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# The Pervasiveness of Culture in Conflict

Pat K. Chew

Mahiki is the process of examining one layer at a time, of inching toward the source of trouble to untangle emotions, actions, and motivations, which will, in turn, uncover yet another, deeper layer of the same. In the process of mahiki, the haku deals with only one problem at a time, tracing it from start to finish until it can be fully understood. Imagine mahiki as peeling back the layers of an onion. It is the heart of a ho'oponopono, the process that enables the family to come closer to *mihī* (forgiveness) through the identification of *hala* (fault or transgression) and *hīhia* (entangled emotions).<sup>1</sup>

While others argue whether the concept of "culture" should be considered at all in the study of conflict, I begin with a different and perhaps controversial proposition:<sup>2</sup> that culture is the perception-shaping lens through which we experience conflict.<sup>3</sup> I take as a given that culture is critically important, and I move ahead with two salient questions. To what extent do we recognize the pervasiveness of culture in understanding conflict? In what ways do we use our recognition to help resolve conflict more constructively?

The concept of culture has been the focus of much scholarly attention and debate, particularly in anthropology. My own evolving definition is that culture is a common system of knowledge and experiences that result in a set of rules or standards; these rules and standards in turn result in behavior and beliefs that the group considers acceptable. Consistent with this broad definition, I suggest that individuals of different races, ethnic groups, religions, genders, and socioeconomic classes, for instance, have distinct cultures and

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1. "Mahiki" is a part of the native Hawaiian dispute resolution process, "ho'oponopono." See Manu Aluli Meyer, *To Set Right Ho'oponopono, a Native Hawaiian Way of Peacemaking*, *Complete Lawyer*, Fall 1995, at 30, 33.
2. For instance, as we later discuss, some feminist scholars have described "culture" as a coercive and false justification for the repression of women's human rights. In this essay I assume that culture is a reality that needs to be understood, while recognizing that the concept of culture, like any other concept, can be manipulated in harmful and undesirable ways. By recognizing and better understanding the role of culture in conflict, I believe we are in a better position to learn to use it constructively and positively. For further discussion, see *The Conflict & Culture Reader*, ed. Pat K. Chew (New York, 2001).
3. For further discussion, see Kevin Avruch & Peter W. Black, *Conflict Resolution in Intercultural Settings: Problems and Prospects*, in *Conflict Resolution Theory and Practice: Integration and Application*, eds. Denis J. Sandole & Hugu van der Merwe, 131 (Manchester, 1993).

cultural profiles. Furthermore, our culture shapes the way we approach conflict and conflict resolution—including our values, norms, and conduct. It even influences how we define conflict itself and what we consider acceptable or desirable goals of problem solving.

At the same time, my definition of culture recognizes the multiplicity, fluidity, and saliency of culture. It assumes that each of us is simultaneously a member of myriad cultural groups (multiplicity) and that our membership in a cultural group may change over time (fluidity). In addition, the extent to which we identify with or are influenced by a particular cultural group may change depending on the situations in which we find ourselves (saliency). This view of culture also is sensitive to the risk of overgeneralizing. Being a member of a particular culture does not necessarily mean that in any specific situation you would adhere to the rules or norms typically characteristic of that culture.

This essay offers a beginning roadmap for exploring the cultural context of conflict. In the first part we begin by understanding our own cultural profile (noting some useful social science constructs for describing distinct cultural profiles), and then we discuss how our perception of others' cultural profiles makes a difference. The cultural landscape becomes both more realistic and more complicated when we take into account the interactive dynamics between the cultural profiles of the multiple participants (including parties, agents, and decision makers) in a typical dispute resolution process. Then moving beyond the more apparent "people" components of culture, I introduce the idea of governing institutions in which conflicts occur, noting that these institutions too have relevant cultural profiles.

The second part identifies the tensions between, on one hand, the pervasiveness of culture in conflict and, on the other hand, American legal traditions that appear contrary to the incorporation of culture into dispute resolution processes. I note examples of social-political and philosophical dilemmas. Finally, there are practical challenges to bringing this recognition of the pervasiveness of culture into our teaching and practice of conflict resolution.

### **Understanding the Cultural Context**

#### *Our Own Cultural Profile: Who Am I?*

Social science research offers provocative insights into the way culture creates the backdrop for conflict. Social scientists have identified and studied constructs that can be used to describe approaches to conflict. These constructs are particularly useful in providing us with a conceptual basis to better understand and critique our own cultural profile and profiles of other cultures. They help us to answer the question *Who am I?*

These constructs identify patterns and attributes that distinguish one group of people from another—offering contrasts between the ways individuals approach conflict or conflict resolution. The constructs of individualism/collectivism and high-context/low-context illustrate.

*Individual/collectivism.* One of the most widely researched of these social science constructs, the construct of individualism and collectivism has been

used to analyze cultural differences in a range of contexts, both domestic and international.<sup>4</sup> This construct focuses on what people value and how they orient their lives. Collectivists pay the most attention to their own cultural groups (their in-groups), which tend to be homogeneous and hierarchical. They adhere to group norms and emphasize group harmony and interests. While self-identifying with their group, they simultaneously look for ways that make them distinct from out-groups. Individualist cultures also have in-groups and out-groups, but individualists emphasize personal goals over in-group goals. In disputes, for example, they are driven more by their personal likes and dislikes and cost/benefit analyses. In contrast to collectivist cultures that prize duty, interdependence, and obedience, individualist cultures value self-reliance and independent thinking.

*High-context and low-context cultures.* Edward Hall and others have studied how groups and individuals think, act, feel, and interpret communication differently.<sup>5</sup> In particular, they contrast the communication patterns and meanings of high-context cultures (associated with, for example, Chinese, Japanese, and Vietnamese) and low-context cultures (associated with, for example, North Americans, Germans, and Scandinavians). In high-context cultures, the meaning of a message is embedded in the implicitly shared social and cultural knowledge of the group. Often what is not said and nonverbal communication are more revealing than the literal words. In low-context cultures, communication and meaning are more literal and direct; what is said is the actual message. The parties do not customarily intend or seek interpretations beyond that.

Building on these premises, we can see that conflict also is manifested differently. Stella Ting-Toomey has written:

In viewing the same conflict episode, for example, in an organizational setting concerning the rejection of a sales proposal by a North American supervisor in the [low-context culture] context, a North American subordinate will probably view the conflict episode very differently than a Japanese subordinate who has submitted the proposal. The North American subordinate will probably enter the conflict situation with heated discussion and issue-oriented arguments. He or she will probably produce facts, figures, and graphs to illustrate his or her case. In contrast, the Japanese subordinate will probably be dumbfounded by the direct, outright rejection and will then proceed to analyze the conflict episode as a personal attack or a sign of mistrust. In fact, he or she will probably resign as soon as possible.<sup>6</sup>

Low-context individuals are better able to disassociate the person involved in the dispute from the conflict issue. They “can fight and scream at one another over a task-oriented point and yet be able to remain friends after-

4. Harry Triandis & C. McCusker, *Multimethod Probes of Individualism and Collectivism*, 59 *J. Personality & Soc. Psychol.* 1006–09, 1020 (1990) (also noting societal antecedents and consequences of these cultural approaches).

5. Stella Ting-Toomey, *Toward a Theory of Conflict and Culture*, in *Communication, Culture, and Organizational Processes*, eds. W. Gudykunst et al., 71, 75–82 (London, 1985).

6. *Id.* at 77.

wards.”<sup>7</sup> High-context individuals, however, bring to the table presumptions about appropriate roles and conduct for persons of a particular stature and background that are inseparable from the specific conflict. The often-heard American principle “Separate the people from the problem”<sup>8</sup> would be a cultural mismatch in a high-context culture.

In addition to individualism/collectivism and low-context/high-context, there are numerous other constructs. Power distance (indicating how disparities in power and equality are perceived), masculinity/femininity (indicating the extent to which people are expected to conform to designated social roles of men and women), and uncertainty avoidance (indicating how people react to the lack of structure and clarity) are examples of constructs that social scientists are currently researching.<sup>9</sup>

Research illustrates how these constructs can help us understand our own cultural profiles. One study, for example, compared the negotiation approaches of buyers and sellers in low-context and high-context cultures. People from the high-context culture (the Philippines) were less confrontational and emphasized interpersonal interactions more than those from the low-context culture (the United States). Consistent with their cultural profile, Filipino negotiators were inclined to consider the other party (*pakikisama*, or camaraderie) and to reciprocate behaviors demonstrated by the other party (*utang-na-loob*)—traits more consistent with a cooperative problem-solving approach. In contrast, the American negotiators were more competitive and self-serving.<sup>10</sup>

While these varied constructs provide a framework for comparing and understanding how people from different cultures approach conflict, some emerging social science research aids our understanding of how our cultural profiles are directly relevant to legal disputes. For example, dozens of empirical studies in a range of occupations confirm that women and men perceive workplace conflict and harassment differently. Likewise, emerging research indicates that people of different racial backgrounds perceive discrimination and harassment distinctively.<sup>11</sup> This rich research is relevant, for instance, to the laws of sexual and racial harassment. It clearly indicates that, in selecting a “reasonableness” standard for determining whether the supervisor or coworker’s conduct toward an employee has been “severe and pervasive harassment,” it makes a difference whether the standard is a gender-neutral or

7. *Id.*

8. See Roger Fisher et al., *Getting to Yes: Negotiating Agreement Without Giving In*, 2d ed., 17–22 (Boston, 1991).

9. Geert Hofstede, *The Cultural Relativity of the Quality of Life Concept*, in *Culture, Communication and Conflict: Readings in Intercultural Relations*, ed. Gary R. Weaver, 131 (Needham Heights, 1994).

10. Alma Mintu-Wimsatt & Jule B. Gassenheimer, *The Moderating Effects of Cultural Context in Buyer-Seller Negotiation*, 20 *J. Personal Selling & Sales Mgmt.* 1 (2000).

11. K. A. Dixon et al., *A Workplace Divided: How Americans View Discrimination and Race on the Job*, Report of Joint Project with the Center for Survey Research and Analysis, University of Connecticut, 2002 (on file with author). See also Pat K. Chew, *Unwrapping Racial Harassment Laws* (work in progress on empirical study of racial harassment cases including a survey of relevant social science research).

race-neutral “reasonable person” or the standard of a person of a particular gender and race.

*Our Perception of Others’ Cultural Profiles: Who Are They?*

Not only our own cultural profiles, but our perception of others’ cultural profiles affects the cultural landscape in conflict situations. Consider these illustrations.

*Situation 1.* Imagine that you are waiting in a modest but modern office for the bank officer to arrive to renegotiate the terms on your twenty-year house mortgage, which has become increasingly burdensome. The officer enters the room confidently and with a formal but friendly greeting. She has a dark olive complexion with graying mid-length hair, not too tall, wearing a sari, and speaking with an accent that tells you she is not a native speaker of English.

What assumptions do you make about how she will handle the negotiations? Do you anticipate that she will be rule bound—or flexible—about your financial problems? And why do you make those assumptions? What if instead of being the bank officer, she is the customer and you are the bank officer? What is your assessment of her cultural profile? Which of her cultural characteristics would be salient in your consideration of her creditworthiness?

*Situation 2.* Suppose instead that you are a party in a mediation. You and your soon-to-be-former spouse are bitterly contesting custody of your three children and the distribution of sizeable assets. You have everything at stake—both personally and financially. The mediator walks in the door. He is a young black man, dressed casually but neatly, with close-cropped hair. He nods first to your spouse, then to you. What assumptions do you make about his values, norms, and sense of fairness? Or suppose instead that the black man is your spouse’s attorney and has accompanied your spouse to the mediation. What are you thinking?

Drawing on what we see, hear, and know about someone in a dispute or problem-solving process, we make assumptions about that person’s cultural profile.<sup>12</sup> Depending on our role in the dispute, these assumptions have different consequences. As the customer in the mortgage negotiation situation above, it could affect the way you present and what you disclose about your financial and personal situation. It could also shape your satisfaction with and your perception of the fairness of the banker’s decisions. As the bank officer, it shapes your assessment of the customer’s creditworthiness, including your ultimate decision on the transaction’s terms. When the black man is in the role of mediator or in the role of opposing counsel in the dispute over custody and the distribution of assets, it could shape your and your lawyer’s mediation strategy.<sup>13</sup>

12. See, e.g., the work of Mahzarin Banaji and others. M. R. Banaji & R. Bhaskar, *Implicit Stereotypes and Memory: The Bounded Rationality of Social Beliefs*, in *Memory, Brain, and Belief*, eds. D. L. Schacter & E. Scarry, 139-75 (Cambridge, Mass., 2000); R. P. Abelson et al., *Perceptions of the Collective Other*, 2 *Personality & Soc. Psychol. Rev.* 243 (1998).
13. Our cultural profiles affect, for instance, our perceptions of procedural justice and distributive justice. See Cynthia Lee et al., *Power Distance, Gender and Organizational Justice*, 26 *J. Mgmt.* 685 (2000).

In a legal case, for instance, the judge's perception of the plaintiff's cultural profile may well affect the outcome. My recent research on racial harassment in the workplace illustrates these points, including the challenge to the judge of correctly gauging others' and her own cultural profiles. Recall that under the federal civil rights laws, the court is asked to determine whether the plaintiff-employee's perception that he was racially harassed is "reasonable," and is not due to the employee's being hypersensitive, idiosyncratic, or even delusional.

In making this judicial determination, whose frame of reference is used? Most courts refer to a hypothetical "reasonable person" in the plaintiff's position; that is, would a reasonable person find the supervisor's or coworker's treatment racially harassing? But the courts do not make clear who they have in mind as standing in the shoes of this reasonable person. What cultural profile and beliefs does this reasonable person possess? Does the reasonable person personify society at large, individuals in the particular profession or industry, or both men and women? Or is the standard what this particular judge or judges collectively consider reasonable? Furthermore, courts do not offer any empirical evidence that their standard accurately reflects the perception of any of these groups. At the same time, as the sexual harassment and racial harassment research indicates, whose perspective you use might well make a difference.

In contrast to this generic reasonable person standard, some courts, most notably in the Ninth Circuit, have adopted the perspective of a reasonable victim with this plaintiff-employee's specific attributes, particularly the plaintiff's race. This presents the judge with a formidable challenge: the judge must correctly gauge the employee's cultural profile and the cultural profile of the racial group to which the employee belongs.

Consider the situation in a Ninth Circuit case where the plaintiff-employee—an Asian-American woman of Indian origin, over forty years old, employed as a nurse in a rehabilitative hospital for mental illness—stands before the judge arguing that she has been racially harassed.<sup>14</sup> The judge is obligated to use the perspective of the plaintiff—that is, the perspective of a reasonable Indian-American women of this age in this occupational setting. What does that mean? It is ironic that the law is asking the judge, who in this case is a seventy-year-old white male looking through his own cultural lens, to determine the cultural profile of Indian-American women in general, and then to assess whether this particular Indian-American woman's cultural profile is consistent with that group profile. He ultimately (but perhaps not surprisingly) concludes that the plaintiff was not reasonable in her own assessment of racial harassment. Without empirical evidence of what a "reasonable Indian-American woman" would conclude, he is left to deduce his own sense of what her sense of reasonableness should be.

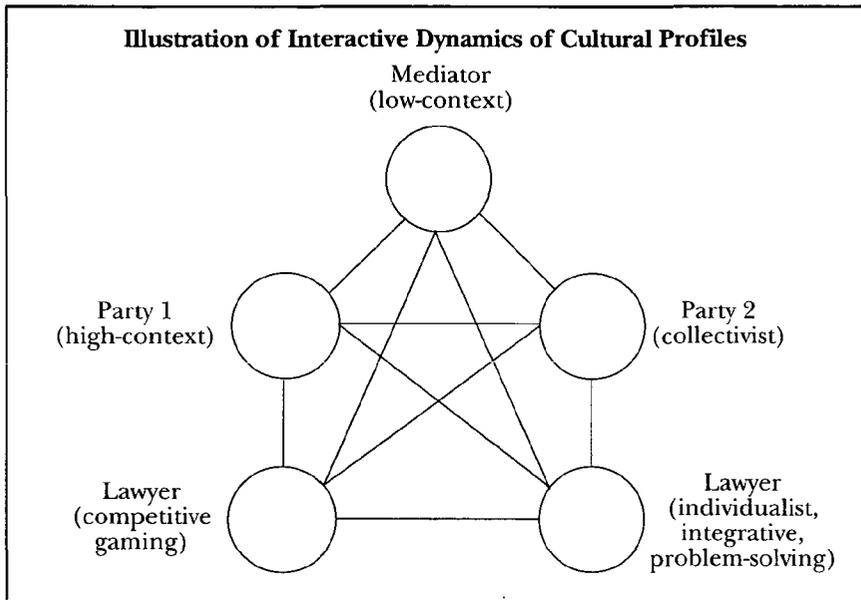
This case prompts numerous empirical inquiries. For example, would a judge who belongs to the same gender or racial group as the employee reach a different or more accurate conclusion? Which of the judge's cultural groups is most salient in this decision-making process?

14. Prem Chaudhary v. Telecare Corporation, 200 U.S. Dist. LEXIS 17729 (N.D. Ca. 2000).

*Interactive Dynamics: Who Are We Together?*

A thorough and realistic assessment of the cultural context of disputes is even more complicated than understanding your own cultural profile and reflecting on your perception of others' cultural profiles. The interactive dynamics and varied roles of the participants trigger a whole array of interdependent cultural profiles.

Consider a hypothetical ADR process, as depicted in the illustration below. There are two parties; each party is represented by agents (presumably lawyers); and there is an arbitrator or mediator. But what are each of their cultural profiles, and how do they conflict with or complement each other?



If a lawyer and her client have different profiles (for instance, if the lawyer is more individualist but the client is more collectivist), what agency-principal issues will arise? How will they prioritize objectives and strategies differently, given their differing values and conflict resolution styles? Given the critical role of the mediator, what if his cultural profile is distinctly different from one or both of the parties? For instance, if one party uses a high-context style of communication, but the mediator is more low-context oriented and is generally not conscious of a high-context style, will that increase the probability that the mediator will misconstrue the party's literal (and nonliteral) communication and hence misunderstand the fundamental dispute or the party's underlying interests? As we consider other individual characteristics, such as age, race, class, occupation, or religion, how might that reconfigure each person's cultural profile? In what ways will each participant "frame" the dispute (defining the conflict, the interests of the disputing parties, and their own underlying interests) and then "game" the dispute (determining their strategy and how to implement that strategy)?

Once the framing and gaming strategies begin to emerge, how will the cultural profiles of the participants affect their interpretations and reactions to the amalgamation? How will each participant's perception (whether accurate or not) of every other participant's cultural profile affect the dynamics? What are the interactive effects and how will they affect the options generated and any movement toward resolution?

*Governing Institutions: What Is the Broader Context?*

In addition to the more apparent "people" components of the cultural context, we also should consider the institutional frameworks in which disputes occur. These frameworks provide the broader infrastructure—the rules, organizations, systems in which conflicts operate. The institutions may be formal with codified rules (such as legal statutes) and sanctioned interpretations and policies (such as those found in court opinions). Or the institutions may be creations of nongovernment private organizations—such as industries; neighborhoods; professional, religious, or political groups—that have evolved over time to address business, moral, or social issues. These private institutions also have distinguishable values and rules of conduct, although they may not be directly articulated.

I posit that these governing institutions have cultural profiles of their own and may be critical in shaping the dispute resolution process. I will illustrate with two examples of types of governing institutions, the legal system and industry groups.

*Legal system.* Each legal system has its own distinctive attributes, embodied in both its procedural and substantive rules as well as the ways in which those rules are interpreted and enforced. The U.S. system, with its particular historical basis and philosophy, is generally characterized by advocacy and adversarialness, adheres to the common law principle of precedents, and is theoretically predicated on notions of justice and individual rights.<sup>15</sup> This cultural profile of the American legal system is apparent, for instance, in the resolution of legal disputes in the litigation process.<sup>16</sup>

Particular subject areas of U.S. laws offer more specific cultural distinctions. In state corporate laws, for example, courts and statutes address disputes between shareholders and corporate management over whether executives have breached their fiduciary duties. What the courts value is apparent: managerial discretion, entrepreneurship, and risk taking in the interest of the corporation's and shareholders' economic profits. Given this cultural profile, it is not surprising that the actual legal standard for directors' and officers' decision making and fiduciary duties is low.<sup>17</sup> Employment laws, although

15. Jerold S. Auerbach, *Justice Without Law?* 69–93 (Oxford, 1983); Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Post-Modern, Multi-Cultural World*, 1 J. Inst. for the Study of Legal Ethics 49 (1996).

16. There are exceptions to this cultural model, such as *ho'oponopono*, as illustrated at the beginning of this essay. See note 1.

17. See Pat K. Chew, *Director's & Officer's Liability* § 2:6 (Practicing Law Institute 1993, updated 2002).

much more eclectic than state corporate laws, also generally prize managerial discretion but sometimes try to balance it against societal innovation and individual rights.<sup>18</sup> Even ADR law is developing its own cultural profile or, perhaps more aptly labeled, its own personality conflict. In its evolving jurisprudence, it struggles over ADR's original promise of efficiency and predictability versus its idealized aspiration to be a fairer and more humane forum than that offered by traditional litigation.

*Industry.* Industries and occupational areas often have their own distinct cultural profiles in resolving disputes. Within these industries and occupations, identifiable subcultures also emerge. For instance, the events surrounding the Enron debacle offered dramatic and timely examples of the cultural profile of the management of some large corporations. Sherron Watkins, former Enron vice president, has described Enron executives' culture of flamboyance, disregard for proprieties, and high-living.<sup>19</sup> The cultural profiles of politicians, legislators, and the securities industry also are being revealed in their attempts to address the management and accounting problems that Enron revealed.<sup>20</sup>

In an almost surrealistic way, the war in Iraq has offered daily examples of the cultural profiles of two industries: the military (of both the U.S. and Iraq) and the media (of the U.S. and other countries) covering the conflict. While using advanced technology in its weaponry, the U.S. coalition also adhered to strategies and priorities that are consistent with its culture and history.<sup>21</sup> In prior American military campaigns, for example, leapfrogging over enemy concentrations en route to a target and focusing on the capital city as the ultimate target, even while other major parts of the country are unconquered, have been time-tested although not always successful strategies.

The war also revealed aspects of the media's cultural profile.<sup>22</sup> A newspaper analysis of CNN (a U.S. media station based in Atlanta) and Al-Jazeera (a Pan-Arab media station based in Qatar) revealed the priorities and official positions typical of media enterprises, no matter their nationalities. Both stations are "business operations competing for viewers and advertisers against increasingly aggressive rivals and avidly seeking to please their target audiences."<sup>23</sup> While they must make judgment calls, they both regard themselves as

18. E.g., *Karpinski v. Ingrassi*, 268 N.E.2d 751 (Ct. App. N.Y. 1971); *Outsource Int'l, Inc. v. Barton & Barton Staffing Solutions*, 192 F.3d 662 (7th Cir. 1999).

19. Mimi Swartz with Sherron Watkins, *Power Failure: The Inside Story of the Collapse of Enron* (New York, 2003).

20. See Chew, *supra* note 17, at § 2:7.3.

21. Bob Davis et al., *U.S. Tactics May Seem Novel, But History Offers Some Lessons*, *Wall St. J.*, Mar. 28, 2003, at A1.

22. Another example of media culture was journalist Peter Arnett, who apparently crossed the cultural norms of his industry and was fired. He reportedly made pro-Iraq public remarks that infuriated viewers. "Arnett became the story . . . That was a mistake," explained his former employer, National Geographic Ventures. Joe Flint, *Arnett's Firing: "Celebrity" News Has Its Peril*, *Wall St. J.*, Apr. 1, 2003, at B1.

23. Emily Nelson, *Battle for Viewers Colors TV Picture Coming from Iraq*, *Wall St. J.*, Apr. 4, 2003, at A1.

unbiased and politically independent. The comparative analysis, however, also revealed distinct traits of the cultural profiles of each station and their audiences. Offering numerous examples, it documented the different lenses through which the same conflict was seen.<sup>24</sup> For instance:

*Thursday, March 27: 6 a.m. EST, 2 p.m. in Baghdad.* On CNN, American paratroopers jump from a plane to open up the northern front in Iraq. On Al-Jazeera, a little Iraqi girl in a pink sweater stares out from her Baghdad hospital bed.

### **Tensions Between the Proposition and American Legal Traditions**

While accepting the proposition that culture is pervasive in conflict, I also am sensitive to the caveats and tensions that this proposition presents. Broadly labeled, these tensions may be of a social and political, philosophical, and practical nature.

#### *Social and Political Tensions*

Definitional and interpretive issues abound. Determining the meaning of the concept of “culture” itself is a challenge. Assessing the values, norms, and attributes of a particular culture also depends on one’s perspective. An insider, for instance, has a distinguishable frame of reference from an outsider to the culture. John Paul Lederach describes how a cultural analysis may be more prescriptive (comparing another culture to our culture and using our culture as the model by which other cultures are to be judged) or more elicitive (viewing another culture as the natural order and model from which we try to understand). “Their way of being and doing, their immediate situation, their past heritage, and their language are seen as the seedbed,” and the core concepts of the culture, although alien to the observer, are the beginning points of analysis and understanding.<sup>25</sup> A “culture” also is not static with clear parameters; it is more accurately described as fluid with evolving borders. Furthermore, the saliency of a particular cultural trait will vary depending on the circumstances.

An example illustrates. Mary Patrice Erdmans describes the substantial and growing Polish-American community in Chicago, emphasizing its dynamic and complex cultural identities.<sup>26</sup> While noting the common ancestry, she explains the divisions within the group. Immigrants from different time periods (1870–1913, 1939–59, 1965–89) left Poland for different reasons (political or economic or both) and had dramatically different commitments to and identification with a national Polish identity. These varied cultural profiles reflect in part the political, economic, and geographic faces of Poland during the relevant emigration periods—shaping who emigrated and their reasons for doing so. Moreover, as immigrants evolve into ethnic Americans, their values are transformed.

24. *Id.*

25. *Preparing for Peace: Conflict Transformation Across Cultures* 3, 63–69, 89–92 (Syracuse, 1995).

26. *Immigrants and Ethnicity: Conflict and Identity in Chicago Polonia*, 36 *Soc. Q.* 175–82, 190 (1995).

Another political and social tension is the importance of identifying and studying “cultures” while recognizing the risks of overgeneralization and stereotyping. As Erdman’s research demonstrates, a particular individual within a cultural group does not necessarily have the cultural profile of that group. A third-generation Polish-American’s commitment to Polish nationalism may be quite negligible or even negative as compared to that of the Polish-American community in general. While stereotyping can be a convenient way to simplify a complex world, it also deprives us of understanding the individuality of those involved in the conflict.

#### *Philosophical Tensions*

American legal tradition is predicated on principles of universalism. Rights, duties, and remedies are based on uniform principles and assumptions about what is most valued. Desirable attributes for dispute resolution processes, for instance, are predictability, efficiency, fairness (in process and substance), and effectiveness. A fundamental attribute of our common law system is following precedents, thus ensuring that these universal rules will be repeatedly enforced and reinforced. This tradition of universalism reflects both philosophical and historic doctrines as well as a national self-confidence (perhaps an egotism) that Americans know what is right and most principled.

Recognizing the relevance of culture in resolving legal disputes raises the uncomfortable possibility that universalist principles might not be apt or that the way to define and to resolve a dispute may be dependent on the cultural context in which the dispute occurs. This prospect of cultural relativism has been viewed as a challenge to the hallowed legal and societal traditions of American jurisprudence, and thus as something to be carefully scrutinized.

Two examples illustrate this tension, one found in criminal law and the other in feminist jurisprudence. Under the theory of the “cultural defense” in criminal law, the defense presents and the court considers cultural evidence as an explanation for what would otherwise be criminal conduct of immigrant defendants. As Doriane Lambelet Coleman writes, the rationale is that “the moral culpability of an immigrant defendant should be judged according to his or her own cultural standards, rather than those of the relevant jurisdiction.” While the cultural defense is consistent with “progressive” criminal defense philosophy which advocates that justice should be as individualized as possible, it must be balanced against the risks of “a dangerous balkanization of criminal law, where non-immigrant Americans are subject to one set of laws and immigrant Americans to another.”<sup>27</sup>

Tracey E. Higgins similarly describes the theoretical and practical tension among feminist scholars between universalism and cultural relativism.<sup>28</sup> Western civil rights activists have long argued for the universality of human rights—a core of rights that transcends countries and cultures. In fact, to the extent that religion and culture are cited as justifications for denying women a range

27. Individualizing Justice Through Multiculturalism, 96 *Colum. L. Rev.* 1093, 1094, 1098 (1996).

28. Anti-Essentialism, Relativism, and Human Rights, 19 *Harv. Women’s L.J.* 89-105, 111-15 (1996).

of rights (including the rights to be educated, travel, seek paid employment, and be protected from domestic violence), feminists have argued that these cultural arguments are obstacles to broader political goals. On the other hand, feminist jurisprudence has been grounded in the importance of valuing differences and listening to and accounting for the particular experiences of all women, that is, of being nonexclusionary and nonessentialist. Recognizing the legitimacy of cultural practices in other countries would be consistent with this aspect of feminist philosophy and with cultural relativism.

### *Practical Challenges*

Recognizing and accepting in the abstract that culture is pervasive in conflict is very different from determining what to do with this recognition. We are still left with many practical queries. Consider these examples.

As this essay demonstrates, legal scholars are still in the early stages of acquiring knowledge of the relationship between culture and conflict. While anthropologists and other social scientists have studied the topic in a range of contexts, their focus has not been on areas that are most relevant to us—disputes that involve legal issues and the effect of culture on dispute resolution processes such as arbitration and mediation. A practical challenge then is deciding what information we need and how to acquire that information.

Furthermore, as we acquire the necessary knowledge, how will we use it? What skills do we need to apply this knowledge to our work? How will we relate it to our legal studies, our classrooms, and our practice of dispute resolution? In my courses that consider conflict and culture, I wonder about whether and how to relate discussions of culture and research on the topic with more traditional and typical legal discussions. Students recognize that the topic is nonroutine, some considering it tangential, irrelevant, or distracting from the “real” substantive issues.<sup>29</sup> When I use social science research to provide more specificity, documentation, and relevance, I acknowledge that students are often faced with unfamiliar concepts and methodology. “Thinking like a lawyer” is not the same thing as “thinking like a cultural social scientist,” but the question for us is whether the former should include the latter.

29. Here are some teaching ideas for linking the topic to students’ lives. They are excerpted from *The Conflict & Culture Reader*, *supra* note 2.

1. Think of a heated dispute where different parties experienced and described the conflict differently. How did these differences come about? How did the individuals involved, the cultural norms, or the event itself contribute to these differences? How did the first person to describe the conflict shape the resolution process and outcome? If you were the mediator, how would these factors have influenced you, your way of handling the dispute, or the eventual outcome?

2. There are many ways in which we acquire our own individual “culture,” including the stories that we grew up with. Identify a favorite family story that deals with a conflict or dispute, either taken from a book or passed down orally. Reflect on how the story transmitted important values and approaches to resolving conflict.

3. Graphically depict your own “cultural map.” You might begin by identifying key cultural groups to which you belong. For this exercise, you can define “cultural group” broadly to include groups that have influenced how you perceive the world and what is important to you. These might include your family, ethnic, religious, school, or occupational group. Be creative in how you depict your map. It might be a circle with free-flowing lines to depict the relative importance of and interrelationships between each group.