Accommodating Cultural Diversity

Edited by
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APPLIED
LEGAL
PHILOSOPHY

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ASHGATE

Published by
Ashgate Publishing Limited
Wey Court East
Union Road
Farnham
Surrey, GU9 7PT
England

Ashgate Publishing Company
Suite 420
101 Cherry Street
Burlington
VT 05401-4405
USA

Ashgate website: http://www.ashgate.com

British Library Cataloguing in Publication Data
Accommodating cultural diversity. - (Applied legal philosophy)
1. Multiculturalism
I. Tierney, Stephen
305.8

Library of Congress Control Number: 2006940516

Transfered to Digital Printing in 2010

ISBN 978–0–7546-2603-9

ACCOMMODATING CULTURAL DIVERSITY

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Chapter 1

Cultural Diversity: Normative Theory and Constitutional Practice

Stephen Tierney

The management of cultural diversity within the state has become an increasingly prominent issue in recent times both for political actors and for scholars of law, philosophy, sociology and political science. There are certainly many reasons why multiculturalism has been the subject of such attention but of these perhaps the two most important are demographics and political mobilisation. On the one hand cultural diversity is an expanding social phenomenon in an age of migration, asylum, population transfer and the increasing diversification of identity patterns within traditionally homogeneous groups. These evolving demographic patterns have also been accompanied by a growing political assertiveness as cultural minorities, be these territorial sub-state nations, aboriginal groups, or migrant groups, demand in ever more vociferous terms political recognition and the constitutional accommodation of their cultural or societal particularity.

Although work on the issue of cultural diversity has also expanded enormously in recent years, it has tended to be separated fairly rigidly, as is so much work in the social sciences, among the disciplines of law, political science and political philosophy. This book intends to offer a different perspective by bringing together work from these different disciplines. Emerging as it does from a conference organised by the Centre for Canadian Studies and the School of Law at the University of Edinburgh in 2004, the book comprises ten essays including contributions from scholars of cultural diversity from a range of backgrounds which together offer a variety of perspectives, both describing how contemporary democracies manage diversity and offering normative prescriptions for how they might better do so. A very welcome participant at the conference was The Honourable Justice Michel Bastarache of the Supreme Court of Canada, himself a strong advocate of the accommodation of cultural diversity and language rights, and he has very generously contributed the Foreword to the book.

The book is divided into three thematic parts. Part I addresses the evolving theory of cultural diversity with three chapters concerning the development of normative theory in this area. Part II comprises a case study in the institutional accommodation of cultural diversity, focusing upon aboriginal peoples whose demands for full recognition have become a prominent and complex issue in a number of modern democracies. Finally, Part III of the book turns to what is very much a developing issue, namely the role of constitutional law and constitutional interpretation as a battleground for the playing out of cultural disputes concerning the political and

constitutional status of sub-state cultural and national groups. In this part of the book one area of focus is the long-running dispute between Quebec and the rest of Canada concerning Quebec's claims to constitutional recognition of its sub-state national status within Canada. Given that the conference was concerned with Canadian issues this case study and a number of other references in the book are related to the Canadian experience as one of the most interesting arenas where multicultural and multinational issues are played out today. However, the book's reach is broader than this, raising theoretical issues of general application and drawing out lessons that have wide implications for other multicultural democracies.

Part I begins with a scene-setting chapter by Will Kymlicka who discusses the development of multiculturalism as a global phenomenon, offering suggestions as to why these debates have emerged now and what the prospects are for their future evolution. His account addresses the ways in which sub-state cultural groups have mobilised politically throughout the world, identifying both the differences that pertain from case to case as well as the commonalities shared by these diverse struggles for multiculturalism. The principal point of commonality in these struggles is a rejection of the traditional model of the unitary, homogeneous nation-state which has privileged the dominant national group through overt nation-building strategies and in consequence of which minority groups have either been assimilated or excluded from a full role in the life of the state. This model, however, is increasingly under challenge from different types of minority group, each of which brings diverse forms of claim: indigenous peoples; sub-state/minority nations; immigrant groups; and metics (by which Kymlicka means migrants who are not admitted as permanent residents, and future citizens, including illegal immigrants, asylum-seekers, students or 'guest-workers' who overstay their initial visa). Although these four groups have faced different problems historically and each seek to have their distinctive identities accommodated in different ways, Kymlicka argues that common to all of these struggles is the demand for a multicultural state which will recognise that the polity is not in fact composed of a single national group but that all groups should be recognised equally, which will respect the equal worth of their cultural traditions, and which will attempt to rectify past injustices resulting from assimilationist or exclusionist policies.

Kymlicka argues that, particularly in western democracies, considerable progress has been made in meeting the demands of each of these groups. Although this has had mixed results in the case of metics, success is particularly notable in the case of the first two types of group because there has been a dramatic move towards reconceptualising states which contain indigenous peoples or territorial national minorities as 'multinational' in character, with concomitant redistributions of political and economic power within the state. Kymlicka then considers why both the political mobilisation of minorities and the accommodation of their demands have occurred over the past three decades. Although specific political initiatives have been influential, Kymlicka also identifies certain structural factors that are common to all of those Western democracies that have engaged in the accommodation of diversity. Underlying dynamics which help explain why minority groups have become more assertive of their rights include demographic developments whereby these groups have not died out; an increase in rights-consciousness across the globe; and the spread of democracy. Additionally, two further factors help explain the willingness

of states to accommodate multiculturalism: first, the improvement in global security, particularly since the end of the Cold War, which helped reduce strategic risks that were, in the post-war period, perceived to be involved in granting autonomy to national minorities; and secondly, the increased awareness that dominant and non-dominant groups share a liberal democratic consensus which in turn reduces the perception of risk within the dominant group that the recognition of cultural difference will lead to, and will indeed institutionally crystallise, a break-down in common political values across the state. With an eye to the prospects for the spread of multiculturalism to other parts of the world, Kymlicka suggests that the three principal factors which led to demands for change in the West are already in place elsewhere today; therefore, whether or not the accommodation of cultural diversity is to become a genuinely global phenomenon depends now very much upon whether the states which are newly involved in this process will respond positively to these demands.

Another lesson drawn out by Kymlicka from the Western experience of multiculturalism is that many of the worst fears about political instability and the breakdown of political authority are misplaced; as he argues, 'it's now clear that a multicultural state can be a successful state'. However, there is still a danger of backlash, largely he suggests due to misperceptions about the goals and consequences of multiculturalism. Many within the dominant elites had hoped multiculturalism was a passing problem, which once accommodated would cease to make demands of the state. But in fact, multicultural politics are clearly here to stay, and in fact will likely proliferate because patterns of accommodation actually encourage further demands by offering an institutional base from which these political movements can mobilise further. Challenges therefore remain because although people in Western democracies have generally accepted the idea of a multicultural state and the initial accommodation of difference, in other ways they resist the ongoing phenomenon of ethnic politics. Kymlicka concludes that the long-term success of multiculturalism will depend upon a change in this mind-set and an acceptance by dominant groups that ethnic politics are 'normal' democratic politics which are now a settled feature of political life.

It is appropriate that Will Kymlicka should contribute the opening chapter of the book given that his work more than that of any other philosopher in recent times has set the framework for normative debates about the political and constitutional accommodation of multiculturalism. A central thesis of Kymlicka's has been that multiculturalism and liberalism are not only compatible with, but are inextricably linked, to a true commitment to liberalism. Liberalism in fact requires the proper respect for and recognition of the cultural particularities that are so central to many people's lives. As is inevitable with any extensive and pioneering theory, Kymlicka's work has been subjected to critique from different directions. In this context the other two chapters in Part I of the book take issue with different aspects of Kymlicka's work.

Helder de Schutter's chapter focuses upon the multinational state and observes that there are two general approaches taken by normative liberal theorists to national pluralism within one state. On the one hand 'liberal nationalist' theorists such as Kymlicka argue that people who share a common national identity are entitled to

a right of self-government or self-determination so that they can make collective decisions within their own national context; while a second group of cosmopolitan liberal theorists eschew such an approach and argue instead that national differences should be overcome or even overlooked, and that instead of offering intra-state autonomy to minority groups, the state should be fostered as one political community for all of its citizens.

De Schutter searches in his chapter for something of a third way between these positions. He accepts some of the ontological premises of the liberal nationalist position, but rejects its ultimate political conclusions as too essentialist. He argues that the liberal nationalist argument can be divided into two theses: one concerning the *value*, and the other the *unit*, of cultural membership. He is inclined to agree with the former thesis, which asserts that individuals are culturally embedded beings, who need a cultural context of choice in order for their cultural freedom to be maximised. However, he rejects the second thesis – and here his primary focus is upon Kymlicka – which contends that the cultural context of choice most relevant to individuals is the nation or, in Kymlicka's formulation, the 'societal culture' (Kymlicka 1995). De Schutter argues that this concentration on the nation or societal culture as the primary unit of attachment fails properly to take account either of mixed or hybrid identities that emerge either when two groups who were once separated but today share the same territory may in time develop a common loyalty and identity, and even a shared context of choice; or of individuals in a 'hybrid cultural situation', such as bicultural bilinguals who do not have a strong sense of belonging to one cultural group over another within the state.

De Schutter contends that it should be possible to respect and foster shared choice contexts whereby several national groups would enjoy cultural protection and recognition in the public sphere, but would co-govern the same societal context. This may be possible in certain contexts but a defender of Kymlicka's position might ask whether it would avoid the problem of domination by the majority nation which many of the remedies Kymlicka advocates are designed to obviate. Another interesting point in many of these debates is that societal cultures can themselves be open spaces whereby national identities therein are not necessarily thick or holistic, and that sub-state societal cultures are as likely to be open and multicultural as state societal cultures. Therefore, to advocate national recognition is not to offer a homogenised or illiberal account, since accounts such as Kymlicka's accept that national identities should be heterogeneous, open and liberal.

One aspect of Kymlicka's that clearly demonstrates his efforts to reconcile his theory with liberalism is his use of the distinctions between 'external protections' and 'internal restrictions' in evaluating normatively the devices that may be used to accommodate minority groups. For Kymlicka, external protections are 'the claim of a group against the larger society', and as such are generally compatible with liberalism, whereas internal restrictions are 'the claim of a group against its own members' and are generally and perhaps always incompatible with liberalism (Kymlicka 1995, 35). Dwight Newman's chapter critiques Kymlicka's use of this distinction. He argues that it is a particularly important part of Kymlicka's work because in many ways it underpins Kymlicka's theoretical structure by helping to demarcate which group-differentiated rights are permissible and which are not.

Newman questions the accuracy of the distinction in both empirical and normative terms. First he takes issue with Kymlicka's empirical claim that groups generally do not seek legal powers to impose internal restrictions. Newman uses examples from Canadian policy, particularly on religious school rights, language rights, and developing self-government agreements with aboriginal peoples, which he suggests demonstrate the regularity of such claims. He therefore argues that there are many situations which Kymlicka's theory does not account for and, as a result, there is a need for new distinctions in the area of group rights that better describe the actual claims of groups. Newman also challenges Kymlicka's normative belief that liberals should almost always reject such internal restrictions. He argues instead that internal restrictions can be morally viable and may even be to the benefit of all members of a group. In this respect Newman contends that Kymlicka's normative account fails to appreciate the justifiability of internal restrictions in certain circumstances because Kymlicka's theory is based upon a search for present equality and as such fails to take account of historical processes that may have led to the creation of 'historically-rooted rights' which are vested in the collective as well as the individual. On this basis he concludes that liberal theorists should develop theories of collective rights even if they potentially fall outside Kymlicka's distinction between 'external protections' and 'internal restrictions' because such group rights may be needed in order to make progress on diversity issues. These arguments demonstrate the complexity and normative difficulty for liberals in debating the extent to which restrictions on certain individual freedoms are permissible in order to enhance the freedoms of groups, and hence the freedom of individuals within these groups. These chapters illustrate the extent to which Will Kymlicka has set the agenda for contemporary normative theorising on the accommodation of cultural identities and how contemporary theorists like De Schutter and Newman are now taking the debate forward in light of evolving theoretical work and changing political circumstances and constitutional structures within and across states.

Part II of the book addresses aboriginal peoples as a case study in the institutional accommodation of cultural diversity. The three chapters in this part each focus upon the principle of self-determination as central to the aspirations of aboriginal peoples to be recognised as fully-functioning societies. In this sense they perhaps offer support to Kymlicka's argument that it is the nation or societal culture which provides the most crucial setting for minority cultures, not least by offering an institutional base from which to develop claims for improved recognition both within the host state and internationally.

Avigail Eisenberg addresses some of the potentially serious problems that arise in the public assessment of minority identity by institutions such as courts or legislatures, particularly where these institutions are dominated by a distinctive cultural, ethnic, linguistic or national majority. The problem she focuses upon is that although institutions frequently reason about identity, there is, she argues, usually nothing systematic about the way they do so in terms of applying a set of standards or criteria beyond their idea of common sense.

In this way she addresses the decision of the Supreme Court of Canada *R. v Van der Peet* in 1996 which did constitute an attempt to establish such a formal set of standards and criteria for reasoning through the identity claims of a minority group.

Here the court adopted a 'distinctive culture test' to decide whether an Aboriginal practice ought to be accommodated. This test requires that claimants prove first that the practice they wish to protect is endangered by state regulation, and secondly that the practice is an integral part of pre-contact indigenous culture, because only if it is will it be entitled to protection today. She observes that *Van der Peet* is by no means an isolated case, and in fact such attempts to assess the nature of minority identity and practice occur in many types of cases, not only those in relation to Aboriginal people. Given that this is the case she sets out to assess this trend, concentrating upon the possible benefits and the disadvantages of attempts to evaluate identity in public institutions.

In terms of the benefits that might accrue from this focus she presents several arguments as to why identity is emerging as a workable and perhaps even a promising focus for minorities in advancing their interests both within states and internationally, before addressing three challenges, presented particularly by critics of identity politics, to the general project of publicly assessing identity. These challenges arise also in the context of the dispute in *Van der Peet*, are: the problem of essentialism; the problem of ethnocentric bias; and the increase in identity politics which brings with it, according to certain critics, a tendency both for distracting us from more important issues and for generating more and more disputes.

Finally Eisenberg asks whether, on balance, the development of a standard set of criteria to be used in the public assessment of minority identity is more likely to improve or impoverish the protection of minority rights. She concludes that identity can be a useful device but that it must avoid attempts either to crystallise the meaning of group identities or to tie groups to practices that are anachronistic or stifling. Secondly, the criteria used in the assessment of identity should perhaps incorporate a broader purpose into the whole process, such as ensuring the continued survival and flourishing of the minority community. And thirdly, the project of protecting cultural identity is but one within the broader struggle by Aboriginal groups for self-determination and other wider claims. In this way reasoning about the identity of another group can help to generate institutional change and assist in efforts to resolve minority conflicts fairly.

By calling for a transparent set of criteria for assessing identity claims so that institutions will deal with these claims more fairly and systematically in a context that is more alive to threats of harm to individual or group claimants and to biases which exist in many institutional practices and methods by which minority claims are currently assessed, Eisenberg's theory in a sense echoes De Schutter's search for a third way that recognises the importance to individuals of their cultural identities but which also acknowledges that identities are multiple, over-lapping and diffused; hence an essentialist approach which excessively prioritises one site or articulation of identity will often represent an over-simplification of a complex cultural configuration and may lead to injustice for individuals by caricaturing, and hence failing to facilitate properly, their variegated patterns of identity and loyalty. Her approach also seems to elide in normative terms with Kymlicka's deep suspicion with internal restrictions (and hence perhaps to contrast somewhat with Newman's approach); it seems that for Eisenberg no less than Kymlicka, internal restrictions on the meaning and development of identity belie the complexity of identity patterns

within and across cultural communities, risking the possibility that dominant voices within cultural groups will be permitted to marginalise certain individuals leading to more marginalised accounts of the meaning of particular identities.

Territorial self-determination also forms the central focus of Sonia Harris-Short's chapter as she addresses the issue of aboriginal self government in Canada in the context of the highly sensitive issue of child welfare. On the one hand she notes that there has been much suffering and inter-generational damage done to aboriginal communities in the past by the policies and practices of Canadian child welfare, and as such most commentators have identified the solution to be the implementation of First Nations self-government with full devolution of child welfare from provincial or federal governments. However, Harris-Short also argues that within certain native communities problems of domestic violence and sexual abuse exist, which make the issue more complex than simply one of the granting or denial of self-government over this issue. Therefore, a balance is needed and as such the aim of her chapter is to explore whether a clear and rational legal framework exists in the area of self-government over child welfare that will guarantee aboriginal autonomy while also protecting potentially vulnerable children living within aboriginal communities.

She observes that on the one hand Canadian constitutional and political developments have been moving towards recognition that family matters should fall within the jurisdiction of aboriginal governments, but that on the other the Canadian state also has a responsibility for child welfare across the state. She argues that the existing system goes too far towards permitting interference in aboriginal affairs with the Canadian Government continuing to impose non-native values on First Nations communities, and she contends that this is tantamount to cultural imperialism. Although the Canadian government has an understandable commitment to the core liberal values of Canada's constitution, the current system does not offer genuine self-determination to indigenous peoples.

However, although far more autonomy for aboriginal peoples is needed, the Canadian public do not seem prepared to accept this. Therefore, she argues that aboriginal communities may have to look beyond the Canadian State to international law for a solution. It is in the arena of international law that significant strides are being made. Although the right of indigenous peoples to self-determination has been generally encapsulated within the concept of 'internal' rather than 'external' self-determination, given that indigenous peoples are not entitled to, and generally don't want, full statehood under international law, Harris-Short notes that something of a 'third way may be developing; i.e. a new and distinctive collective right to self-determination for indigenous peoples which is wider than the internal right of self-determination that currently exists for national minorities, but which falls short of the full right of external self-determination and statehood which is an established international legal right of colonial peoples. Although the prospect of this new concept of aboriginal self-determination becoming a full, positive legal right is to say the least some way off, Harris-Short is encouraged by progress to date. Such a development would offer an important measure of decolonisation and autonomy for indigenous peoples, and it would also be more readily accepted by states than would a right to full, external self-determination since states would not be conceding a legal right of secession. Harris-Short also notes that such a development would not

only confer rights but would also impose duties upon aboriginal peoples to accept the principles of international law in general, including international human rights standards and established rights concerning child welfare. Harris-Short does not envisage very much difficulty here since these values are already generally fully accepted by aboriginal peoples. In fact the importance of child welfare is recognised by the UN Draft Declaration on the Rights of Indigenous Peoples Article 33 which specifically refers to international human rights guarantees for vulnerable individuals living within self-determining communities. One final question raised by Harris-Short is whether there is a danger that international law, as the creation of states, may itself be seen as itself a western, ethnocentric, colonial regime which merely replaces the dominant role of the state in dictating solutions for aboriginal peoples. But despite this concern she argues that if international standards are drafted carefully and in a way that is sensitive to aboriginal cultures then they may be accepted by these communities as fully reflecting their own values and standards.

Kathryn Last also considers the contemporary condition of aboriginal peoples in the context of both municipal and international law in her focus upon claims by sub-state groups for the return of objects of cultural heritage. Hitherto this process has in fact taken place not through legal processes at all, since sub-state groups are invariably excluded from these, but as a result of negotiated repatriation settlements. In addressing these negotiated settlements she employs examples from Canada, the UK and the US, looking at both international and domestic law to highlight the problems faced by groups in making claims. She begins by looking at three preliminary issues, the definition of cultural heritage, the role of the repatriation process, and the distinction between restitution and repatriation. All of these it is argued illustrate the importance of the return of cultural heritage as well as the difficulties that arise in framing or applying substantive law in this area.

In terms of the definition of cultural heritage, the issues which are relevant to claims by groups are the role of cultural heritage in identity formation and control of the process of definition, both of which affect legal claims for return in terms of establishing a sufficient interest in an object and determining whether that object is covered by the relevant law. Control of the process of definition is particularly important for the heritage of sub-state cultures since it raises the question of whose definitional voice is, or should be, determinative in asserting the value of the object. The second preliminary issue, the role of the process of return, embraces different aspects: recognition of the relationship between the object and the group; and the symbolic function of reparation for and recognition of the group. In terms of the third preliminary issue it is important to distinguish between restitution and repatriation. The former is the return of an object to its owner based upon traditional property rights, where its character as an item of cultural heritage is generally irrelevant; repatriation, on the other hand, is return of an object to a particular territory which focuses avowedly upon the cultural value of the object. Much of the rest of the chapter addresses how sub-state groups are excluded from legal mechanisms for restitution of cultural heritage when the object is located in a state other than that within which the group is located. Here the rules of private international law are unhelpful because traditional rules of property law protect possessors of such objects. Claims for repatriation are also difficult to pursue for different reasons: the sub-state

group may be dependent upon its host state to make a claim on its behalf; also the group may need a representative or institutional structure to make a claim, and the existence of such a structure may depend upon whether the group already possesses devolved autonomy. Finally Last notes that in certain states laws have been passed to facilitate the repatriation of cultural heritage, and she concludes by addressing briefly the legal regimes in the US, Canada and the UK, each of which take very different approaches to this issue.

Part III of the book examines how the constitution of the multicultural state has become a battleground in recent times for the playing out of cultural disputes. This has involved contentious disputes before constitutional courts but has also witnessed deeper levels of argumentation concerning the very tenor or spirit of a particular constitution and the ways in which it represents the cultural and national identity(ies) of the state's citizenry.

Mayo Moran's chapter addresses the equality guarantee contained in section 15 of Canada's *Charter of Rights and Freedoms* which is often lauded both in Canada and elsewhere for its strong substantive conception of equality in emphasising the inherent dignity of the individual. Moran notes that the early case law on the *Charter* justified this perception of section 15 as a strong embodiment of a substantive guarantee of equality in contrast to more formalistic readings of equality such as that of the Fourteenth Amendment to the American constitution. This issue is central to contemporary debates about culture and its constitutional accommodation because it raises the whole issue of neutrality. As has been observed, theorists like Kymlicka refute the idea of nation-states and dominant societies as being neutral in cultural terms; instead they argue all such societies operate as homogenising devices that serve to entrench, foster and promote their own cultural particularisms. Moran's chapter is a close, forensic analysis of one particular instance of how processes of constitutional interpretation can act in such a way as to impose, often unconsciously, the cultural preconceptions of certain dominant ways of thinking within a society. The concept of equality is her focus given its central importance in the management of difference. The idea of equality is fundamental to the normative self-confidence of liberal constitutionalism, since the idea of the equality of individuals before the law underpins the wider sense of legitimacy that contemporary western legalism draws upon in justifying the moral authority of its legal and constitutional systems. But in fact here we must step back and ask fundamental questions about constitutional interpretation. Given that many consider the concept of cultural neutrality to be a myth, it is significant that this idea of neutrality is called upon to underpin the notion of equality: if legal processes operate neutrally then they are capable of treating all people equally regardless of their cultural backgrounds. However, if neutrality within the democratic state is itself a chimera, then it seems we also need a more robust and critical approach to analysing claims to constitutional equality, since its meaning in practice is, like the notion of neutrality, also subject to the same cultural and other imbalances which pervade social structures.

Moran's thesis is that in recent times the Supreme Court of Canada has adopted a more conservative position in its application of the equality principle. Although the rhetoric employed by the Court remains strong, the focus of section 15 has shifted, and one particular device that is now used by the courts in determining whether the

equality principle has been violated is the concept of 'the reasonable person'. Moran argues that this idea is now central to equality law because it is concerned with a particularly difficult but important issue, namely which decisions are and which are not discriminatory. For Moran it is especially odd that a court as progressive as the Supreme Court of Canada, in attempting to resolve equality issues, should turn for help to a concept that has always been a difficult and imprecise tool, and one which has in fact been criticised for leading to *inegalitarian* outcomes. The concept of the reasonable person seems to suggest that it is possible to ascribe neutral characteristics to a hypothetical actor or observer, when in fact, Moran argues, a basis of neutrality is very difficult to achieve in a situation where deep, structural inequalities prevail. Instead the court should have looked for a more contextualised stance from which to determine discrimination issues.

One important area in which the benchmark of the reasonable person has been employed is the determination of culpability such as in the criminal law defences of provocation and self-defence. These cases illustrate how problematic a standard it is to use given its high degree of indeterminacy. And in this context Moran asks a number of important questions concerning how we are to determine the precise nature of the subjective and objective characteristics of the reasonable person and indeed which characteristics of the reasonable person are fixed or objective and which are subjective and hence variable. Often the test collapses into notions of 'common sense' or 'ordinary' standards; but again these concepts are potentially very problematical in the discrimination context because discrimination itself often stems from common beliefs and attitudes, and therefore there is a danger that the reasonable person standard will actually legitimise discriminatory attitudes within the law itself. Accordingly, it is essential to separate the normative ideal of reasonableness from any association with what is ordinary or customary.

Moran then reviews recent cases before the Supreme Court of Canada in which the court has applied the reasonable person standard in section 15 discrimination analysis. She observes the problems that the court has faced in using this standard, problems which judges themselves at times are aware of. Despite efforts to use the principle to help establish an idealised judicial point of view, the over-riding problem remains that the reasonable person test can remain, even when applied by judges, a vehicle for the crystallisation of common prejudices within legal standards or a way of justifying the judge's position by accrediting it with a veil of objectivity. Therefore the identification of an objectifiably 'reasonable' position has the unfortunate consequence of effectively declaring the unsuccessful equality claimant to be unreasonable. In conclusion Moran advocates that the test should no longer be used. Instead the Court should express its own reasons for its judgments, taking responsibility for a decision not to accept a claim of discrimination rather than attempting to give its decision a cloak of objectivity by applying a purportedly reasonable person standard in justification for its own inevitably subjective opinion.

The final two chapters of the book address the debate about the cultural identity of the state in terms of the political and constitutional status of sub-state cultural and societal groups. They address in particular the dispute between Quebec and the rest of Canada concerning Quebec's claims to constitutional recognition of its sub-