Yadah Kibar See page

The Free Exercise of Culture

Ethnic Customs, Assimilation and American Law

*by Richard A. Shweder, Hazel R. Markus, Martha L. Minow and Frank Kessel**

"We are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellent practice because the same tolerant impulse protects our own idiosyncrasies" (Supreme Court Justice William Brennan, dissenting, *Michael H. v Gerald D.*, 491 US 141, [1989]).

"It's amazing the things we don't know about this country. I learned that in this country anyone can call the police if they see you pulling your son's ear." Comment by Jorge Arevalo, a Peruvian immigrant in Miami, who had to convince social workers that he was a competent father after an observer in a parking lot complained that he had grabbed his five-year-old by the neck (Ojito 1997).

"When in Rome, do as the Romans do." A piece of advice given by the fourth-century Italian bishop Saint Ambrose to a resident visitor, a devout Christian Berber woman from North Africa, whose norm for fasting in her homeland (do it on Saturday) was in conflict with the local norm (do it on Sunday) in the bishop's home town (based on Poulter 1986).

"Cultural differences are beautiful, but they have nothing to do with the law. We can't possibly have a set of laws for Americans, a set of laws for immigrants, and a set of laws for tourists" (Marceline Walter, director of community education in the New York State Administration for Children's Services, quoted in Ojito 1997).

"The reason for admitting a cultural defense lies not so much in the desire to be culturally sensitive, although that is surely part of it, but rather in a desire to ensure equal application of the law to all citizens. . . . Individual justice demands that the legal system focus on the actor as well as the act. . . . This, in turn, necessitates the introduction of cultural information into the courtroom" (Renteln 1993, pp. 439-440).

"The current battle over bi-lingual education [Hispanic disciplinary practices, Asian arranged marriages, African female excision and coming of age ceremonies, Danish socialization practices permitting parental absence and emphasizing total self-reliance in young children, Islamic animal sacrifice] is the latest chapter in a long history of absorbing 'un-American' elements into the cultural mainstream. It is characteristic of this process, as our culture has evolved from pristine Anglo-Saxonism to the 'ethnic melting pot,' that some members of cultural and racial minorities have been champions of assimilation. But more and more, people have come to identify cultural assimilation as the problem rather than the cure" (Stolzenberg 1993, p. 666).

Scholars from several disciplines—notably anthropology, psychology, and law—have begun to address an overlapping series of questions related to problems of immigration, cultural pluralism, conflict of norms, and legally enforced assimilation in the United States.[1] (1) Which aspects of American law impact on ethnic minority customs? (2) To what extent does American law presuppose, codify and hence inculcate the substantive beliefs and values of a cultural main-

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[1] An initial exploration of this agenda took place in April in Washington, DC under the aegis of the Committee on Culture, Health, and Human Development's Working Group on Ethnopediatrics, which is supported by the William T. Grant Foundation. Participants in the mini-conference on "The Free Exercise of Culture: How Free Ought It To Be?" were: Ronald Barr, Montreal Children's Hospital; Diana Baumrind, University of California, Berkeley; Arthur Eisenberg, New York Civil Liberties Union; Christopher Eisgruber, New York University Law School; Jacqueline Goodnow, Macquarie University; Jill Korbin, Case Western Reserve University; Corinne Kratz, Emory University; Hazel Markus, Stanford University; Usha Menon, Drexel University; Peggy Miller, University of Illinois, Urbana-Champaign; Martha Minow, Harvard Law School; Martin Packer, Duquesne University; Lawrence Sager, New York University Law School; Brad Shore, Emory University; Richard Shweder, University of Chicago; Elliot Turiel, University of California, Berkeley; Unni Wikan, University of Oslo; and Carol Worthman, Emory University.

stream? (3) How much cultural diversity in family life practices ought to be permissible within the moral and constitutional framework of a liberal pluralistic democratic society? (4) How strong are the implications of citizenship for the way people in America marry, arrange a "family," discipline and raise their children, conceptualize gender identity, and so on? (5) What does it mean for an ethnic custom or practice to be judged "un-American"? (6) How do ethnic minority communities react to official attempts to force compliance with the cultural and legal norms of American middle-class life?

Issues concerning cultural diversity and assimilation arise right now for several reasons related to public policy concerns, legal scholarship and practice, and controversial views of culture within anthropology and cultural psychology.

Public policy concerns

The United States and many Western and Northern European nations have experienced a substantial influx of immigrants from countries with cultural and religious traditions that do not fit easily into the mainstream cultural traditions of the host countries.[2] These immigrants often bring with them their own culture-specific ideas about many aspects of life, e.g., standards of femininity and masculinity, ideals of parental authority, marriage practices, patterns of religious devotion, dietary restrictions, dress and worship.

Moreover, many of these immigrants continue to maintain long-term social and economic ties with their countries of origin and are not always eager to abandon their customary beliefs and practices and other signs of cultural identity. In Norway the economic benefits associated with citizenship in the welfare state have encouraged some Pakistani immigrants to engage in hyper-traditional forms of arranged marriage with families in West Asia and North Africa who want to develop an international family network with nodes in Europe and the United States. A Punjabi immigrant may be driving a taxi cab in New York City but could be building a house in Chandigar and carefully chaperoning his daughter to and from school while arranging her marriage in India. A Somali immigrant may be living in Seattle but may not be ready to surrender her cultural identity or jeopardize the prospect for a marriage of her children to other members of her ethnic group; and if an American obstetrician is unwilling to circumcise her daughter (as well as her son) she may journey to Canada or Africa to have the customary coming-of-age ceremony performed. Mexican immigrants working in Los Angeles may so disapprove of the lack of strict discipline and moral training in the local public school that they may opt to send their children back to Mexico to become educated.

Contemporary immigrants to the United States, then, do not necessarily break their ties with their places of origin. Under such circumstances, as Nomi Stolzenberg (1993) remarks, cultural assimilation may be viewed as a mixed blessing or even a problem, rather than a cure; and the question arises whether resistance to assimilation serves as a protective factor that increases immigrants' chances for social success and long-term well-being.

A certain tension is apparent in contemporary mainstream American reactions to the influx of culturally unfamiliar immigrants not necessarily eager to be culturally assimilated. On the one hand, our political ideology, including some important liberal commitments to individual freedom in constitutional law, favors tolerance and permissiveness towards diversity (West 1990). For example, we permit the Amish to lead an insular life, to shun the technologies, values, and representatives of modernity, and to keep their children out of secondary school (*Wisconsin v Yoder*, 406 US [1972]). This is in keeping with a conception of the United States as a haven for religious and cultural diversity, as a land where the "state" maintains a stance of relative "neutrality" vis-à-vis religious convictions and cultural values, as a place where "citizenship" has only weak implications for the way one leads one's private life, for the type of associations and social relationships one forms, for the way one brings up children.

On the other hand, despite the liberal ideal that individual liberty and freedom of choice should prevail and that the state should be "neutral" as to true values and beliefs and not favor or inculcate any single vision of the good life, the American polity has created institutions of regulation and control—such as the Public Health Service and child protection agencies—which have been legally empowered to

[2] Although this essay is framed in terms of the United States, a comparative perspective would obviously enhance understanding of the kinds of issues raised.

intervene in the most intimate aspects of the family lives of immigrants. Concerns about the substantive responsibilities and duties associated with a vision of the good life, which were once lodged within local communities, have been dislodged from families and face-to-face groups and vested in governmental regulatory and administrative agencies. Mexican families in Southern California, just like the Peruvian father in Miami quoted earlier, worry that they will lose their children to the state if they continue to discipline them (for example, with physical punishment) or express intimacy with them (for example, by sleeping in the same bed) in the ways to which they are accustomed. Laws are targeted at the 2,500-year-old coming-of-age ceremonies and tribal identity rituals of African peoples (e.g., female circumcision, male facial scarification), ceremonies, and ritual which are grounded on substantive views of femininity, family life, and in-group identity and solidarity no more exotic than the Amish rejection of the modern industrial world. Asian families, accustomed to arranging the marriage of their teenage children as a means of forming an alliance between kin groups and of maintaining the status and traditions of their family, are charged with child abuse. Thus, despite our pluralistic ideals, something like a cultural un-American activities list seems to have begun circulating among representatives and enforcers of mainstream American culture (Dugger 1996a, 1996b; Ojito 1997; Terry 1996).

As a result of the tension between ethnic minority customs and the customs of the American cultural mainstream, some of the limits of pluralistic tolerance have become apparent in recent public policy debates. At these limits either pluralism gives way to calls for assimilation and some basic cultural uniformity, or tolerance gives way to attempts to castigate, outlaw, or penalize particular ethnic minority customs.

Consequently, new, difficult, and sometimes troubling questions are being asked in public policy forums. Is our constitutional framework, with its guarantees of various individual freedoms (freedom of expression, freedom to contract, freedom of religion, freedom of association), really meant to provide scope for the reproduction within the United States of the full range of long-standing family life practices known to exist on a world-wide scale? Such scope could promote and risk the development of a profoundly real, yet potentially conflictual, multicultural society. Should the current multicultural scene, with its attendant variety of ethnic minority customs (some of which are disturbing to the cultural sensibilities of the American mainstream), lead us to conclude that the state must play an inculcative role and thus renounce the ideal of "neutrality"? Do our constitutionally guaranteed liberties in fact presuppose cultural homogeneity and assimilation to a single vision of what it means substantively to be an American? How much assimilation is minimally necessary for the cultural reproduction of a democratic pluralistic American society? And what precisely does it mean to be an American in the first place?[3]

Legal issues

Issues of cultural diversity and assimilation arise for a second reason. Within the discipline of constitutional law there is a renewed interest in the question of whether ethnic minority groups have a right to reproduce their way of life without interference from the state or from the cultural mainstream.

One legal issue concerns the tension between parental and state control over the upbringing and education of children and the lively reconsideration of the power of the state to inculcate values. A famous series of Supreme Court decisions (e.g., *Pierce v Society of Sisters; Wisconsin v Yoder; Mozert v Hawkins County Board of Education*) have left us with a somewhat confusing picture of the right of the state to act as a super-parent and arbiter of taste and values; of the connection between such freedoms as speech/religion/association and the right to embrace cultural practices of one's own and pass them on to your children; and of the link between religious freedom, cultural rights, and the right to home education. In 1924 in *Pierce v Society of Sisters* the Supreme Court stated that "In this day and under our civilization, the child of man is his parent's child and not the State's." But is protection for parental power the only, or even the best way to guard against the state imposition of values? What, in short, should be the place of a view common among

[3] As these questions suggest, and as signaled by Stolzenberg's reference to bilingual education in the quote above, issues at the intersection of ethnic customs, assimilation, and the law are relevant to U.S. minority groups in general, and not just recent immigrants.

children's rights advocates, and powerfully voiced by Justice William O. Douglas in his dissenting 1972 opinion in *Wisconsin v Yoder*, that children are potentially autonomous agents who should be consulted about their desire to exit from the governance and cultural domination of their parents? And what limits, if any, should be placed on the state's right to compel educational standards and to inculcate civic values?

A closely related issue derives from work on the legal principle of "the best interests of the child" (Alston 1994), adopted by the International Convention on the Rights of the Child in 1993 (Murphy-Berman and Weisz 1996). The principle, which originally arose in the context of divorce proceedings and custody hearings but has now been extended to many other decision contexts, states broadly that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." Although that strongly child-centered approach to the goals of social decision-making has been judged by some critics to be ethnocentric, potentially corrosive of pluralism, and to run counter to the rights of adults to perpetuate their language, culture, and ancestral lineage (Alston 1994), it has raised a number of important questions which must be addressed in a serious discussion of the free exercise of culture and its limits. Questions such as these:

- Are parents ultimate or merely proximate guardians of their children and under what circumstance can the state, the community, or the courts supersede their judgments as guardians?
- What is the relationship between the expressed wishes of a child (for example, to be brought up in a religion other than the parents' religion, or to live apart from parents, or a desire to have different parents) and the child's best interests?
- Are both parents coequal in their parental rights or should cultural traditions be respected in which parental authority descends only through either the paternal line (as in Islamic law and many West African cultures) or through the maternal line?
- What intellectual and moral capacities are children believed to possess at various ages and how do they relate to the idea of an "age of discretion" when the wishes of the child must be respected regardless of the wishes of the parent as guardian?
- How are determinations of the best interest he child to be made? Is it that every child has a primary interest in growing up such that he or she can be successful in the cultural mainstream of American society? Or should the likelihood of the child's continued engagement in another, particular sociocultural group and tradition be equally relevant to definitions of the child's best interest?

Related to these questions there is, within the discourse of legal studies, a divide between communitarian and liberal individualist approaches to questions of cultural diversity. Generally put, liberal individualists believe in the neutrality of the state as an ideal and hold that the main purpose of the state is to uphold and promote liberty and procedural justice for individual actors within society. Within the ground rules of liberty and justice for all, individuals are free to act, without prejudice or interference, to form communities and create and adopt traditions of belief and practice as they see fit. From this perspective groups and communities are voluntary organizations. For liberal individualists, then, the purpose of the state is to ensure that no individual is treated with prejudice, discriminated against, or unfairly harm as he or she makes religious, cultural and associational choices.

Liberal individualists in the field of constitutional law, such as Christopher Eisgruber and Lawrence Sager (1994), therefore do not wish to privilege religions, cultural traditions, or ethnic groups, or to see them as possessing some kind of inherent, special value over and above the freedoms enjoyed by individuals and protected by a value-neutral state. They believe that principles of procedural justice and nondiscrimination are sufficient to ensure the free exercise of religion and, by extension, the free exercise of culture. From the perspective of liberal individualists the state does not have an interest in diversity per se; it has an interest in freedom and justice, from which diversity may (or may not) flow.

Adopting a different perspective, scholars such as Martha Minow (1997) and Nomi Stolzenberg (1993) see an inherent value in the existence of cultural traditions and communities and are doubtful that the law can ever be simply procedural or the state neutral. Even the so-called stance of value-neutrality and the idea that everyone is free to hold their own religious *opinions* is viewed by Stolzenberg as a substantiv

cultural commitment to the doctrine that religious beliefs are merely subjective, a doctrine which is being imposed by the state. In other words, "value-neutrality" in this view is not a neutral position. Although there is a significant division between those communitarians who equate the community with the state and those who view the community and state as in tension, all who adopt this general position consistently conceptualize society as made up not only of individuals but also of larger social entities (e.g., corporate groups) and/or cultural traditions. Beyond that, it remains to be seen whether the criteria used by communitarians and liberals to evaluate whether any particular ethnic minority custom is acceptable will yield consequentially different conclusions.

Anthropology/cultural psychology

Issues of cultural diversity and assimilation arise in full force these days for a third and ironic reason. Just as the idea of culture and ethnic minority customs gains prominence on the public policy scene and in the context of legal theory, just as awareness of cultural variety in family life practices grows, and just as the relative powers, rights, and responsibilities of the individual, the family, the community, and the state in a pluralistic society become a focus of scholarly debate, from within the discipline central to such debate—anthropology—there has emerged a morally motivated "anti-culture" or "post-cultural" stance. This position holds that the idea of "culture" simply and fundamentally reinforces the maintenance of authoritarian power relationships in society, permitting despots to deflect criticism of their practices with the argument that "this is our custom" or "this is the way we have always done things in our culture."[4] This anti-culture stance, in which culture is equated with domination, has prompted other anthropologists and cultural psychologists (Shweder 1996) to re-examine the viability of the culture concept, to bring the "stance of justification" into discussions of culture, to articulate the grounds for defending the idea of a "genuine" (vs. spurious) cultural tradition, and to spell out the tests that should be used to judge the acceptability of any particular ethnic minority custom.

Any such analysis of the criteria for evaluating whether any particular ethnic minority custom is or is not acceptable will need to begin roughly where the writings of Sebastian Poulter (1986, 1987, 1990) leave off. With an eye towards potential conflicts between specific statutes of English law and the customary practices of particular African, West Indian, and Asian immigrant communities in England, Poulter's work focuses on such topics as marriage (arranged marriage, dowry, bride wealth), family patterns (extended vs. nuclear), divorce, parental authority (discipline, fostering, tattooing and scarification, circumcision), education at school (bilingualism, dress at school, separation of the sexes), religious observance, and employment (work absence for the purpose of religious observance, freedom from discrimination on the basis of dress or appearance).

Poulter summarizes his own approach to the conflict of norms between English law and ethnic minority customs as follows:

> No doubt in the case of matters of relatively little importance it is prudent for a newcomer [to England] to take the smooth path of conformity in order to save embarrassment on either side. However, where any particular custom has a deeper and more fundamental significance for him, deference and politeness may well have to give way to a more positive assertion on his part that a moral principle is at stake. To have to forego a traditional or religious practice here may be portrayed as tantamount to the surrender of cultural identity and ultimately to the denial of a human right. While the avoidance of friction is clearly desirable, it can be purchased at too high a price. Broadly speaking . . . any satisfactory solution must depend upon finding a proper balance and upon the acceptance of some degree of compromise. Legal recognition must be afforded to many ethnic minority customs on grounds of practicality, commonsense, individual liberty, religious tolerance and the promotion of racial harmony. However, a few restrictions and limitations must equally be imposed, in the interests of public policy, to protect certain core values in English society and to obviate any genuine and reasonable claim by the majority that ethnic minorities are obtaining preferential treatment or special dispensations which cannot be justified by reference to established legal principles (1986, p.v).

[4] For a variety of views on this issue, see the debate on "Objectivity and Militancy" in *Current Anthropology* 1995 (36): 399-440, particularly the two opening pieces by Nancy Scheper-Hughes and Roy D'Andrade, as well as Wikan (1996).

Future conceptual and empirical research

The six questions presented at the outset of this essay involve both normative and descriptive issues, issues that frame an agenda for emerging work on ethnic customs, assimilation, and American law.[5] It is clear from some of the more dramatic examples of norm conflict between mainstream practices and minority customs that ethnic communities are not homogeneous in their reactions to such situations. In the face of various kinds of legal and administrative pressures to surrender their ethnic customs, the advantages and disadvantages of assimilation to the mainstream are often topics of debate within such communities.

As a noteworthy example, in Seattle last year members of the recently arrived Somali community (a rapidly-growing group of 3,500 members) were initially quite surprised to discover that local hospitals were willing to circumcise their sons but unwilling to circumcise their daughters. Some members of the community, in concert with doctors at the Haborview Medical Center came up with a compromise operation involving informed consent of both child and parent, hygienic operating conditions, and a minor alteration of the genitals which was less physically consequential than the male procedure. This compromise turned out to be acceptable to some members of the Somali community but not to members of the cultural mainstream in Seattle and in the U.S. Congress. When the Harborview compromise was withdrawn, after a public outcry, some members of the Somali community declared that, as responsible mothers concerned with their daughters' honor, purity, and marriageability, they would fly their children back to their homeland for a proper ritual initiation. Others, however, seemed prepared to surrender the custom or to underplay its moral significance or centrality to Somali cultural identity. Men and women were not of one mind on the issue, with men evincing more assimilative tendencies than women. A male spokesman for one Somali organization, Forward USA, which even in its name favors assimilation, declared "What the Somalis, what the immigrants like me need is an education, not sensitivity to culture" (Brune 1996).

This complex pattern of reactions is likely to arise in many cases and needs to be carefully documente and modeled. Thus, one of the major goals of future social science scholarship in this area will be to plan a line of empirical research—grounded in relevant social science literature—on key instances of norm conflict between American law and ethnic minority customs in the United States, with a particular focus on the conditions under which assimilation is either embraced or resisted.[6] Complemented by conceptual analyses undertaken by legal scholars and philosophers, such research could shape an interdisciplinary field of inquiry as intellectually exciting as it is socially significant. ■

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[5] The SSRC is exploring the possibility of establishing a working group to develop such an agenda.

[6] See, for example, Dovidio and Gaertner (1997), Fiske et al (1997) and Prentice and Miller (1997).

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Human Resources Needs in Asia in the Next 25 Years

*by John Ambler**

A key element of the SSRC's new international program is the Human Capital Initiative, which focuses on the evaluation of issues associated with the training, retention, and utilization of scholars and researchers globally. Two meetings were held this year, in New York (January 17–18) and in Kuala Lumpur (June 2) to explore some of these concerns. The following is adapted from a presentation made by one of the participants and lays out some of the human capital challenges he believes will arise in the next quarter century in Asia. He makes the point that these are also challenges for social science researchers who can only be as effective as the educational systems that produce them.

Much of the last 30 years in Asia's development can be characterized by the movement from predominantly rural economies into mixed economic systems, still largely rural, but with rapidly industrializing and urbanizing sectors. Differences between countries in terms of levels of economic development have increased, as have within-country income disparities. In terms of income levels and life styles, Asian societies have become more heterogeneous, while in terms of "national culture," each may be in the process of becoming more homogeneous. Significant amounts of training have been given to technical specialties, as "making things work" in technologically more complex societies generally has been accorded higher priority over the development of social sciences.

In most Asian countries, the last 30 years have seen central governments gain increasing control over remoter regions of their territory, as witnessed by the expansion of civil administration and military apparatus, improved transportation and communications, and more marketized economies operating on similar precepts. As the cultural values of pre-industrialized Asian societies have changed, the ritual significance of many traditional cultural manifestations has also declined. In many cases, the manifestations of culture, such as dance and dress and local architecture, stripped of their ritual significance, have also been appropriated by the Asian states as evidence of a rich and diverse cultural patrimony, which is then presented to the public in essentially homogenized forms. The last 30 years have also seen the expansion of state educational systems promoting national curricula and values, which play important roles in what used to be called "nation-building." Social science has much to contribute to understanding these processes, and helping chart new directions.

What challenges in the next quarter century will Asian countries face that require new approaches to human capital development? A number of trends are already discernible.

In the political-economic sphere

- National integration into an increasingly global economy, with international standards often clashing with particularistic interests
- The accelerating productivity—and mobility—of capital, and consequent devalued utility of a long-term unskilled labor force
- The expansion of intra-Asian economic trade and a concomitant strengthening of Asia's political bargaining power on the world scene
- The rise in the importance of multilateral and cross-cutting economic and political alliances as a consequence of an increasingly multi-polar world
- The information technology explosion and the expansion of non-controlled avenues of communication
- Mounting pressure for decentralizing government as a way of handling increasing administrative complexity, in spite of having only recently extended and centralized government control in many cases
- Increasing awareness of economic, social, and cultural rights as responsibilities of governments to protect and nurture
- Continued resistance to relaxing a generally authoritarian grip on civil and political rights
- A call for greater political participation, especially by the economically disenfranchised and the enlarging middle class of Asian countries

In the social sphere

- A rapidly urbanizing Asia with new urban

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