Introduction

Engaging Cultural Differences

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> We are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellent practice because the same tolerant impulse protects our own idiosyncrasies.
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> —William J. Brennan, U.S. Supreme Court, in *Michael H. v. Gerald D.*, U.S. 110, 141 (1987) (dissenting opinion)

Tolerance often appears in discussions of difference. Yet what does tolerance mean in liberal democracies such as the United States, Germany, France, India, Norway, and South Africa, where an increasingly wide range of diverse cultural groups hold contradictory beliefs about appropriate social and family life practices? How wide should be the scope of social and legal tolerance? Many emigrating women and men from African countries (notably, Sierra Leone, Somalia, Mali, Egypt, Ethiopia, the Sudan, and the Gambia), for example, take pride in the ritual practices of both female and male circumcision. Yet majority community sentiment and legal regulation in the United States and most European countries permit genital surgeries for boys but treat genital alterations of girls as unacceptable and even grounds for criminal action. Does this unequal treatment of male and female circumcision demonstrate hypocrisy, ethnocentrism, or unjustifiable limits to the tolerance granted ethnic minority groups in the United States and European nations? Does such treatment reflect an important, transcultural difference in the nature of the genital alterations involved or perhaps a misunderstanding of unfamiliar practices? Or does the protection of girls represent the proper elevation of universal commitments to individual rights and justifiable public protections for the vulnerable? If so, should that protection then extend to boys, too, despite Jewish and Muslim practices extending for three thousand years? How should competing beliefs and values that in turn color understandings of practices and facts be evaluated, and by whom?

The essays in this collection explore how liberal democracies do and should

respond legally to differences in the cultural and religious practices of minority group residents. Since the terrorist attacks of September 11, 2001, the levels of fear and suspicion in the United States and the "West" about "others" have understandably heightened, while the jeopardy to civil rights and civil liberties has grown. Questions about how to balance commitments to liberty and equal regard with the goals of security, patriotism, and community have taken on a new urgency. But the answers must grow from deeper and more enduring normative analyses of how liberal democracies should respond to the range of differences in the values, religions, and practices of their residents, who are increasingly migrants from around the world. Democratic societies are those in which the authority of those who govern is derived from the will of the people (typically determined by some form of vote). These societies are liberal to the extent that they are organized to guarantee basic liberties (such as freedom of association, expression, and religious practice) as well as various protections (for example, against discrimination, coercion, and abuse) to all society members in pursuit of a good life. Liberal democratic societies, however, are not identical in their legal and moral dimensions or in the extent to which the role of those who govern is kept limited. They differ in the extent to which the meaning of a good life is left up to individuals or families to define privately. They differ in the balance struck between two often contradictory liberal impulses: the impulse to leave individuals free to live their lives by their own personal, cultural, or religious lights and the equally liberal impulse to protect those who are vulnerable from exploitation and to promote social justice. These differences among liberal democracies produce different experiences for immigrant minority groups when public conflicts arise over cultural practices that offend the sensibilities of mainstream or dominant groups.

The authors in this book explore several interrelated questions: Which aspects of American (or Norwegian or German or South African or Indian) law impact on the customs of ethnic minority groups? To what extent does the law presuppose, codify, and hence inculcate the substantive beliefs and values of a cultural mainstream? How much cultural diversity in family life practices ought to be permissible within the moral and constitutional framework of a liberal pluralistic democratic society? How strong are the implications of citizenship for how people in countries such as the United States, Norway, Germany, India, or South Africa marry, arrange a family, discipline and raise their children, conceptualize gender identity, and so on? What does it mean for an ethnic custom or practice to be judged, for example, un-American or un-Norwegian or un-German? How do ethnic minority communities react to official attempts to force compliance with cultural and legal norms of, for example, American or Norwegian or German middle-class life? Finally, how do understandings and misunderstandings of family lives, international and domestic human rights frameworks, and studies of culture contribute to the struggles over accommodation, control, and resistance around issues of cultural difference?

Contested practices under discussion include genital alteration, parent-child relationships, conventions regarding selection of marital partners and other fea-

tures of marriage and divorce, religiously based clothing requirements for women and girls, religion and schooling, self-segregation by minority groups, and cultural defenses to criminal charges. The authors address how liberal democracies go about accommodating differences or expecting assimilation to a common norm. The chapters explore resources from legal and political theories, ethnography, history, comparative law, and international law as well as domestic doctrinal legal analysis.

The authors include legal scholars, anthropologists, psychologists, and political theorists. The authors met several times as an interdisciplinary working group on Ethnic Customs, Assimilation, and American Law, supported by the Russell Sage Foundation and organized by the Social Science Research Council (see *www.ssrc.org*). Some of the resulting chapters focus on the United States. Some focus on other nations (in particular, France, Germany, Norway, India, and South Africa), where coming to terms with ethnic diversity and cultural differences is a major public policy concern. Some chapters consider the legal and moral grounds supporting tolerance for a given cultural practice, such as polygamy, wearing a head scarf to work, or presenting a photo exhibit in public schools depicting the lives of gay and lesbian families. Other chapters consider the circumstances under which a democratic and liberal order should treat certain practices—such as forced marriage and murderous defense of personal or family honor—as intolerable violations of human rights. Certain chapters examine the changes required if mainstream practices in schools, health care settings, and the criminal justice system in various liberal democracies are to accommodate or accept the diversity of peoples and cultures affected by them. Other chapters examine why some people reach beyond their own communities and embrace the language of universal human rights while for others, the rhetoric of universal human rights does not resonate, even when outsiders believe it should. Reflecting ongoing debate among the authors and the complexity of circumstances examined, some chapters are reluctant to broaden the scope of toleration, while others suggest that mere tolerance is itself potentially confining and demeaning and that appreciation of difference should be the aspiration.

This volume thus is concerned with the aims of tolerance and its proper limits. Taken as a whole the chapters examine definitions of and negotiations over tolerance in practical encounters between state officials and immigrants, members of long-standing minority groups and majority groups, local agents of authority and parents, parents and children, and neighbors and coworkers. The collection examines these issues from multiple perspectives, including those of judges, law enforcement officials, school administrators and teachers; minority group members, new immigrants, and subordinated people (often women and children) within minority groups; activists and academics who want to advance either universal rights or cultural appreciation or some combination of each; people committed to their own group (defined in ethnic, religious, gender, or national terms); and people—whether immigrants or academics—engaged in moving across, and therefore comparing, different societies and legal orders. The chapters do not pursue still further perspectives—such as how economic or po-

litical pressures affect responses to immigrants and other "different" groups—although the discussions may prompt inquiries in those directions.

The book thus examines the challenge of multiculturalism in contemporary liberal democracies. Part I describes processes that produce diversity, such as globalization and increasing migration across borders. By considering a range of national contexts in which cultures collide, new questions are raised about how liberal democracies around the world respond to people perceived as different. This section provides many examples of contested practices that often trigger debates over whether or how a liberal democracy should treat people as members of groups for purposes of their legal status and rights—and thereby use state power to enhance group practices and identities. Part II considers forms of cultural accommodation other than group status or rights. This section asks how well the tools of legal analysis and political theory connect liberal values with accommodation for cultural practices that challenge settled assumptions or conventional practice. When tensions arise, what should give? Part III explores how minority groups position themselves vis-à-vis universal human rights claims, transcending national legal systems. Part IV concludes by examining contrasting conceptions of group differences as they affect institutional and legal practices. What gets understood as a difference to be dealt with, and why? The following overview explores these organizing themes with insights drawn from the chapters.

ONE NATION, MANY CULTURES

In a rapidly globalizing world, peoples from Asia, Mexico, Latin America, and parts of Africa migrate because of better labor market opportunities abroad or political turmoil at home. Some leave because they wish to become cosmopolitan; others seek a safer space to preserve their traditions. Given global economic developments and emerging cultural and political trends, liberal democracies face not only burgeoning numbers of immigrants, but also their own hidden assumptions about the scope and limits of tolerance for cultural diversity.

The particular history (or lack of history) of prior struggles over racial and religious diversity within each nation set the legal and political framework for responses to current immigrants. A nation organized to permit two or more linguistic and religious groups to coexist will greet newcomers with the prior framework for coexistence as the starting point. A nation founded on slavery and still struggling with its legacy will respond similarly, even to new group differences, with a template shaped by racism, slavery, and the political and legal responses to them. Responses to current immigrants in turn shed light on and even raise for reconsideration prior understandings of tolerance and assimilation. In the United States, for example, constitutional doctrines redressing racial discrimination and implementing free exercise of religion—doctrines that adopt some notions of equality and tolerance but also limit them to dimensions of race

and religion—set the legal standards when new immigrants engage in practices that teachers, police, employers, and social workers find problematic.

In the United States and elsewhere, recent immigrants may engage in practices or express ideas concerning gender, discipline, authority, sex, marriage, reproduction, intimate violence, and work that clash with the views of other residents from more dominant groups, who are powerful enough to have their views embraced by prevailing institutions. Many immigrants retain strong links to their places of origin and to others in their diasporic communities; many travel back and forth with some frequency. Some emphatically hang on to valued traditions of their ethnic community; some, in contrast, consciously embrace dominant liberal practices. Others are repelled by what they perceive to be highly commercial, violent, degrading, or insufficiently protective practices in the capitalist liberal societies they have entered. They may try to reinforce norms and customs they consider far more ethical and moral than traditions of the cultural majority, and become more insistent about practices that mark them and their families as different from those they encounter in the new land. These immigrants may view the environment of the broader liberal society as sinful, jeopardizing the character and future life prospects of their children. They may feel perplexed and even under siege as intergenerational conflicts emerge within their own families and cultural groups. An immigrant Islamic community in Norway, for example, responded with dismay and horror as Nadia, an eighteen-year-old of Moroccan descent born in Norway, accused her parents of abduction (with the aim of forcing her to marry) and testified against them in court. Unni Wikan examines this incident in detail in chapter 6. For members of the immigrating generation, cultural assimilation may be viewed as a mixed blessing or even a problem, rather than a cure (see Stolzenberg 1993). A South Asian father living in Chicago may decide to forbid his teenage daughter from dating boys in order to protect her chastity and family honor. Resisting assimilation may even serve to protect some immigrants and their children from patterns of criminal behavior and low school performance they find among their neighbors in poor communities where they are able to find a home.

Some immigrants confront prejudice against newcomers, or against people with dark skin, or against people with minority religious beliefs and practices. They may confront restrictive legislation or bureaucratic interventions into the most intimate aspects of their family life. They may find the efforts by child protection agencies offensive and interfering and experience such state interventions as forms of political persecution. "Cultural differences are beautiful," comments Marceline Walter, who directs community education in the New York State Administration for Children's Services, "but they have nothing to do with the law. We can't possibly have a set of laws for Americans, a set of laws for immigrants, and a set of laws for tourists" (Ojito 1997, 3). Should immigrants from Asia, Africa, and Latin America then be given detailed instruction in the norms governing parent-child relations in the United States? What makes such norms valid for everyone in the first place? Are they indeed valid for everyone? When might our

pluralistic ideals call for legal accommodations sensitive to cultural differences in ideas about what is good, true, beautiful, and efficient? Will the need for such accommodation become more apparent if a deeper and more accurate cultural understanding of those governed is achieved by those charged with enforcing the law?

Consider the following examples:

- Groups of Cubans and Haitians migrate to a city in Florida, where they continue to practice their Santeria religion. Hence they sacrifice animals to their sacred deities. These groups suddenly discover that their church has been zoned out of town by means of an ordinance prohibiting animal slaughter outside of areas zoned for slaughterhouses. Additionally, the Santerias discover that their religious ritual has been criminalized by means of various ordinances that make it illegal to kill animals for reasons other than food consumption. The newly enacted laws are written in such as way as to protect the practices of interested parties—local hunters, those who construct buildings in which animals are slaughtered for human consumption, pest control specialists who kill mice and other animals, and local farmers who kill small numbers of hogs and cattle for purposes other than food consumption. The Santerias challenge the ordinance in court. Animal rights advocates side with the town. The U.S. Supreme Court ultimately rules in favor of the Santerias—after several years of litigation (*Church of the Lukumi Babalu Aye and Ernesto Pichardo, Petitioners v. City of Hialeah*, 508 U.S. 520 [1993]).
- An Afghani immigrant lives in Maine and provides baby-sitting services to local families. One of these children sees him place a kiss on the genitals of his own eighteen-month-old son. The father's gesture is customary and familiar to members of his family and within the Afghani community, where it is understood as a display of love and affection. Yet this type of physical contact is viewed differently by his neighbors in Maine. The parent of the visiting child reports the incident, and the man finds himself arrested for sexual assault and separated from his child as the case slowly makes its way to the state supreme court. Two years later, the charge is dismissed, although the court warns against any repeated conduct of this nature (*State of Maine v. Mohammed Kargar*, 679 A. 2d 81).
- A Peruvian man named Jorge Arvelo migrates to Miami. A child protection agency confronts him and threatens possible action after an observer in a parking lot complains that the man grabbed his five-year-old by the neck. "It's amazing the things we don't know about this country," Arvelo later remarks. "I learned that in this country anyone can call the police if they see you pulling your son's ear" (Ojito 1997).

These and similar examples are the kind of stories gaining media attention and triggering public debate today. Did similar encounters with immigrants produce cultural clashes in earlier eras? Did prior waves of immigration result largely in assimilation while new groups resist absorption, or is this juxtaposition itself a product of contemporary mythmaking as people respond to difference? A central

effort in this book is to keep open such questions while emphasizing the agency, the decision making of people who seem different to dominant groups, as well as of people who label others as different. Yet members of each group also respond to narratives and myths not of their own making; this too is part of the context that must be explored.

CONTESTED PRACTICES AND THE PLACE OF GROUPS IN LIBERAL DEMOCRACIES

It is not always predictable what becomes identified as the kind of group difference that, at least initially, is not accepted by a society, yet a series of topics have become familiar sites of cultural collision over difference in the contemporary scene. Women's status, clothing, and scope of options are a central topic; treatment of children is another. Underlying many of the topics are contests over the relative importance of liberty and equality compared to honor and decency.

Even visual images—for example, those displayed on the cover of this book—can become objects of debate as interpreters from different disciplines or political perspectives or cultural backgrounds generate divergent meanings and understandings. For those who are suspicious of the "ethnography of difference," the image may suggest exoticism or a stereotypical representation of Islamic fundamentalism or the status of women. For others, whatever mystery is suggested by the image may seem inviting, especially if there is an appreciation of the striking individuality, power, and expressiveness of the figures. For some, the picture will connote a respectful interest in cultural differences and tolerance for women who mark their religious or ethnic identities and sense of decorum by clothing themselves in this way. For still others, the image on the cover (especially the woman on the right who is peeking back) may bring to mind the idea of a reciprocal encounter between viewers and thus generate the crucial predicates of equality and mutual exchange. A debate about these interpretations would be a welcome response to this book, whose contributing authors have engaged in parallel debates about the issues of accommodation, rights, individuality, and group differences.

As noted earlier, liberal democratic nations do not come to terms with cultural differences in identical ways. Their legal and moral traditions, histories of benign and hostile contact across cultural, religious, and racial groups, and mythical narratives of themselves affect the context in which individuals negotiate and confront differences and also affect the formal, institutional treatments of such conflicts.

Some liberal democracies proceed by assigning people to distinct legal regimes depending on membership in a particular group. In India, for example, the public, secular legal system assigns individuals on the basis of their religions to distinctive normative regimes for regulating marriage, inheritance, and divorce. Lloyd and Susanne Rudolph (chapter 2) examine this kind of system in India while considering defenses, criticisms, and modifications of a system denying access to one general body of law on an equal basis to every individual. This type of group-

based system would not be countenanced in the United States; it is difficult even to imagine where there would be sources of support for a system structured by the state to enact separate legal regimes for Christians, Jews, Muslims, and other religious groups. Racial, ethnic, and religious profiling by law enforcement and anti-terrorist efforts begin to push in the direction of separate legal treatment, based on group membership. Yet even with these tendencies, the United States would preserve individual rights and one common body of law applied to all, not separate rules or decision-makers. Yet the United States has permitted a somewhat analogous regime in the special context of adoption and child welfare within American Indian communities. South Africa historically pursued a strategy of group-based legal treatment for family law matters, although it deployed the notion of customary law, enforceable within the public regime. With the adoption of the new South African Constitution after the fall of apartheid, the country stands poised to negotiate new relationships between individual and group identities. The new constitution recognizes individual rights to gender equality and children's rights but also recognizes rights to culture, religion, and family. Some advocates have pressed for one universal public law, ensuring the same rights for all regardless of their membership in ethnic or tribal communities traditionally bound by customary law. They have encountered many sources of resistance. As David Chambers explores in chapter 4, the clash over individual and group rights could occasion unprecedented legal innovation; it will not produce an easy or simple answer.

In contemporary Germany and France, claims by Muslims to be treated the same as Christians and Jews could be understood as efforts to embrace the dominant structures of individual rights. Yet historic accommodations for Christians and Jews within the public realm of the state may suggest that the Muslims simply want to be treated as a group, as others have treated them in the past. Katherine Ewing's chapter on the disputes over Muslim claims in France and Germany (chapter 3) thus affords a window on how new groups may challenge prior assumptions about treating rights for individuals and groups.

As these examples indicate, nations—including liberal democratic ones—differ considerably in their constitutional conceptions of the proper relationship between state and religion. In Germany, the state approves of public schools teaching and promoting Christianity; the United States—at least up until the present—has interpreted its Constitution to call for a sharp separation between public schools and religious instruction. These differences can affect not only how the individual nations respond to emerging cultural differences, but also how members of minority groups position and advocate for themselves. Given the German practice of public school religious instruction, Islamic Turks residing in Berlin now ask, why shouldn't Islamic instruction also be available—as an elective—in public schools? The closest analogous argument available for Islamic residents in the United States is that public school facilities should be no less open to an after-school student-organized Islamic group than they are to an after-school Christian group—though both have had to struggle for use of public school facilities.

Freedom of religion can be interpreted as a right of individuals, with no addi-

tional protection for groups, yet it can also lead to recognition, support, and preservation of religious groups. As liberal democracies work with their own constitutional frameworks and respond to claims and controversies around religious differences, they press closer toward or further away from group-based protections. Either approach can generate friction with those perceived as different from the dominant group or unable to fit within settled practices.

Communitarian and liberal individualist approaches to cultural diversity bear contrasting implications, especially about whether people should have distinct legal status based on their membership in particular groups. In general, liberal individualists tend to seek a certain type of state neutrality toward the ultimate ends of individuals and toward the good life. For liberal individualists, the state's purpose—and therefore the justifiable limits on its power—stem from a vision of liberty ensuring individuals freedom to act, affiliate with subcommunities if they wish (but also exit from them as they desire), associate with others voluntarily, and express themselves as individuals through choices about religion, culture, and family life. Accordingly, many liberal individualists reject not only pride of place for groups but even using groups as significant categories. Any affiliation with a religious or ethnic group, in this view, is simply a voluntary choice by an individual; it deserves no greater respect than an individual's choice to join a club or give a speech. No exemption or accommodation should be granted due to religious or ethnic group membership unless the same exemption or accommodation arises for individuals who have athletic, political, or artistic affiliations. Procedural justice and nondiscrimination become vital guides for this constitutional vision and the measure of free exercise of religion and, by extension, free exercise of culture. Yet the liberal tradition is complex and variegated enough to permit some to argue that a transcendental or spiritual side to the human nature of individuals in matters of conscience is entitled to special protection from the dictates of majoritarian government rules (McConnell 1990).

Communitarians, in contrast, identify an inherent value in the existence and perpetuation of cultural traditions and the communities sustained by them. They doubt that law can ever be purely neutral or procedural. They evaluate a given constitutional framework as either corrosive or protective of cultural traditions. Communitarians disagree among themselves over whether to identify the community with the entire polity—and thus the state—or instead to view the communities that matter as necessarily smaller and often in tension with the state. Nonetheless, communitarians share the view that society is composed of not only distinct individuals but also social and ethnic groups and cultures. Communitarians reject most the idea of the unencumbered or unbounded self, and see people formed and inevitably embedded in relationships with others. This makes the liberal assumption of the individual as the fundamental unit of analysis seem mistaken or even cruel. Communitarians and liberal individualists may converge or diverge, however, when evaluating how acceptable they find a given ethnic minority practice. These differences may stem from competing theories of the good.

The long-standing debate between liberal individualists and communitarians

receives a healthy challenge in arguments by John Rawls, who has called for a kind of political liberalism that respects even worldviews inconsistent with features of a tolerant liberalism. Rawls (1993) argues that in a politically liberal society, "it is unreasonable for us to use political power, should we possess it, or share it with others, to repress comprehensive doctrines that are not unreasonable." Comprehensive doctrines include conceptions of the world and ideas about the good life, including family life, elaborated from standpoints that may include religious and cultural traditions. Taken seriously, this commitment to political liberalism carries with it an injunction to do more than tolerate those who are different and, instead, to scrutinize dominant beliefs and practices to guard against ill-considered restrictions or unjustifiable distinctions in both who can be accommodated and how.

Yet what works well in theory may be far from illuminating in practice and can produce ironic results. Existing institutions governing child protection and schooling may disrupt moral and effective practices held dear by some subcommunities. Moreover, other liberal institutions, such as private property, may empower deeply illiberal communities, whose very empowerment may provoke illiberal reactions in dominant groups and trigger attempts at regulation or eradication.

Even liberal theorists recognize one group that deserves distinctive treatment: the family. Especially challenging for a liberal society committed to the freedom of each individual is to determine how much latitude parents or elders should have to inculcate certain values and not others, offer some experiences and prevent others, and govern children's bodies and bodily movements; for the precise measure of freedom of the parent is restraint on the child. Yet until a certain age (itself a subject of dispute), children simply cannot make decisions for themselves. Especially during this period of massive immigration, predictable points of conflict arise between immigrant parents and children. Such potential conflicts bring into view the limits of liberal democratic deference to self-determination. How much can or should government agents intervene, and on whose side? Should the parent be permitted to exercise control over children in the name of the parent's own self-determination, or should the state step in to protect the child—or assist the child in voicing a preference, preserving future options, or becoming self-determining at once? The parent-child relationship is especially likely to generate conflicts around tolerance for cultural variety. This kinship bond also exposes the limits of individualism even for the adult—that is, when the adult sees him- or herself as a member of an ethnic or religious group seeking to reproduce itself. Here, in efforts to pass on cultural traditions, control of marriage and education are key. Should the liberal democratic state simply exemplify its values through state-sponsored options such as public schools and the secular practices of marriage and divorce? Or should the government also use its coercive power to control decisions parents may wish to retain for themselves concerning the education and marriage of their children? In cases interpreting the U. S. Constitution, the U.S. Supreme Court has at times favored toleration for diverse practices by parents, and at other times ordered restraints on parental control over children's access to liberal democratic values.[1] These inconsistent decisions manifest the compelling arguments on either side.

Creating and respecting group-based legal status, giving strong protections for freedom of religion, and according parents much latitude over their children are three devices liberal democratic states may use to allow considerable room for group-based cultural variety—even if the resulting array of practices is viewed negatively by many in the society. These devices do not, however, dictate results in particular controversies; they do frame the methods of analysis and may tilt the results for or against tolerance for difference.

CULTURAL ACCOMMODATION AND ITS LIMITS

Debates over accommodation are especially pronounced in societies that seek a secular public space and restrict freedom of religion, or question parental prerogatives. When liberal democracies resist creating group rights, and instead embrace the individual as the proper holder of enforceable rights, accommodation of group-based differences must take other forms. One method is to enforce a sharp distinction between public and private, while ensuring large scope to the private sphere. Within a liberal framework, this makes room for cultural differences—as long as they remain in the private sphere. Typically, this means the sphere of the family; it may also include schooling. Nation-states differ in their legal and cultural distinctions between public versus private, in their ideas about whether children ultimately are the responsibility—and object of instruction—of the state or the parent, and in the stance taken toward the public protection of children. France and Norway are more likely to support consistent public protection of children than are the United States and India.

Employment can be characterized as private and thus insulated from public regulation. When employment and workplaces instead are treated as part of the public sphere and subject to public norms, they become sites for governmental scrutiny of differences in religious practices, attire, treatment of women and sexuality, and other potential points of conflict between employees and either their employers or other employees.

Liberal societies that embrace a right to culture, the best interests of the child, a right to fair trial, and equal protection of the laws may offer resources for accommodating different cultural traditions that might not be initially obvious. As Alison Dundes Renteln shows, arguments for recognizing a cultural defense to certain criminal charges thus can draw on values and rights well-embedded within liberal states. Yet these arguments generate counterarguments (see chapter 3 by Jane Cohen and Caroline Bledsoe); there are no trumps in these debates.

Beyond cultural defenses, public and private, parent and child, state and religion, and group rights, additional points of conflict involve the relation between formal laws and customary practices. How much uniformity of enforcement of formal laws is expected and enacted? How much room should be left, officially or unofficially, for the operation of customary practices? Liberal legal systems may share many fundamental commitments and still differ in the precise degree to

which they expect and implement universal enforcement or, instead, permit or even provide for plural norms and local variations.

More important than any of these variations is the fact that any liberal constitutional arrangement does inevitably take a position on the relationships between religion and state, public and private, individual and group, thereby setting highly particular stages for enacting conflicts and negotiations of cultural differences. As a result, constitutional and legal frameworks affect the room available for expressing and maintaining cultural differences, while also arranging how conflicts between mainstream and minority groups will be identified, addressed, and resolved. The public and legal responses to immigrants are closely tied to a nation's stance toward multiculturalism, toward neutrality about religion and race, toward gender equality, and toward conceptions of universal individual human rights.

Thus, most fundamentally, legal systems differ in the extent to which they try to curb or, instead, try to intensify the imposition and inculcation of the substantive beliefs and values of a particular cultural group, whether majority or simply dominant. These differences in legal pressures to assimilate profoundly shape the experiences of cultural minorities, and must be taken into account to understand both processes of conformity and the reasons for resistance to mainstream cultural beliefs and practices. Understanding the relation between these stances and the treatment of particular groups and conflicts requires attention to history but also to the dynamic interaction between groups, ideologies, and formal and informal norms.

THE UNIVERSAL HUMAN RIGHTS DEBATE: MOBILIZATION AND RESISTANCE

More is involved with conflicts over cultural practices than just domestic constitutions and laws. International law and the discourse of international human rights increasingly offer resources for people to mobilize against traditional cultural practices. Others then face decisions about whether to join or resist the importation of international human rights language in assessments of tensions over cultural practices. In the meantime, international human rights offer institutions and sites for action as well as resources for analysis and debate. As Maivân Lâm reports, women within minority groups, members who identify as tribes, First Nations, or indigenous people have found the use of an international forum promising for mobilization and dialogue otherwise unavailable either within their own communities or inside their own national states. The plural settings available for debating the relationships between rights and culture thus can afford avenues for action even for people with relatively little power in their own settings. Yet when multiple legal arenas become available for debating international human rights, different arguments and results will emerge. Corinne Kratz examines how domestic law, asylum law, and human rights law have affected high-profile debates over female genital modification.

The International Convention on the Rights of the Child provides a vivid

example of the contests generated over human rights. Adopted by more than one hundred nations, the convention pursues a strong child-centered approach to social decision making. Its use of the legal principle of the best interests of the child and its articulation of rights running to each individual child strike some critics as corrosive of pluralism and counter to the rights of adults to perpetuate their language, culture, and ancestral lineage. Interpreting this convention, and considering its very meaning in the context of diverse cultural traditions, exposes for debate and disagreement basic questions such as:

- Are parents the ultimate guardians of their children or merely temporary state agents, subject to state review and control?
- Should each parent have equal authority in rearing the children or should cultural traditions—elevating the father according to some traditions, the mother in others—receive public deference?
- When should police, school officials, social workers, religious leaders, or judges second-guess and supersede the judgments of parents about their children?
- When and how should the child's age matter? Should there emerge a cross-cultural, universal notion of when a child becomes an adult for purposes of self-determination, or should cultural and national variety persist on this question? Even before a child reaches adulthood, when and how should the child's expressed wishes—concerning which religion to follow, where to live, where to go to school, what to wear, and whom to marry—matter to third-party actors such as teachers and judges?
- Does the state's assessment of a child's best interests include the child's membership in a given culture or does it abstract the child from that membership, as if the child had no such connection and was really a "citizen of the world"? For example, should it count as part of the child's best interests to have her tribal or ethnic community continue to exist and provide a context for her own development and future? Or are the child's interests better assessed in terms of the education, lifestyle, and income aspirations that the mainstream culture heralds for each individual?

Addressing just these sorts of questions proves divisive within communities and among scholars and theorists. People outside particular communities may be surprised by the degree of resistance to individual rights approaches even among imagined beneficiaries, such as women. Usha Menon portrays a world of Hindu women in a temple town in India in which feminist ideas of individual rights are alien and unappealing.

Anthropologists, long associated with efforts to promote tolerance of cultural variety, have struggled for fifty years with the notion and scope of international human rights, as Karen Engle documents in her chapter. Multiple layers of analysis emerge from such struggles. It is one step to unearth the particular cultural assumptions and potential imperialism behind the rhetoric of international human rights; then we have a choice among cultural practices rather than a collision between rights and culture. It is another step to acknowledge the variety and

contestability of views about the flexibility of particular notions, such as children's best interests or freedom of choice, within the human rights world—and the variety and contestability of views about any given cultural practice that allegedly conflicts with a human right. Yet until these levels of analysis proceed, the contrast between rights and culture is a caricature, ungrounded in any genuine practice. (On the supposed contrast between rights and culture see Okin 1999; for a sustained critique of the contrast see Volpp 2001.)

CONCEPTIONS OF DIFFERENCE AND THE DIFFERENCES THEY MAKE

Lying even further underneath arguments about accommodation of cultural differences are the very perceptions and conceptions of difference held by members of various groups. Close study indicates that contrasting and diverging perspectives of diversity affect how people in different groups make sense of one another and how they express themselves. Yet people may hold ideas of difference that prevent them from even recognizing how others experience their mutual encounters. The actual social position of individuals as well as their historical experiences and cultural frameworks can affect how they understand diversity and approach people they view as different, as Austin Sarat and Victoria Plaut explore in their chapters. Similarly, Hazel Markus, Claude Steele, and Dorothy Steele highlight the way that colorblindness, as a progressive worldview developed in the United States after the civil rights movement, can limit people's abilities to see social dynamics and experiences of others.

In this moment in which cultural collisions, large and subtle, are escalating due to the high levels of mobility across national borders, understanding the variety of potential responsive legal frameworks compatible with liberal democracy would expand the tools available for working through conflicts. By sorting through the promise and peril of group rights, a public-private division, respect for parental rights, commitment to the best interests of the child, strong religious freedom protections, customary law, international law, and recognition of the variety of perceptions and cultural models of diversity, this volume aims to enrich understandings and responses to cultural conflicts. Individuals will continue to differ about how to reconcile commitments to individual freedom and to communal traditions and meanings, yet they may do so with greater understanding of the sources of their differences and even the potential points of convergence.

We hope that this volume will raise provocative and useful questions about the ends and aims of tolerance, and about how free the exercise of culture is and how free it ought to be in societies organized as liberal democracies. We hope that the chapters—in raising questions about the scope and limits of tolerance in the lives of all people living in liberal democratic societies—will inform and prove useful to teachers, lawyers, judges, social workers, physicians, social scientists, and all members of multicultural societies who are trying to make sense of cultural diver-

sity and create the right kind of room for cultural differences. The effort is in many ways inspired by Clifford Geertz's (2000) comment,

> Positioning Muslims in France, Whites in South Africa, Arabs in Israel, or Koreans in Japan are not altogether the same sort of thing. But if political theory is going to be of any relevance at all in the splintered world, it will have to have something cogent to say about how, in the face of a drive towards a destructive integrity, such structures can be brought into being, how they can be sustained, and how they can be made to work.

NOTE

1. See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Wisconsin v. Yoder*, 406 U.S. 205 (1972). See also *Mozert v. Hawkins Board of Education*, 827 F. 2d 1058 (6th Cir. 1987).

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