

OXFORD

Gender and Justice in Multicultural Liberal States

Monique Deveaux

书馆

Gender and Justice in Multicultural Liberal States

MONIQUE DEVEAUX

OXFORD
UNIVERSITY PRESS

*This book has been printed digitally and produced in a standard specification
in order to ensure its continuing availability*

OXFORD
UNIVERSITY PRESS

Great Clarendon Street, Oxford OX2 6DP

Oxford University Press is a department of the University of Oxford.
It furthers the University's objective of excellence in research, scholarship,
and education by publishing worldwide in

Oxford New York

Auckland Cape Town Dar es Salaam Hong Kong Karachi

Kuala Lumpur Madrid Melbourne Mexico City Nairobi

New Delhi Shanghai Taipei Toronto

With offices in

Argentina Austria Brazil Chile Czech Republic France Greece

Guatemala Hungary Italy Japan South Korea Poland Portugal

Singapore Switzerland Thailand Turkey Ukraine Vietnam

Oxford is a registered trade mark of Oxford University Press
in the UK and in certain other countries

Published in the United States
by Oxford University Press Inc., New York

© Monique Deveaux 2006

The moral rights of the author have been asserted

Database right Oxford University Press (maker)

Reprinted 2010

All rights reserved. No part of this publication may be reproduced,
stored in a retrieval system, or transmitted, in any form or by any means,
without the prior permission in writing of Oxford University Press,
or as expressly permitted by law, or under terms agreed with the appropriate
reprographics rights organization. Enquiries concerning reproduction
outside the scope of the above should be sent to the Rights Department,
Oxford University Press, at the address above

You must not circulate this book in any other binding or cover
And you must impose this same condition on any acquirer

ISBN 978-0-19-955924-4

GENDER AND JUSTICE IN MULTICULTURAL
LIBERAL STATES

Acknowledgments

This book is centrally concerned with the tension between cultural group rights and protections on one hand, and gender equality and justice on the other. That these two kinds of ‘equalities’ might conflict was first made apparent to me in the early 1990s, when I worked for Canada’s main feminist organization, the National Action Committee on the Status of Women (NAC). At that time, federal negotiations were under way to secure greater sovereignty for First Nations peoples. Some Native women’s groups argued that their right to sexual equality might be undermined if First Nations peoples were to receive immunity from the Charter of Rights and Freedoms, as promised under the proposed accord. I was inspired by the efforts of the Native Women’s Association of Canada, NAC, and other groups that dared to press the issue of sexual equality and protest women’s political exclusion from constitutional negotiations in this heady political climate. However, I was also troubled that Aboriginal peoples’ aspirations for self-government were pitted by circumstances against sexual equality rights, and reasoned at the time that there must be a way to get beyond this impasse of ‘conflicting equalities’.

Later, after graduate studies, I returned to this problem and began to develop examples of other instances in which sexual equality protections stood in tension with cultural group rights. My earliest framings of the problem were belied by a study of the actual manifestation of these conflicts, particularly in Canada and South Africa. Eventually, I resolved to let the case illustrations guide me in the development of a normative framework that could help to mediate and resolve tensions between cultural and sexual justice. I am indebted to the many activists and academics who shared with me their analyses of the gender/culture tension in Canada, South Africa, and Britain, and whose perspectives helped to shape my interpretation of the problem. The opportunity to give portions of this preliminary work as talks in academic settings was a tremendous help. I thank members of the Political Science Departments at the University of Rochester, the University of Toronto, and the University of Victoria for their thoughtful responses to my work, and fellows (and audience members) at the Radcliffe Institute for Advanced Study, where I presented some of the core ideas for the book in a public lecture in early 2002. Participants at conferences at the University of Edinburgh, University of Nagoya, and especially University of British Columbia (on ‘Sexual Justice/Cultural Justice’) and the University of Nebraska (on

'Minorities Within Minorities') helped me to question, and so to revise, many of my normative arguments.

For their astute comments on parts of the draft manuscript, either as talks, journal articles, or as chapters, I am grateful to Barbara Arneil, James Bohman, Denise Buell, Joseph Carens, James Johnson, Will Kymlicka, the late Susan Okin, Jeff Spinner-Halev, James Tully, Stephen White, and anonymous reviewers for *Political Studies* and *Political Theory*. For providing incisive comments and excellent suggestions for revising the book for publication, I thank Chandran Kukathas, Deen Chatterjee, and a third, anonymous, reviewer for Oxford University Press. To Avigail Eisenberg and Paul Voice, I owe a special debt, for reading and commenting extensively on the whole manuscript. Thanks are also due to Dominic Byatt at Oxford University Press for his support for the project and for being patient about its completion. Hilary Barraford edited an early version of the manuscript, making it much more readable; EunSu Chang provided invaluable help with research for Chapter 4, and generously took on the task of compiling the book's bibliography; and Sarah Hirsch and Ryan McNeely lent additional help in preparing the final manuscript.

For financial assistance that enabled the writing of this book, I thank the Radcliffe Institute for Advanced Study at Harvard University, for a wonderful fellowship year (2001–2); the National Endowment for the Humanities, for a summer research stipend which permitted me to devote time to writing in 2001; Williams College, for funding from the Class of 1945 World Fellowship, which made it possible to conduct interviews in Britain in 2001 and South Africa in early 2002, and for generously allowing me an extra semester's leave; and the Rockefeller Foundation, for a short but productive team research residency at Bellagio, Italy, in May 2003 on the subject of sexual and cultural justice.

Some parts of this book have appeared elsewhere in print. Thanks to Sage Publications for permission to incorporate parts of my article, 'A Deliberative Approach to Conflicts of Culture', *Political Theory*, 31/6 (2003), 780–807, into Chapters 4 and 7; to Blackwell Publishing, for giving permission to use my article, 'Conflicting Equalities? Cultural Group Rights and Sex Equality', *Political Studies*, 48/3 (2000), 522–39, some of which appears in Chapter 5; and to Routledge/Taylor and Francis, for granting permission to use my article, 'Liberal Constitutions and Traditional Cultures: The South African Customary Law Debate', *Citizenship Studies*, 7/2 (2003), 161–80, parts of which are included in Chapter 7.

Finally, for their moral support and encouragement during the writing of this book, I thank Avigail Eisenberg, Cathy Johnson, Tamara Metz, Cheryl Shanks, and especially Paul Voice.

Contents

<i>Acknowledgments</i>	vi
1. Introduction	1
2. Liberal Approaches to Conflicts of Culture	23
3. Women's Rights as Human Rights	54
4. Democratic Deliberation: Empowering Cultural Communities	89
5. Native Rights and Gender Justice: The Case of Canada	127
6. Personal Autonomy and Cultural Tradition: The Arranged Marriage Debate in Britain	155
7. Gender and Cultural Justice in South Africa	186
8. Conclusion: Legitimizing Democracy and Democratizing Legitimacy	215
<i>Bibliography</i>	229
<i>Index</i>	245

Introduction

Much normative political theory of the 1980s and 1990s emphasized the importance of citizens' group-based cultural differences, and the need to recognize and formally accommodate cultural minority groups in liberal democratic states.¹ The current mood, by contrast, reflects a preoccupation with the *internal* differences of social and cultural collectivities, and with whether and how such differences should affect the status of their claims for greater accommodation. This altered focus is due in part to political theorists' embrace of a more fluid and complex understanding of cultural identities, a consequence, perhaps, of what has been called the 'Geertz-effect' in political theory.² Increasingly, cultural identity has come to be viewed as a dynamic and changing phenomenon, and cultural practices and arrangements are recognized as sites of contestation. This intensified attention to the internal differences of social and cultural communities may also reflect a growing awareness of the political character of cultural identities, and of cultural justice struggles generally, in plural liberal democracies. From disagreements within Native American communities over membership rules, to disputes among South Asian immigrants about norms and rules governing arranged marriages, these struggles increasingly reveal the strategic and contested nature of group identities, and the sometimes fractured solidarities of ethnic, linguistic, and religious minorities in multicultural liberal polities.

Wider recognition of the fact of disagreements and conflicts within minority cultural groups has in turn focused attention on the potential for mistreatment of vulnerable members of such communities.³ This is the

¹ I use the term 'cultural groups' to cover a broad range of groups whose members share an identity based on ethnic, linguistic, racial, or religious characteristics, and for whom these aspects strongly shape the self- and ascriptive identification of individual members. Such collectivities are sometimes referred to as 'encompassing groups' or 'societal cultures' to indicate that they may shape not only the self-understandings of members but also their community contexts, opportunities, life choices, and so forth.

² David Scott, 'Culture in Political Theory', *Political Theory*, 31/1 (2003), 92–115, p. 111.

³ The descriptor 'minority' refers here to the social and legal status of particular practices, not to whether they are practiced by few or many. This distinction is important because in some states, such as South Africa, 'minority' practices—for example, those concerning customary marriage—may actually be practiced by a majority of the population. I do not mean to suggest

problem of ‘internal minorities’, as Leslie Green has called it, or that of ‘minorities within minorities.’⁴ The more autonomy a group has over its practices and arrangements, and the more nonliberal the character of the group, the greater the risk that individuals may be subjected to rights violations.⁵ National cultural and ethnic minorities who are accorded collective rights, and religious communities that enjoy special dispensation in order to accommodate their traditions and values, are among the prime subjects of concern here. Political theorists have pointed to the right of Orthodox Jews in Israel to maintain a system of personal law that prevents many women (but not men) from obtaining a divorce decree without their spouse’s consent and the right of the Amish in the United States to remove their children from high school at age 15, as examples of how cultural rights can leave some group members susceptible to mistreatment. Immigrant groups whose cultural practices are largely unhampered by law are also sometimes accused of unjust customs, such as sex-segregated religious schooling that only prepares girls for traditional lives. Within both national minority and immigrant communities, the spectrum of vulnerable individuals is thus quite broad, and might include religious minorities within the group, gays and lesbians, individuals who resist particular conventions, and girls and women in general.

Against this political backdrop, calls by cultural minority groups for greater recognition and rights inevitably raise questions about the proper scope and limits of such accommodation. Posing the greatest challenge are those demonstrably nonliberal cultural groups that adhere to practices that reflect and reinforce traditional and, by liberal lights, discriminatory, cultural or religious norms, roles, and worldviews. Where the customs and arrangements of traditional cultural communities stand in tension with the broader liberal norms of the society in which they live, how should multicultural, liberal democratic states respond? Should the (intolerant) practices of nonliberal groups be tolerated—if so, on what grounds, and to what effect? These questions acquire a special urgency when the norms and practices of cultural groups clash with individual rights protections guaranteed under liberal

that only the practices of cultural minorities should be subjected to critical scrutiny and potential reform; however, to the extent that a debate has risen within political theory regarding the ambiguous legal status of practices of such minorities, my intention is to try to steer this response in a more democratic direction.

⁴ See Leslie Green, ‘Internal Minorities and their Rights’, in *Group Rights*, ed. Judith Baker (Toronto: University of Toronto Press, 1994), and *Minorities Within Minorities: Equality, Rights and Diversity*, eds. Avigail Eisenberg and Jeff Spinner-Halev (Cambridge: Cambridge University Press, 2005).

⁵ The term ‘nonliberal’ is usually used by political theorists to refer to groups or practices that restrict individual liberty in very pronounced ways, and so risk violating liberal norms. I use the term similarly in this book, but also include communities and customs that stipulate rigid social hierarchies or prescribe sharply differentiated gender roles for men and women.

constitutional law, but they also arise in connection with more everyday social customs and arrangements.

By most accounts, nowhere is the tension between policies of multicultural accommodation and liberal principles and protections more apparent than in the area of women's rights and roles. In particular, the concern that special group rights and provisions for cultural minorities might undercut the rights of women group members, or even jeopardize liberal sex equality guarantees more generally, has recently emerged as a daunting problem for proponents of multiculturalism. Religious groups and ethnic minority (especially immigrant) communities, and indigenous groups that discriminate against women in some way, are a particular focus of concern. In some cases, the cultural practices and arrangements of groups are protected by customary systems of law or by sanctioned religious systems of family and personal law (e.g. in India, South Africa, and Israel) that may conflict with a constitutional commitment to sexual equality. The road to group accommodation is increasingly a legal and political minefield, then, and it is far from clear how customs that stand in tension with individual rights legislation, such as sexual equality protections, can be permitted—or, still less, protected—without undermining the universality of such rights.

Perhaps the central paradigm framing most current political, and to a lesser extent, scholarly discussion of what I call 'conflicts of culture' is that of liberal toleration, which generates the question, 'What should the liberal state tolerate, and what should it prohibit?' This emphasis on toleration is, as I shall shortly argue, highly problematic in that it cuts short a fuller discussion of group claims about identity and self-governance; of the many possible processes for the evaluation and reform of cultural practices; and of the power relationships between minority groups and the state. In effect, the litmus test for the soundness of arguments for policies of cultural accommodation thus becomes whether such arguments unwittingly permit individual rights violations, including sex-based inequalities, or whether proponents of cultural recognition seek to grant collective rights at the expense of vulnerable members (such as women). The questions are fairly posed, and I ask a version of them myself in the coming chapters. However, it is important to see how they can also rely on a dangerously false dichotomy, namely, that between cultural groups and their rights on the one hand, and women and their rights on the other. Yet women make up at least half of the cultural communities in question, and some, as we know, defend precisely those practices and arrangements that make liberals uncomfortable, like arranged marriage and polygyny. This is why, in my view, it is not really an option to be 'pro-women' and against cultural rights. Although our preferences and commitments should not always be taken at face value—particularly in highly constrained

circumstances—it is nonetheless unsatisfactory to merely set women's evaluative assessments aside where they stand in tension with liberal norms.

This book tries to move away from the paradigm of toleration, and to ask instead on how we might democratically mediate the tensions between the claims of cultural and religious minorities with respect to women's rights and roles, and the demands of liberal democratic states. Here my concern is tensions that arise as a direct result of claims for formal rights and protections for cultural or religious norms and arrangements, not the difficulties that arise when a member of a distinct group simply invokes a 'cultural defense' to excuse an action or to plead extenuating circumstances.⁶ On the whole, political theorists writing on issues of cultural diversity have been slow to ask about the implications of cultural group rights and accommodation for gender equality, or for gender justice more broadly. As feminist thinkers have long noted, it is precisely because sex roles and arrangements are often seen as private, and so excluded from the realm of politics, that framing gender issues as problems of justice is so difficult; sex inequalities are in a sense unnoticeable because they are such a pervasive part of community life. Where liberal political theorists have directly addressed this issue, they have tended to leverage liberal norms as a litmus test for assessing the claims of cultural minorities, without good justification (or results). As I argue in Chapter 2, this approach is an overly blunt instrument for dealing with the challenges posed by cultural minority practices and arrangements; as such, it risks unjustly prohibiting practices that ought to be allowed, and at the same time, ignores forms of sexual injustice that escape the rights frame (such as restriction of girls' educational and occupational opportunities through cultural pressures). Human rights frameworks, which I discuss in Chapter 3, fare somewhat better in that they appeal to a broader range of human needs and possible forms of harm. However, human rights are far from dispositive when trying to resolve disputes over gendered cultural roles, practices, and arrangements, as cultural group rights are also often defended in the language of human rights.

It is not only liberal political theorists' responses to this problem that have fallen short. The relationship between cultural group accommodation and sex equality also presents a formidable challenge to deliberative democracy, as I argue in Chapter 4. A deliberative democratic approach to conflict resolution that purports to secure respect for cultural pluralism, as mine does, will require changes which traditional cultural collectivities may vehemently

⁶ For a discussion of this issue, see Alison Renteln, *The Cultural Defense* (Oxford: Oxford University Press, 2004). Instances of the latter are growing in number and significance, and have been the subject of considerable recent scholarship.

reject, thereby rendering the prospect of moral consensus impossible. In particular, a deliberative democratic approach to resolving disputes about the value and status of cultural practices will require that female members of cultural groups have a voice in evaluating and deciding the fate of their communities' customs, both by including women in formal decision-making processes and developing new, more inclusive, forums for mediating cultural disputes.⁷ To accomplish this greater enfranchisement of women in both formal and informal democratic spaces, we will need to examine the practical impediments to their empowerment in their communities, and the cultural barriers to their participation in public life.⁸

* * *

When cultural practices and arrangements that are protected by policies of multicultural accommodation stand in tension with constitutional guarantees of sex equality, or when social practices are internally contested within communities, difficult conflicts of culture emerge that usually involve the liberal state at some level. This conflict and its challenges are the subject of this book, which takes as its focus three main tasks. In the first place, I aim to reframe the disputes over so-called nonliberal cultural practices and arrangements, highlighting their intragroup and strategic, political character. Second, I offer an analysis of illustrative instances in which cultural group practices and individual rights protections have clashed in South Africa, Canada, and Britain, providing a contextualized discussion of this pervasive normative and political dilemma. And third, I develop an approach to mediating cultural conflicts over women's rights and roles which foregrounds the deliberative judgments of cultural group members themselves, as well as strategies of bargaining and compromise. This approach, which insists on norms of democratic legitimacy and political inclusion, is broadly situated within deliberative democracy theory. Crucially, however, it depends on a greatly expanded conception of 'the political', one that includes not simply formal political deliberation but also informal spaces of democratic activity and expression. It also accords particular attention to the need to empower

⁷ Other political theorists have also stressed the importance of including female members of cultural groups in decisions about contested practices. See Susan Moller Okin, 'Is Multiculturalism Bad for Women?' and 'Reply', in *Is Multiculturalism Bad for Women?*, eds. Joshua Cohen et al. (Princeton, NJ: Princeton University Press, 1999); and Jeff Spinner-Halev, 'Feminism, Multiculturalism, Oppression, and the State', *Ethics*, 112 (2001), 84–113, p. 108.

⁸ The cultural obstacles to women's participation in public life are not always obvious. For instance, Sawitri Saharso has written of the internalized psychological barriers to autonomous behavior or action, which are common among women 'raised in a culture that does not value autonomy.' See her 'Female Autonomy and Cultural Imperative: Two Hearts Beating Together', in *Citizenship in Diverse Societies*, eds. Will Kymlicka and Wayne Norman (Oxford: Oxford University Press, 2000), p. 228.

vulnerable members of cultural communities by shifting power away from those community leaders who try to silence and intimidate them, and expanding opportunities for critique, resistance, and reform.

My approach to mediating the phenomenon of cultural conflicts shares with other democratic theorists the intuition that the insights of deliberative democracy theory can and should be applied to problems of intercultural justice. Seyla Benhabib, Joseph Carens, Bhikhu Parekh, James Tully, and Iris Young have all argued for dialogical and deliberative approach as a response to cultural minorities' claims for recognition and accommodation, and as a means of grappling with specific conflicts of culture.⁹ While sharing these authors' intuition that inclusive political deliberation must precede policy decisions about cultural conflicts, my perspective differs in important respects. As suggested above, unlike these thinkers, I argue that cultural conflicts involving cultural minorities are primarily political in character, and while they include normative dimensions, they do not necessarily entail deep disputes of moral value. This reframing of cultural disputes has implications for how liberal states should attempt to mediate such conflicts. Rather than exclusively foregrounding moral argumentation aimed at reaching normative consensus, I argue that *strategically* focused deliberation—in which participants seek negotiation and political compromise—is oftentimes a better solution to tensions between contested cultural practices and sex equality protections, both normatively and practically. The ensuing strategic agreements are often temporary, as they are contingent upon agents' shifting interests and assessments of practices, as well as upon social relations of power more broadly. Yet I argue that even these negotiated agreements and compromises can come to take on a settled normative quality, sometimes reinforcing thicker (and more durable) forms of moral assent. And finally, I contend that questions surrounding the legitimacy of contested cultural practices need not be resolved through formal political deliberation alone: certain types of informal democratic activity, such as forms of cultural resistance and reinvention, also speak to the validity of disputed customs, roles, and arrangements. Moreover, these informal sources of democratic expression can and should be introduced when citizens deliberate on the status and possible reform of contested cultural practices.

⁹ Seyla Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, NJ: Princeton University Press, 2002); Joseph Carens, *Culture, Citizenship, and Community: A Contextual Exploration of Justice as Evenhandedness* (Oxford: Oxford University Press, 2000); Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Cambridge, MA: Harvard University Press, 2000); James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity* (Cambridge: Cambridge University Press, 1995); and Iris Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000).

The task of reframing the problem of cultural conflicts in multicultural liberal states is, in my view, an urgent one. Conflicts between cultural rights and sex equality are often addressed as part of a broader dilemma of liberal toleration that asks 'Should the intolerant be tolerated?' Yet to understand conflicts between liberal democratic norms and the cultural practices of nonliberal minorities in these terms is deeply problematic. From the start, the toleration framework places the issue solely in the hands of the state, viewing cultural conflicts as primarily about shoring up the security and authority of the state, and only secondarily about delivering justice to minorities.¹⁰ This state-centric view is rarely justified as such, but merely assumed, particularly by liberal theorists writing on cultural minority rights. Moreover, as Rita Dhamoon has argued, this focus necessitates a view of culture in which only (ostensibly) discrete, highly bounded cultures are seen as worthy of notice, because only these can challenge the authority of the state. Such a move both ignores sources of cultural injustice suffered by groups who do not fit this description (such as gays and lesbians), and exaggerates the boundedness of cultural groups and their importance to political life in plural democratic states.¹¹

In foregrounding the perspective and status of the state in this way, the liberal toleration paradigm also assumes that the main conflict is between the state and the cultural group in question. Yet as I argue, oftentimes the heart of the dispute lies within the cultural or religious community itself, even if it may first be brought to light—or compounded—by broader legal and social structures. Through its focus on the state-group schism, the toleration framework overlooks important democratic responses within cultural communities to their own contested cultural practices. As a result, the ways in which individuals resist, revise, and reinvent their social customs and traditions drop from view. Yet these informal instances of democratic practice reveal much about the nature of the conflict: why a particular custom or arrangement is contested; how its practitioners attempt to change, or to resist its change; and who supports which version of a custom, and why. These responses can, moreover, also contribute to an evaluation of the validity of contested customs and arrangements by helping to inform institutionalized forums of political deliberation. Such forums, often directed by cultural group members themselves, can become critical vehicles for determining the legitimacy and future status of controversial cultural practices in liberal democratic states.

¹⁰ For a parallel argument, see Barbara Arneil, 'Cultural Protections vs. Cultural Justice: Post-colonialism, Agonistic Justice and the Limitations of Liberal Theory', in *Sexual Justice/Cultural Justice: Critical Perspectives in Theory and Practice*, eds. Barbara Arneil, Monique Deveaux, Rita Dhamoon, and Avigail Eisenberg (Routledge, 2007).

¹¹ See Rita Dhamoon, 'Shifting from Culture to Cultural: Critical Theorizing of Identity/Difference Politics', *Constellations* 13/3 (2006).

Not surprisingly, the state-centric liberal toleration framework, which I take up in Chapter 2, has generated inflexible responses to cultural practices ostensibly in conflict with liberal norms, ultimately yielding recommendations that states prohibit offending customs.¹² And indeed, some practices are clear candidates for restriction rather than deliberative resolution, such as infanticide, sati, and ‘honor killings’.¹³ Nor, in liberal democratic states, do these practices have defenders as such, although there is some dispute about the proper understanding of these customs and the best practical responses to them. Where harm or danger exists and subjects do not consent, decisions by liberal states to restrict or limit particular practices are mostly uncontroversial. Applying what I call a ‘moral minimum’ to an analysis of disputed practices will certainly support the prohibition of customs that result in serious physical harm, or which require outright coercion. Yet beyond these obvious cases, demands by traditional cultural groups for special accommodation may raise many more formidable challenges for government policymakers for which prohibition is not an adequate response. Nor will mere prohibition of certain customs—combined with appeals to liberal individual rights—automatically protect the internal minorities of cultural communities. Attempts to restrict controversial cultural practices through legal and coercive means can also fail to protect vulnerable members of such groups, such as women, by leaving certain individuals more exposed to private forms of oppression.¹⁴ It is thus no surprise that the zero-tolerance response to problem of tensions between collective cultural claims and individual rights advanced by some liberal thinkers, such as Brian Barry, Will Kymlicka, and Susan Moller Okin,¹⁵ has come under criticism.

A different response by liberal political theorists to tensions between gender equality and cultural protections urges a largely laissez-faire approach. In Chapter 2, I discuss the work of Chandran Kukathas, who opposes formal

¹² See for example Brian Barry, *Culture and Equality* (Cambridge, MA: Harvard University Press, 2001).

¹³ So-called ‘honor killings’ involve the assassination of girls or women deemed to compromise a family’s honor through sexual infidelity (real or suspected) or their refusal to marry a marriage partner chosen by the family. These killings are usually carried out by a male family member (father, brother, or even uncle or cousin). Cases of honor killings are reported annually in Britain, for example, in communities of Middle Eastern, North African, and (Muslim) South Asian descent.

¹⁴ See the discussion by Jacob Levy, who also makes this point in *The Multiculturalism of Fear* (Oxford: Oxford University Press, 2000), pp. 53–62.

¹⁵ See Kymlicka’s *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), and *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford: Oxford University Press, 2001); Okin, ‘Is Multiculturalism Bad for Women?’, and Okin, ‘Feminism and Multiculturalism: Some Tensions’, *Ethics*, 108 (1998), 661–84.

cultural rights. Kukathas nonetheless believes that in liberal societies, the state is not warranted to meddle in the affairs of citizens' cultural arrangements, since to do so would violate the rights of freedom of association and freedom of conscience.¹⁶ Some cultural rights proponents also adopt a hands-off position: Jeff Spinner-Halev, for example, contends that as a matter of equal justice, the liberal state should not determine the internal arrangements and personal laws of religious groups. He is especially concerned about the injustice of imposing external reforms on oppressed groups, and argues that the liberal state's role should be limited to the practical construction and implementation of communities' personal laws, but should not include the selection or reform of those laws.¹⁷ Yet granting cultural communities near-complete autonomy over the allocation of rights and benefits to group members overlooks the harm that may befall vulnerable group members (notably women), as well as the impact on prospects for societywide policies of gender equality.

Another liberal approach to conflicts of culture, which intersects with those sketched above, is the 'women's rights as human rights' paradigm, which appeals to human rights norms to justify protection from cultural and religious practices that harm or discriminate against women. Two normative liberal theories that employ a broadly human rights-based perspective are the philosopher Onora O'Neill's neo-Kantian perspective, which focuses on agents' consent and its requirements, and Martha Nussbaum's 'capabilities approach'.¹⁸ As I discuss in Chapter 3, however, these perspectives are of limited use when it comes to hard cases of cultural conflict that involve socialization more than overt force. Nussbaum, with her Aristotelian-inflected liberalism, argues that customs common in traditional societies—such as arranged marriage and polygyny—should be prohibited because they undercut capabilities for human functioning.¹⁹ Numerous problems arise, however, when an account of capabilities embedded in a conception of human flourishing is used to judge the validity and permissibility of contested practices across different cultures. Nussbaum's claim that a capabilities approach is 'sensitive to pluralism and cultural difference' is put into serious question given the liberal perfectionist framework that undergirds her theory.²⁰

* * *

¹⁶ See for example Chandran Kukathas, 'Are There Any Cultural Rights?', *Political Theory*, 20 (1995), 105–39.

¹⁷ Spinner-Halev, 'Feminism, Multiculturalism, Oppression', esp. pp. 86 and 107–9.

¹⁸ See especially Onora O'Neill, *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), and Martha Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000).

¹⁹ Nussbaum, *Women and Human Development*, esp. Ch. 4.

²⁰ *Ibid.*, p. 81.

As this brief overview of recent responses to the problem of cultural conflicts suggests, political theorists need to think much harder not only about *how* such conflicts might be resolved, but about how they should best be *understood* in the first place. This book is in the first instance an attempt to reframe tensions between cultural and sexual equality as problems of power and democracy, and specifically, as problems of democratic practice. The main questions posed in the book are *how should cultural disagreements and conflicts about women's status, roles, and arrangements be understood, and how should they be mediated or resolved in democratic societies?* However, once we look at specific cases of cultural conflicts, we quickly see that many additional questions need to be asked. Rather than asking what the liberal state ought to tolerate, I suggest that we pose questions that might help to reveal the social, cultural, and political meanings and purposes of practices: Why has a particular custom or arrangement come under fire now? Who is supporting it and who is opposing it? What are the relative power positions of the supporters and dissenters? What channels are available for dissent, and for reform? How has the state impacted the conflict, and are there ways in which the state (and semi- and nongovernmental organizations, or NGOs) can support the safe articulation of dissenters' criticisms and demands for reform?

In my view, these questions are best answered through contextual discussion of concrete instances of conflicting equalities. My point of departure in two of the country case studies (those of South Africa and Canada) is the tension that exists between constitutional protections for sex equality, on the one hand, and formal protections for cultural groups and recognition of a parallel system of religious or customary law, on the other. In a third example I explore, that of the issue of arranged and forced marriage among some South Asian communities in Britain, a conflict is ostensibly presented between the custom of arranged marriage and liberal norms of choice and autonomy. Although these examples may seem unique to the states in which they arise, these kinds of tensions are, arguably, likely to increase in scope and occurrence with efforts to expand cultural rights and protections in liberal democracies. Political theorists can help to illuminate the points of friction between cultural group norms and liberal democratic principles, and suggest some ways of mediating these. We can also draw attention to power struggles within communities, and reflect on the role of the state in either shoring up cultural power structures or, conversely, democratizing power more broadly.²¹

²¹ For example, anthropologist Unni Wikan discusses Norwegian officials' reluctance to challenge the newly increased power of male immigrants over their families in their host society, in *Generous Betrayal: Politics of Culture in the New Europe* (Chicago and London: University of Chicago Press, 2002), p. 5.