Over the past several years, studies have shown that public decision-makers in multicultural states sometimes essentialise the identities of cultural and religious minorities (Volpp, 2000; Renteln, 2005; Phillips, 2007; Song, 2007). In some cases, judges and legislators appear to be in the grip of cultural, racial and gendered biases that distort their decisions in ways that stereotype groups. States that adopt multicultural policies exacerbate these tendencies by providing incentives for citizens to use their cultural and religious identities strategically by exaggerating the importance or uniformity of a particular practice or belief in order to secure concessions from the state. In what is by now an extensive scholarship about the risks associated with decision making in multicultural contexts, several critics have proposed alternative approaches to responding to cultural diversity which specifically address the problem of essentialism. This chapter examines three alternative approaches, each of which aims at avoiding essentialism. The first approach avoids essentialism by favouring individual self-identification over collective identity markers to establish the importance of a practice or tradition to an individual’s identity; the second approach asks that individual equality rather than cultural difference is the focus of protection; and the third approach situates minority rights in a framework of collective self-determination rather than cultural accommodation. Each approach aims to avoid some of the pitfalls of essentialism and all are partially successful. But none is free of drawbacks and, as we shall see, the best approach to good decision making is not always one that avoids essentialism.

The problem of essentialism is often a by-product of difficult trade-offs decision-makers encounter in cases about minority accommodation. On one hand, when decision-makers respond to group claims about
unjust treatment by recognising the collective dimensions of cultural and religious practices, they risk essentialising groups in ways that can entrench hierarchies within the group or bind members to static conceptions of their community’s identity. On the other hand, decision-makers can avoid these risks by adopting an approach that avoids the collective dimensions of identity but, in doing this, they are thereby less able to respond to the collective dimensions of injustice. Courts and legislators encounter this dilemma all the time when deciding how to accommodate religious practices, implement affirmative action programmes or recognise particular group members as experts or representatives of the group in negotiations or consultations. In many contexts, good decision making can rely on simplifying identities even though these simplifications may lead to risks commonly associated with essentialism.

Four kinds of essentialism in public decision making

To start, it is worth reviewing four ways essentialism occurs when courts and legislatures consider claims made for the protection of cultural or religious identity. First, minorities can be essentialised when a group practice or tradition is legally recognised as distinctive of the group or as that which makes the group distinctive. Essentialism based on a distinctive feature is found in cases where groups are offered special legal protections by the state if they can show they have a distinctive practice that sets them apart from other citizens. For example, aboriginal communities are often essentialised in terms of their distinctive practices by laws that promise to protect group practices if they can be shown to be distinctive and integral to the community making the claim, such as herding reindeer in the case of the Saami people, or fishing salmon in the case of the Sto:lo (see Borrows, 1997–98; Eisenberg, 2009, ch. 6). In some cases, where legal entitlements depend on possessing a distinctive feature or practice, groups may ‘self-essentialise’ or exaggerate the importance or uniformity of the practice in order to convince those outside the group of its validity. In some cases, the practice can end up defining the group (rather than the group controlling how the practice is defined) and the group can come to depend on adhering to the practice in order to retain favourable access to resources or exemptions to generally applicable laws.

Second, cultural groups are essentialised when the boundaries between them are considered clearly demarcated rather than blurred and where cultures are considered internally uniform so that a characteristic