



Book Reviews

Multicultural Jurisdictions — Cultural Differences and Women's Rights

Ayelet Shachar

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Multiculturalism as a liberal policy to accommodate minority interests in liberal states has gained more and more attention from political theorists. Its defenders argue that rights accorded to minority cultures are necessary in order to protect them from oppression by the majority state. Its critics often argue that such rights give leeway to illiberal groups to oppress their own members, particularly women, whose discrimination is often justified on the grounds of 'traditional' cultural practices. Shachar helpfully addresses this central debate, by examining the jurisdictional tensions between state, *nomoi* groups (i.e. groups that *share a comprehensive and distinguishable worldview that extends to creating a law for the community*, p. 2), and individual group members. She provides a model of conflict resolution that is sensitive to the concern of liberal states for citizenship rights and individual interest for equality and autonomy while keeping in mind the need to safeguard minority cultures that do not necessarily subscribe to liberal values. In her model of adjudication, Shachar focuses on family law as an area of law that pertains to the community because it is through the family that cultural values are transmitted while often discriminating against women. Her motivation is clearly to design a model that would avoid putting members of cultural minority groups in the deadlock position of having to choose between either cultural affiliation or citizenship rights.

Shachar identifies religious and cultural minorities as the groups most prone to come into conflict with majority state laws, while using examples taken from the accommodation of Aboriginal Peoples to illustrate her point. Indeed, the starkest conflicts between state, group, and individual will arise from those minorities that are embedded in a liberal state yet aim for more autonomy by claiming more encompassing self-government and self-determination rights. Put differently, those cultural groups that aim for *political* and *cultural* accommodation, including their own community laws.

To tackle conflicts between cultural minorities and the liberal state that may arise from different conceptions of law, Shachar emphasizes that state and minority groups should share responsibilities for regulating contested sub-matter areas in her proposal for a joint governance arrangement. For example, when it comes to marriage, the religious community should implement rules for



the wedding procedures, while the state should regulate the possibility of divorce, both being sub-matters to the legal domain of marriage. As an example pertaining to Aboriginal Peoples, Shachar explains ‘sentencing circles’ that have been established in Canada. This joint governance arrangement divides the task of trying criminal Aboriginal offenders into, first, the process of conviction, performed by an institution of the liberal state, i.e. the courts, and second, sentencing which is administered by Aboriginal communities. This specific accommodation of Aboriginal Peoples relies on traditional Aboriginal customs and traditions that have survived assimilationist policies in Canada.

Other traditional cultural practices have been changed over time, and it is difficult to tell whether because of assimilation through the colonial state or transformation of the cultural context by Aboriginal Peoples themselves. Cultural change and transformation in itself is not a worrisome process to liberals — it is, however, if it does not come about as a result of group decision-making, but only as a response to external pressures. Yet this seems to me what Shachar is advocating. Investigating different models of joint governance, she argues for what she names ‘transformative accommodation’ of minority cultures in liberal majority states. It is her belief that while some areas of family law should be divided along the lines of ‘sentencing circles’, in other matters the jurisdictional authority should be given to the minority culture — but only so long as the individual chooses to be subjected to minority rules. In other words, if an individual member of a group feels treated unfairly by her cultural group, the state will serve as a jurisdictional back-up and take responsibility for her. Shachar insists that joint governance through transformative accommodation between state and minority group will provide for better protection of formally discriminated group members, especially women, because it allows for a meaningful exit option. If discriminated against, women will have the right to exit because their cultural group has forsaken them, not vice versa. The protection of individual citizenship rights, that is the interest of the liberal state, is thus assured. Individual members, on the other hand, can use state protection mechanisms for their citizenship rights as a vehicle to internally change the discriminatory practices. Shachar speculates that in order to safeguard membership numbers, group leaders will induce minorities to liberalize their cultural laws because the transformative accommodation puts state and group into a competition for individual allegiance.

Why would cultural minorities want to cooperate? Simply because the liberal state could stop protecting the minority cultures in its midst. This is problematic. Shachar assumes that cultural minorities will feel a need to compete for their members in order to remain viable communities. However desirable an end to discrimination of women in some traditional cultures may be, linking Aboriginal cooperation with a threat to suspend cultural



accommodation diminishes Aboriginal autonomy and defies the idea of protection from oppression through cultural minority rights — quite in contradiction to Shachar's sensitivity for cultural minority needs and the liberal principle of autonomy with which she starts out.

Further, Aboriginal Peoples will have to cooperate in a liberalization process that they may or may not genuinely wish for. This smacks of assimilation. Thrown into a competition with a liberal majority state over the allegiance of its members, Aboriginal Peoples will change some cultural traditions and practices because of external pressure from the liberal state. To my mind, the injustice of the transformative accommodation is exacerbated by the colonial history of assimilation and oppression that has put Aboriginal Peoples continuously on the losing end.

Shachar has set the stage for a more nuanced debate of the conflicts between liberal state, cultural minorities, and individual members of both. While the model of joint governance she proposes has some flaws, it cannot be ignored in the muddied waters of multicultural debates that have to deal with diverse values and needs of cultures.

Christine Straehle
McGill University.