Liberal Values and Questions of Tolerance

Graham Griffiths

The changing composition of many Western democracies has raised questions concerning the nature of tolerance and identity. Taking the chador controversy in France as a starting point, this paper examines a recent critique of the “liberal model of tolerance” and the associate “principle of neutrality.” The author of this critique, Anna Elisabetta Galeotti, proposes an alternative model of tolerance, “tolerance as recognition,” that she claims is superior to the liberal model. I argue that she fails to suitably differentiate this model from the liberal model by failing to recognize that she, too, accepts the basic premise of the liberal model. Further, she incorrectly claims that the liberal model cannot provide acceptable solutions to situations like the chador controversy. Drawing on the work of Supreme Court Justice Stephen Breyer and others, I show that political liberals are committed to values such as equality and democratic self-government and that these values give a politically liberal society the resources for addressing Galeotti’s concerns.

European states, from France to Holland to Denmark, have recently been forced to acknowledge the problems posed by their growing Muslim populations. Anna Elisabetta Galeotti believes the cause of some of these controversies lies in the philosophical underpinnings of the liberal state—in particular, the liberal doctrine of toleration, which constrains the state’s ability to use coercive power to influence the private lives of its citizens. The doctrine of liberal toleration defines these constraints by appealing to a public/private distinction that, Galeotti argues, limits the state’s ability to publicly recognize collective identities. Galeotti, in her paper “Citizenship and Equality: The Place for Toleration,” focuses specifically on the “chador controversy” in

1 I will use “C&E” to denote references to this paper.
France in 1989, in which several Muslim girls were banned from wearing head scarves in public schools. She claims to show that the liberal model of toleration can explain the decision to ban the head scarves in public schools and is therefore an inadequate doctrine of toleration. Further, she argues that even a ruling allowing the head scarves under the liberal toleration model inadequately respects the girls’ assertion of their identity. Instead, she proposes a model of “toleration as recognition,” which would be able to acknowledge citizens’ collective identities and thus afford them the equal respect they are due.

I will argue that though the liberal doctrine of toleration limits the state’s coercive powers and therefore cannot authorize the positive recognition of collective identities, other liberal values such as equality, democracy, and diversity allow liberal states to depart from a neutral stance to redress specific grievances. I believe this addresses Galeotti’s concerns regarding the inadequacy of the liberal model. To accomplish this, I will first provide an account of the substance and the justification of the liberal model of toleration. I will then explain Galeotti’s argument and offer a critical analysis of it. Finally, I will examine the issues of affirmative action and hate speech codes to show how a liberal state can depart from the neutrality required by the liberal model of toleration.

Liberal Toleration

The doctrine of liberal toleration stems from the necessity of finding a way to ensure peaceful coexistence among citizens who live in a state composed of people with different, and sometimes radically opposed, comprehensive beliefs. Thomas Nagel offers a contemporary account of the substance and justification of the liberal model of toleration in his book *Equality and Partiality*. Nagel believes that political philosophy must develop principles for resolving conflicts that can command the acceptance of every reasonable person in a society, even if that person finds himself on the losing side of a dispute. But, Nagel argues, “some
disagreements are so deep that it is not possible to devise a method of fighting them out politically whose results could command the reasonable acceptance of the losers.”

Disagreements over religion, conceptions of the good, and the meaning of life represent the most important examples of such disputes. The inability to resolve such disputes implies “the exclusion of certain values from the admissible grounds for the application of coercive state power.” That is, the government cannot interfere with its citizens in their “pursuit of their most central aims of self-realization,” as long as these pursuits do not interfere with the rights of other citizens.

The liberal doctrine of toleration implies a distinction between public and private life. In our private lives, we can employ our personal values and beliefs in the choices we make. In public life, however, these specific values and beliefs cannot be advanced as grounds for decision-making. Rather, we must appeal to principles that reasonable people who have different comprehensive beliefs can accept. Liberal toleration, therefore, requires us to “bracket” some of our personal beliefs when we enter the public sphere.

The model of liberal toleration also implies a neutrality principle. The recognition that certain reasons (those based on specific comprehensive beliefs) can never be reasonable grounds for the exercise of coercive state power leads to the prohibition of state interference in the private lives of its citizens, in which they pursue those goals compatible with their comprehensive beliefs. The elimination of these reasons as justifiable grounds for the use of state power implies the state must remain neutral regarding the various sets of comprehensive beliefs adopted by its citizens. Thus, for example, the U.S. Constitution prohibits the

---

3 Ibid., 155.
4 Ibid., 164.
government from establishing a state religion. The state achieves neutrality by being “blind” to the private religious differences of its citizens in its extension of rights and privileges and in its application of the law.

Galeotti’s Criticism

Galeotti uses the “chador controversy” as the departure point for her essay. In 1989, French school officials banned several Muslim girls from wearing their headscarves to public school. The French school authorities subsequently reversed the decision (though France recently passed a law banning the wearing of any religious symbols in public schools).\(^6\) Galeotti, writing before the passage of the current law, found neither of the original decisions satisfactory but thought both could be justified under the liberal model of toleration.\(^7\)

Galeotti argues that the purpose of liberal toleration is, as we have seen, to limit “the political to a defined sphere, which is the subject of legitimate political decision and interference.”\(^8\) Because the political sphere cannot concern itself with those particular aspects of peoples’ lives that are part of the private sphere, it must “deny public relevance to their special identity”—their religion, their ethnicity, their sexual orientation, etc.\(^9\) It does this by being “neutral, blind and indifferent to differences in order to treat everyone equally.”\(^10\)

The public sphere comprises the public school system, and so public schools must be blind to those differences among its

---


\(^7\) Because Galeotti agrees with neither decision, any model that could condone either had to be wrong from her perspective.

\(^8\) Ibid., 589.

\(^9\) Ibid., 590.

\(^10\) Ibid., 591.
students that are excluded from the public sphere. Similarly, those characteristics, which are germane to only the private sphere, cannot interfere with the operation of the school system. By wearing the headscarf, however, the girls made “a public statement of what is a legitimate position only of the private conscience.” Galeotti, therefore, believes that by banning head scarves the French government reaffirmed “the boundaries of the secularized public sphere against any religious interference.” Though the ban may appear discriminatory at first glance, Galeotti believes she can demonstrate how the public/private distinction in the liberal model of toleration (unacceptably) justifies for the ban.

In subsequently reversing the ban, the French education authorities decided to permit religious symbols that were not used as a means of pressure or proselytizing and that did not interfere with the educational environment. According to Galeotti, this ruling tolerates religious symbols “as long as their dimension is private and they can be disregarded as statements while being interpreted as tastes.” That is, the school system tolerates religious symbols by pretending they are no different than eccentric tastes in clothing. The two responses to the “chador controversy” authorized by the liberal model, therefore, view the wearing of head scarves as either an illegitimate intrusion of religion into the public sphere or as a mere taste in clothing that has no relevance to the public sphere.

---

11 I will ignore, for the purposes of this paper, the special significance the French place on the role of their public schools in the public sphere, a significance not found in America.

12 Ibid., 593, original emphasis.

13 Ibid., 592.

14 My account of why Galeotti believes the French government could justify banning the head scarves is not yet convincing. A fuller explanation, however, requires the development of some different points of her argument, and so I will return to this particular argument later in the paper.

15 Ibid., 594.

16 Ibid., 594, original emphasis.

17 Ibid., 586.
Both of these responses, however, ignore the claim for public visibility of a collective identity that Galeotti takes to be one of the functions of the headscarf, the first by banning it and the second by ignoring it. The liberal model produces these inadequate responses, according to Galeotti, because it reduces all differences to individual differences. She explains this by reference to the historical circumstances that produced liberal political philosophy. The religious strife following the Reformation led to calls for respect for the free conscience of individuals.18 This claim for freedom of conscience makes religious differences a matter of public irrelevancy because they are a matter of private choice.19

Because the liberal model developed as a model for religious tolerance, it does not adequately meet claims for tolerance of cultural, ethnic, and sexual identities. The issue has to do with visibility.20 Due to historical circumstances, “the liberal public sphere has always been open to some particular collective identity, namely, to the white Christian male: to him, the public private divide does not require him to change, his dress, his appearance, his behavior.”21 For those whose particular collective identity lies outside the white Christian male norm, and particularly those who have suffered oppression or marginalization, however, the liberal model of toleration implies a barrier between public and private life: because their identity does not constitute the norm, its very presence in the public sphere (in the form of a chador or a gay partner, for example) is regarded as a transgression (the attempt to impose Islam or the

18 Ibid., 595.
19 Ibid. 594.
20 In her work, Galeotti argues for the importance of visibility only in the case of homosexuality, claiming that because people cannot disguise their race or ethnicity they cannot, unlike homosexuals, participate in the public sphere while hiding their identities (Galeotti 2002, 170-1). To the extent that the chador controversy revolves around mutable characteristics (clothing), however, I believe that visibility remains the central part of Galeotti’s critique.
21 Ibid., 600.
homosexual agenda on others). Marginalized groups can, therefore, enter the public sphere only to the extent that they make their private identity invisible.

We can now see why the liberal model of toleration provides grounds for justifying the decision to ban the wearing of headscarves. The state did not view the other students’ appearance (i.e. white Christians) as transgressing the public sphere because their appearance constituted the “neutral” norm; it required of them only that they did not press their beliefs within the school system. On the other hand, the headscarf, because it did not conform to this “neutral” norm, symbolized an invasion of the public sphere. The policy banning religious garb focused on equal treatment but it did not treat all students as equal: “only the Muslim girls were ordered to give up the mark of their religious identity in order to be students like the others, whereas Christian students, with no gap [between their public and private personas], could consistently be obedient Christians and respectful students.”

The liberal model of toleration cannot address this type of intolerance toward group identities because its purview does not extend beyond the private sphere—its conditions are satisfied as long as citizens are allowed to follow their personal beliefs in private. Further, as a negative doctrine requiring the state to refrain from interfering in the private lives of its citizens, it cannot afford these identities positive recognition “in order to make an excluded identity a normal presence in the public sphere of society [i.e. eliminating the barrier between public and private life] and a viable option.”

Interpreted in this light, the claim that the girls made by wearing the head scarf was a claim about the public relevancy of a group difference. It was a claim for the public recognition of the girls’ marginalized comprehensive group identity (comprising

---

22 Ibid.
23 Anna Elisabetta Galeotti, Tolerance as Recognition (Cambridge: Cambridge University Press, 2002), 176. I will refer to this work in the text as “TR.” For the purposes of this paper, I will assume that there are no differences between her positions in C&E and TR.
religious, cultural, and ethnic aspects). This points to the inadequacy of the decision to allow the head scarves by interpreting them as eccentric sartorial tastes: this response ignores the girls’ claim that their identity should be granted the same recognition in the public sphere as those of other students and should be seen as a normal, viable group identity that does not threaten the public sphere. Because both of the liberal responses took the central issue to be whether or not the girls have the right as individuals to wear head scarves, they could not address the group claim of the girls.

Liberals respond to this argument, says Galeotti, by claiming that the liberal state acknowledges these group claims by providing for free association, equal protection of the law, and redistributive mechanisms for helping the socially disadvantaged. But the state cannot, according to these liberals, “command respect, recognition, or esteem for anyone.” Galeotti believes this answer does not satisfy groups’ demands for equality of respect: “if a social difference is denied public visibility and legitimacy in the polity, the group associated with it inevitably bears social stigmata.”

This line of critique seems to claim, as Fullinwider says, that “groups cannot be socially equal unless their specific experience, culture, and social contributions are publicly affirmed and recognized.” Or, as Galeotti puts it elsewhere, that “neutrality as public blindness will never properly makeup for the history of homosexuals’ [and by extension, other groups’] invisibility.” Rather, the state must afford public recognition to these groups so that their lifestyles are seen as “viable alternatives” within society.

---

25 Ibid.
26 Ibid.
29 Ibid., 176-77.
Toleration as Recognition

Galeotti, therefore, recommends replacing the liberal model of toleration with “toleration as recognition.” This model of toleration would establish equality of respect as its central tenet rather than neutrality. She argues that this model of toleration would be more sensitive to “exclusionary social standards,” such as the ban on the head scarf, which would not be recognized under a model emphasizing neutrality and public blindness. Further, making equal respect the central tenet of toleration would require the state to take positive steps to recognize excluded identities as part of the “normal range.” In the head scarf case, Galeotti proposes that the state could adopt a policy explicitly recognizing the girls’ right to wear the head scarf to public schools or to go to an Islamic private school from which they could receive a valid diploma so long as the school conformed to the state curriculum. Unlike a policy that simply permits religious garb in schools, this policy would grant the girls’ identity recognition and equality of respect by specifically acknowledging it and presenting it as a viable option.

This, however, raises the question of why liberals could not endorse exceptions to the neutrality principle in cases that called for state redress but otherwise continue to support the liberal model of toleration. This would require a two-step process combining “traditional liberal toleration with anti-discrimination and equal rights,” where supporting anti-discrimination and equal rights is taken to refer to some endorsement of positive action by the state. Galeotti offers two responses to this claim. First, she believes two separate lines of argument are needed to defend this position: the first to establish the liberal model of toleration and the second to provide an endorsement of exceptions in order to

---

30 Ibid., 175.
31 Ibid., 175.
32 Ibid., 190.
promote anti-discrimination and equal rights.\footnote{Ibid.} Toleration as recognition, on the other hand, immediately justifies positive action by the state. Second, because the liberal position still grounds itself in the principles of neutrality it remains intrinsically insensitive (if perhaps capable of responding) to the situations that call for positive state action.\footnote{Ibid., 190-91.}

A Liberal Response

In my response to Galeotti, I will argue that toleration as recognition just as much as the liberal model of toleration is grounded in liberal principles and that this in some way commits her to the liberal model. After establishing the congruency between the two positions, the question becomes which model better addresses issues relating to the recognition of minority group identities that Galeotti expounds. Though she believes there is a disconnect between the argument for the liberal model of toleration and any liberal endorsement of proactive state policies, I will argue that liberals can make this endorsement through reference to broad liberal principles.

I will largely follow Robert Fullinwider’s response to Iris Young’s *Justice and the Politics of Difference* in order to establish the congruency between Galeotti’s position and the liberal position. Young makes claims similar to those of Galeotti regarding the need to recognize group identities in the public sphere. But, as Fullinwider notes, those who endorse the recognition of group identities in the public sphere appear to acknowledge that the form this recognition takes cannot infringe upon the individual rights of others.\footnote{Fullinwider 1995, 500.} Thus, Galeotti’s proposals for making Islamic or gay identities part of the “normal range” comprise largely symbolic acts, such as a school policy recognizing Muslim girls’ right to wear head scarves or the state extending the institution of
Griffiths • 89

marriage to homosexuals. Galeotti, therefore, seems to accept the liberal claim stated earlier that the state cannot “command respect, recognition, or esteem for anyone” because it must respect individual rights.\(^3^6\)

But, drawing on what I established in the first section of the paper, respecting individual rights—i.e. accepting that the state cannot command respect, etc.—implies that certain parts of its citizens’ lives are off-limits because there is no principle for guiding the use of state power in these areas that reasonable people could accept. This argument, however, constitutes the foundation of the principle of neutrality and the liberal model of toleration. It appears, therefore, that Galeotti’s position entails some acceptance of the liberal model of toleration because she accepts its basic premise. I am not sure that she would disagree with this point, but she never explicitly addresses it in her argument.

Galeotti, of course, wants to go on to claim that the neutrality principle and the liberal model of toleration are not sufficient guides for state action given the exclusion of certain minority identities from the public sphere. Since we have established that she likely accepts the basic premise of the liberal model of toleration, however, the debate seems to have been reframed. The debate no longer centers on what the model of toleration would be in an ideal state.\(^3^7\) Rather, the debate revolves around the most effective model of tolerance for redressing current grievances.

We must, therefore, examine her arguments as to why a liberal response that accepts her critiques of the limitations of the liberal model of toleration could not address the issue as efficiently as recasting the notion of toleration. Her first

\(^3^6\) Galeotti 1993, 597, my emphasis.

\(^3^7\) Because Galeotti’s argument would have no force were it not for unfortunate historical circumstances—if some minorities did not face partial exclusion from the public sphere, the liberal model of toleration would be sufficient. It would be sufficient because she accepts its basic premise, only arguing that it cannot effectively address specific, contingent historical circumstances.
argument, as we have seen, is that any liberal justification for positive recognition requires an argument that has different grounds than the argument supporting the liberal model of toleration. I will respond to this argument by considering the issues of hate-speech codes and affirmative action.

Andrew Altman presents an argument for campus hate-speech codes that, he believes, responds to the liberal concern that these codes illegitimately infringe on speech. This concern is based on the neutrality principle: “the liberal principle of viewpoint-neutrality holds that those in authority should not be permitted to limit speech on the ground that it expresses a viewpoint that is wrong, evil, or otherwise deficient. Yet, hate-speech rules rest on precisely such a basis.” Therefore, any liberal advocating hate-speech codes must be prepared to make an exception to the neutrality principle. Altman believes this can be justified because the neutrality principle “itself rests on deeper liberal concerns which it is thought to serve.”

Though I will not detail Altman’s proposal, he articulates a hate-speech code that would target only speech-acts that morally subordinate others. We can justify preventing these wrongs, even though they require the state to abandon viewpoint neutrality and regulate speech, because these wrongs “are among the principle wrongs that have prevented—and continue to prevent—Western liberal democracies from living up to their ideals and principles.”

Altman, however, remains vague as to what exactly he means by the “deeper liberal concerns” that underlie viewpoint neutrality. For a fuller articulation of these concerns, I turn to the work of Supreme Court Justice Stephen Breyer. Breyer calls attention to a theme he believes runs through the U.S. Constitution, the theme of “active liberty.” By emphasizing this theme in jurisprudence, Breyer believes judges can better

---

39 Ibid., 308.
40 Ibid., 312.
promote the ends the Constitution was written to secure. He believes active liberty is a concept equivalent to what Benjamin Constant termed the “liberty of the ancients,” which consists in “an active and constant participation in collective power”; that is, self-government. Breyer claims that this “democratic theme” resonates throughout the Constitution and that emphasizing this “democratic objective” of the Constitution will lead judges to consider how their decisions will affect the connections between people and their governments, “connections that involve responsibility, participation, and capacity.”

Breyer attempts to show the consequences of emphasizing this theme by considering its effects on our understanding of affirmative action. He writes that one interpretation of the Equal Protection Clause maintains that the clause requires state activity to be color-blind. A second view, however, understands the clause as purposive: written in the historical context of slavery, racism, and segregation, the clause “demands laws that equally respect each individual.” It forbids laws that discriminate based on race but differentiates between “policies of exclusion and inclusion,” between policies meant to continue oppression and “measures taken to hasten the day when entrenched discrimination and its after effects have been extirpated.” The Court, therefore, found limited affirmative action—limited abandonment of the neutrality principle—to be “necessary to maintain a well-functioning participatory democracy” because “effective participation by all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized.”

Thus, the underlying liberal concerns of democratic self-government and equal respect justify the partial abandonment of the neutrality principle in the case of affirmative action.

---

42 Quoted in Breyer 2005, 4.
43 Ibid., 16.
44 Ibid., 77.
45 Ibid., 78.
46 Ibid., 78.
47 Quoted in Ibid., 82.
Returning to the hate-speech case, we can see that these same concerns justify the government abandoning the neutrality principle in regard to speech: preventing the moral subordination of vulnerable members of society ensures their ability to participate fully in society. Thomas Scanlon draws the connection between these positive liberal concerns and tolerance: tolerance requires an attitude that “all members of society are equally entitled to be taken into account in defining what our society is and equally entitled to participate in determining what it will become in the future.”48 Liberals, therefore, seem committed to an idea of tolerance broader than just the “liberal model of toleration” when certain groups cannot participate in the shaping of society.

Returning to Constant’s notion of “liberty of the ancients,” we can note that he believes that this liberty must be combined with the “liberty of the moderns”—the liberty to pursue one’s own ends and designs free from government interference.49 This, of course, is the concept of liberty that gives rise to the neutrality principle. Modern liberal states are founded on both of these kinds of liberty. Galeotti’s claim that any liberal endorsement of positive action by the state to address intolerance rests must be justified by a different set of arguments than those endorsing the liberal model of toleration is, therefore, trivially true: one rests on ancient liberty and one on modern liberty. Both of these types of liberty, however, are inextricably intertwined in the fabric of the modern liberal state.

We can, therefore, reject Galeotti’s first argument that any liberal justification of positive recognition must rely on two separate strands of argument whereas toleration as recognition can immediately endorse a policy of positive recognition. This same argument is sufficient to reply to Galeotti’s second argument: that any liberal position will ultimately be grounded in the neutrality principle and will thus be intrinsically insensitive to

49 Breyer, 5.
the demands for positive recognition, whereas sensitivity to these demands “constitutes the background of the whole reasoning for toleration as recognition.”

As we have just seen, the liberal position grounds itself not just in the neutrality principle, the liberty of the moderns, but also in principles of self-government, the liberty of the ancients. I believe Breyer construes these principles of self-government in such a way that they include sensitivity to the exclusion of certain identities from the public sphere. The granting of equal rights to African-Americans satisfied negative requirements for equality under the law, but the satisfaction of the positive requirements—full African-American participation in the public sphere—requires a positive governmental intervention in the form of affirmative action.

I therefore find neither of Galeotti’s arguments for favoring toleration as recognition over the liberal model of toleration (when combined with other liberal principles) convincing. I have not detailed what kind of solution the liberal position would propose for the chador case, though I see no reason to believe it would be substantively different from the solution Galeotti herself proposes. I believe, however, that I have shown two examples of how one could, from a liberal position, argue for a policy that grants exceptions to the neutrality principle. Neither of these examples provided a direct analog to the chador case, but I believe they both represent cases where the government could respond to practices that effectively kept minorities from fully participating in the public sphere. The government’s recognition in these cases that it is particular groups whose

---

50 Galeotti 2002, 190.
51 I should note that Breyer does not emphasize considerations of equality, arguing that “the Court in earlier cases cast doubt on the constitutional validity of affirmative action that seeks simply to remedy prior “general societal discrimination” (Breyer 2005, 80). I am somewhat puzzled by this as it seems to me that an important part of his argument that a functioning democracy requires the participation of all of its members rests on equality considerations: full participation in civic life requires us to acknowledge that all groups are, as Scanlon puts it, equally entitled to participate in the shaping of society. Insofar as groups have been denied this in the past, we must seek to include them.
identities are being protected and promoted by these acts constitutes the symbolic recognition that Galeotti argues places these groups’ identities in the “normal range.” I can see no reason to think, therefore, that a satisfactory liberal policy could not be articulated in the chador case.

Galeotti makes a passionate case as to why the liberal model of toleration has failed to satisfy some of the most important demands made by the people it seeks to protect. I accept this critique. I have argued, however, that she underestimates the resources political liberalism has at its disposal. These resources, notably the concept of “active liberty” or the “liberty of the ancients,” allow its adherents to respond adequately to the issues Galeotti raises.

Bibliography


