of criminal prosecution might reasonably be expected to turn a new page in the relationship between the state and religious polygyny. It will presumably alleviate the ‘diversionary effect’ and make both parties less dependent on the sway of public
opinion. Though this cannot be ensured, the stigmatization of polygamists as ‘deviants’ will likely slowly start fading. Importantly, it will also likely make women more confident and prone to access health and public services without fear of repercussion. If the threat of criminal prosecution is removed it will be more difficult for group leaders to centralize power or mobilize support for more strict norms. On the other hand, the full legal recognition of polygamous marriages does not hold out promise that it would go much further than mere decriminalization would. Yet it would state politically that polygyny is consistent with gender equality, as required by other laws – something which is likely wrong or at best inconclusive, given polygyny’s demographic and normative tendencies which compound already existing systemic gender domination.

There is of course an obvious set of benefits that plural wives might be able to claim in the areas of tax law, divorce law and immigration. These are not to be underestimated. However, it is not clear whether full legal recognition is in fact necessary for extending these benefits to second and third wives once the practice is decriminalized. There may be other policy tools to boost material equality in those areas. In terms of exit, the formal process of divorce itself seems unlikely to make it easier for women to end undesired marriages. Indeed a formal process for polygamous divorce might make this even more difficult in terms of time and cost, considering that courts will have to process the impact and adjudicate the conditions of the divorce with respect to each of the plural members. In this sense, ending marriage might be better facilitated by other means focused on divorce from the husband rather than divorce from each and every other spouse.
Importantly, the full legal recognition of polygynous marriages would do nothing to improve the subordinated social status of women. Since the practice is informed by religious principle, for those who are involved a celestial marriage is more ‘real’ and more important than a formal legal one. In this respect the difference in change between decriminalization and legal recognition would likely be very marginal within the community itself.
Chapter 8

Conclusion

Overview

My objective in the thesis was to develop and defend the idea that non-domination is a principle that ought to guide both inter-group and intra-group relations. The main focus was on the type of case where accommodation is sought for social practices which appear to perpetuate the subordination of those who endorse them, and where it is thus not easily determined what the advancement of non-domination requires. My motivation for this focus came from similar debates within the multiculturalism literature about the potential and actual conflict between what gender justice and multicultural justice demand.

The case of religious polygyny appears to exemplify this conflict very well. As the submissions to the Reference show, both within the legal system and within political theory this case has been conceived as a case about the limits of toleration in a liberal-democratic state, and about achieving a delicate balance of justice – a balance between the legitimate interest of the group in exercising religious freedom and maintaining its distinct style of life with the equally legitimate interest of women within the group in being protected from exploitation. Within liberal multiculturalism such cases pose a dilemma between the conflicting requirements of a single principle of justice and the single overarching value of the political order – individual autonomy. From this perspective it appears that accommodating the claim of the group may likely run against the same reasoning which justifies the entitlement of the group to
accommodation. Within value pluralist multiculturalism, the issue appears even further complicated if we assume deep disagreement about the values that the political order should protect (or their ranking), and even more radically, about the principles of justice themselves (Mookherjee 2010). This balance is also a difficult question within feminist thought, where two critical commitments pull in opposite directions – the definitive commitment to questioning gender norms and the inequalities they produce in all societies, and the critical imperative to resist paternalistic interventions with women’s agency and the privileging of Western liberal values in political and cultural critique (Okin 1999, Hirschmann 1998, Phillips 2007, Arneil et al, 2007).

Democratically grounded approaches to multicultural justice attempt to circumvent the value pluralist dilemma through a procedural dialogical approach that involves group members in deliberation about the meaning and role of contested norms and practices. This, they claim, gives the resulting principles more legitimacy. However, it is not clear that the democratic method reflects a qualitatively different approach from the justice-based approach, to the extent that it posits democracy as the overarching value of the political order.

The case of polygyny, and others like it, are thus usually framed as about balancing politically and theoretically distinct, but equally valid, concerns. As I argued, however, it is helpful to consider that there is only one fundamental concern at play in these various justice considerations – that is, the concern with domination. However, an approach which treats non-domination as one kind of a conception of freedom is likely to run up against the same kind of dilemma as liberal multiculturalism, since the meaning and value of freedom is one of the most philosophically and culturally contested. Instead of developing an approach which simply
replaces individual autonomy with non-domination, I argued for recognizing that non-domination captures an important moral intuition about the legitimate use of political power, and is thus an appropriate way to conceptualize the nature of the problem in, and a suitable guiding principle for, conflicts about the accommodation of specific social practices. In this respect, I argued that we should embrace the democratic turn on the recognition that the value of democracy is itself not free-standing, and that its justification rests with the ‘thinner’ fundamental principle of non-domination. Since non-domination does not espouse a thesis regarding the inherent value of autonomy or democratic process, or about the justice principles enshrined in a given political order, it marks an improvement on other regulative ideals.

According to the legitimacy principle of non-domination that I argued for in this dissertation, a political authority derives legitimacy from the degree to which its political institutions are configured to and work to promote relations of non-domination among its individual and collective subjects. The question that would guide such an approach to the accommodation of social practice is ‘what sort of institutional responses maximize non-domination for both affected identity groups and affected individuals’. Reasoning from this kind of commitment to non-domination would raise two sets of considerations 1.) in what ways is the religious group vulnerable to domination by other groups with other comprehensive doctrines, and 2.) in what ways are differently situated members of the group vulnerable to domination. These considerations are captured if we apply a three-dimensional analysis that interrogates systemic, inter-group and intra-group dimension. Furthermore, neither of these questions can be investigated from the top down. Rather the answers can only be determined in
dialogue with those affected, since what the institutional response is will affect the dynamics of power in the group and the group’s social standing as a community.

Importantly, I argued that an analysis of the advancement of non-domination in the three dimensions cannot be achieved without any reference to the capacities of human agents to become socially enabled to set the terms of power relations which apply to them, as well as to resist those relations which would designate a subordinate social status for them. For this reason we need to incorporate a conception of relational moral autonomy. I described non-domination as a structural term, referring to the mitigation or absence of patterned asymmetries in/of social power. Relational moral autonomy supplements non-domination as an agentive term, concerned with the normative authority of the person. It specifically refers to the state where, in addition to expressing her practical identity, an agent’s actions also express her normative authority – an attitude towards oneself sustained through relations of intersubjective recognition. On this conceptualization of individual autonomy (defended more thoroughly in the work of Catriona Mackenzie), autonomy does not replicate the personal autonomy ideal of liberal theory, and so does not threaten the minimalist premises of the non-domination principle. It does, however, have normative implications, which allow us to ground critique of social norms which undermine the normative authority of women as a means of perpetuating domination.

I developed this argument in the following steps. In chapter 2 I situated my argument through a discussion of two seemingly very different approaches to multicultural justice, and defended my focus on groups that exemplify nomoi communities. In chapter 3 I considered legitimacy as a political problem about the authority of exercising political power over individual
and collective subjects. In chapter 4 I elaborated on legitimacy as a philosophical problem about differentiating between relations of power, as well as an analytical problem about the permanent tension between the different priorities of theory. This review set up the discussion of power and non-domination in Chapter 5 and the discussion of autonomy and internalized oppression in Chapter 6. In chapter 7 I concluded by taking a closer look at the main case example used to support the theoretical framework – the practice of polygyny by the FLDS church in Canada.

**Limitations of the thesis and areas of further research**

There are a number of questions that arise from the approach I outlined, but whose answers are beyond what can be achieved in the scope of this project.

First, my discussion was focused narrowly on nomoi groups and claims for the accommodation of minority social practices. There are of course many ways to demarcate social groups, which vary by context and subject, and I have not had room to consider how the non-domination legitimacy principle and the non-domination analytical framework might be applied with respect to other kinds of social group. There are also various types of claims made by minority populations that are not focused on a specific social practice, including self-determination claims, special representation claims and broader group-differentiated rights claims. My treatment of non-domination as a legitimacy principle suggests that these types of claims should also be examined on the same basis as more modest accommodation claims. I believe that is the case and that this could be shown with respect to more complex cases. This
would require a full theory of legitimacy focused on the so-called ‘particularity problem’, which also bridges this question to a wider theory of historical injustice. For example, such a full theory might take up the question of the legitimacy of the colonial state vis-à-vis indigenous peoples. What I have done here is some preliminary work of defending the conceptual link between non-domination and legitimacy and the idea that legitimacy in relation to individual and collective subjects can and should be theorized on commensurable terms through non-domination (i.e. as opposed to developing separate standards and theories, or moving dubiously between individuals and groups in reductionist arguments).

I have also mentioned only in passing the connection that a non-domination framework might have to the kind of theory of structural injustice that Iris Young was developing. As with the relationship to democratic theory, my precursory view is that non-domination is a demanding but broader principle that does not capture the same breadth of political issues as the rubric of (in)justice; yet nor does it displace or demote any of these issues. Relatedly, the question might be raised as to whether non-domination is a useful principle for exploring the intersection of the politics of race, gender, sexuality, disability and class. While I think that as a principle of legitimacy it is fully compatible with this kind of analysis, the three-dimensional model of itself does not give the systemic dimension the kind of priority and depth that would satisfy the complexity of these categories. Yet there are already multiple competing theories dedicated to conceptualizing domination from this perspective. The tools I develop here might serve as a complement to such theories even if not their centerpiece.

Non-domination, as I articulated it, is a matter of degree. How to advance non-domination, however, is sometimes going to yield conflicting conclusions within a pluralist
society. I focused specifically on the potential tension between intra-group and inter-group non-domination, but there was no room here to consider what corollary principles we might need to make a normative judgment about other possible tensions. My implicit assumption was that the most pervasive form of domination in the inter-group dimension is that between majority and minority nomoi groups. At the same time I assumed a pluralist society with multiple distinct social groups. Of course, it is possible that what the advancement of non-domination requires vis-à-vis one minority group is a social policy that is inconsistent with the advancement of non-domination vis-à-vis another distinct group (rather than subgroup of the first). (For example, if there were conflicting language rights claims between Quebecois and indigenous peoples under the same jurisdiction.) This would add considerable complexity to the application of the non-domination framework. There is no blueprint within the legitimacy principle itself on how to gauge what constitutes an advancement in such a case.

Finally, in light of the example case study and the framing of my argument, one might note the absence of a discussion of the relationship between secularism and non-domination. This relationship opens a whole new host of questions that could not be addressed here. I do not think they would have led to radically different conclusions in the analysis of polygyny offered in the final chapter, but it is obviously of some significance. It would be an indispensible component to any further elaboration on this project. Secularism goes straight to the heart of the question of how political authority is constituted. The most interesting question in that vein would be what form of secularism is most consistent with non-domination.
Contribution to debates in contemporary political theory

In the building of the main argument, this thesis contributes to three areas of normative theorizing. The first area is multiculturalism theory. In this area it offers an account of one ‘thin’ regulative principle that can be applied in the accommodation of social practices, without itself jeopardizing the relationship between the state and the group. In the course of this I also discussed the unproductive impasse between the juridical/a priori- and political/dialogical approaches. One of the ideas in this discussion was that this division in approaches can be accounted for by looking at more foundational debates, such as those surrounding power, structure and agency. It also elaborates on the concept of a nomoi group, which could be employed in other contexts. Finally, with respect to the tension between doing justice to minority groups and doing justice to women’s claims within those groups, this project contributes the view that these are in fact variations of the same problem, the problem of being dominated.

The second area in which this project contributes are theories of political legitimacy. Most obviously, the contribution the project makes in that direction is to open up the space for theorizing non-domination as a legitimacy principle. As a corollary to this, the thesis also contributes the view that there is an important theoretical gap to be closed in the so called ‘particularity’ problem where the political authority of a state must be morally justifiable to the collective subjects of that authority. Finally, the thesis took some steps towards exploring the conceptual relationship between democracy and non-domination. I argued that a non-domination principle both demands and checks a democratic method for resolving far-reaching
questions like accommodation. These contributions could be developed further within a general, broad theory of legitimacy or as contrast points to rival conceptions of non-domination.

Finally, the third area of contribution of this thesis is in theories of individual autonomy. More specifically, my analysis of the relationship between non-domination and relational moral autonomy shows how each concept is constrained, but also how the two complement each other in a fruitful way. This discussion would be of interest to scholars interested in the emancipatory potential of the concept of autonomy and how it can be re-configured to speak to the long-standing problem of oppressive socialization into gender norms that subordinate women.
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