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# American Arrivals

*Anthropology Engages the New Immigration*

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# 9

## The Moral Challenge in Cultural Migration

Richard A. Shweder

Coming to terms with diversity in an increasingly multicultural world has become one of the most pressing public policy projects for liberal democracies in the early twenty-first century. One way to come to terms with diversity is to try to understand the scope and limits of toleration for variety at different national sites where immigration from foreign lands has complicated the cultural landscape. This chapter examines a series of legal and moral questions about the proper response to norm conflict between mainstream populations and cultural minority groups (including old and new immigrants), with special reference to disputed cases that have arisen in the recent history of the United States.

### A SPLINTERED WORLD?

Clifford Geertz (2000) has remarked that “positioning Muslims in France, Whites in South Africa, Arabs in Israel, or Koreans in Japan are not altogether the same sort of thing. But if political theory is going to be of any relevance at all in the splintered world, it will have to have something cogent to say about how, in the face of a drive towards a

destructive integrity, such structures can be brought into being, how they can be sustained, and how they can be made to work.”

By the phrase “the splintered world,” Clifford Geertz means our contemporary world of borderless capitalism, in which globalization has become a motivating (albeit controversial) ideal. In that world, not only are goods (including cultural goods and symbols) and financial capital encouraged to travel more freely across national frontiers but labor also moves internationally (although with highly variable and fewer degrees of freedom).

Of course, we are not talking here just of Muslims in France or Koreans in Japan, but also of Thais in Israel, Bangladeshis in Saudi Arabia, Angolans in South Africa, Nicaraguans in Costa Rica, Guatemalans in Mexico, Mexicans in the United States, Gambians in Norway, and so forth. In our splintered world at the end of the twentieth century, more than 125 million people (including at least 27 million political refugees) lived outside their country of birth or citizenship—an all-time high. About one-third of that international migration moved in the direction of the seven wealthiest countries in the world, including the United States and Canada. About 50 percent moved across national borders within the third world (Martin 1996).

As a footnote, I should mention that although 125 million (or so) may be an all-time high in numbers of people living abroad, the deep or long-term significance of that number is not entirely transparent. To remember that internationalism is neither a new thing nor an irreversible process may even be a useful corrective to some of the grandiosity, utopianism, and presentism of the current discourse about globalization, cosmopolitanism, and the free flow of everything. The last great push to globalize the world and promote free trade and labor migration in the late nineteenth century came to a halt with World War I. This was followed by protectionism, isolationism, and nationalist fervor. It remains to be seen whether we are witnessing something new in the organization of a world system or are compulsively repeating a deep historical cycle, another swing of the internationalism/nationalism, free trade/restrictive tariff, open borders/closed borders pendulum—*déjà vu*, all over again. (Concerning similarities and differences in immigration waves across two centuries; see Foner [2000] and Suárez-Orozco [2000].)

Even now, in these heady, high-tech, on-line days of so-called bor-

derless capitalism and expanding global markets, a little caution in the face of visionary claims about a new transnational, neo-liberal world order might be wise. There is, of course, much talk about the dissolution of national boundaries. For the moment, there is a clear pulse in the direction of increasing international labor flows (foreign workers make up one-seventh of the labor force of South Africa and a majority of the labor force in some West Asian nations). To splinter things further, political refugees displaced by civil wars and local conflicts are living all over the place.

Nevertheless, it remains a fact that approximately 98 percent of the people on the planet Earth have stayed put, in the sense that they live in the country where they were born or where they are citizens (Martin 1996). Many of them believe that there are too many splinters (that is, foreigners) around, therefore Clifford Geertz’s mention of “a drive towards a destructive integrity.” At least some of the 2 percent on the move are making some of the settled 98 percent, who want to feel at home in their culture, nervous about the future of their way of life, and vice versa. Vice versa because when some of those 2 percent arrive in a foreign land, they may well be told either to conform to local cultural norms or go away.

### THE DRIVE TOWARDS A DESTRUCTIVE INTEGRITY

“A drive towards a destructive integrity” is an arresting (even if tendentious) expression. By this, I take it that Clifford Geertz means the inclination of dominant cultural groups to demand and/or require culturally different immigrant minority groups to alter their way of life and assimilate their tastes, values, and practices to mainstream cultural norms. This drive includes the use of the state’s coercive power to “cleanse” the local national scene of genuine cultural diversity.

For example, in the predominately Christian regions of Northern Europe, Islam is perceived as a real or potential danger. In those countries, even center-left political leaders may voice attitudes evoking images of strident “cultural nationalism.” The *New York Times* journalist Roger Cohen has described the plight of Turks in Denmark (Cohen 2000; also see Ewing 2000 and Wikan 2000 on Islam in other parts of Europe). Cohen notes that even the then-prime minister of Denmark, a social democrat, has asserted “that he could not accept certain ‘aspects

of the Islamic religion' like interrupting work with prayer." "It must be clear," the prime minister announced, "that in Denmark we work in the workplace." Roger Cohen goes on to remark that "European governments, uneasy about an influx of foreigners [from Muslim countries], now say these immigrants must resolve the contradictions [between cultures] by embracing the culture of their adoptive lands. The bureaucrats have focused on arranged marriages as disastrous; they hinder integration, offend Western values and encourage immigrant ghettos, or so officials say. They also bring more immigrants because 'family unification' is one of the few legal ways left to get into Europe." "The message is clear," writes Cohen, "Conform at work and at marriage." The journalist goes on to report that because the Danish government estimated that 90 percent of Danish Turks found wedding partners in Turkey, it "passed legislation this year to deter any immigrant younger than twenty-five from bringing a foreign spouse to Denmark."

That idea—conform to mainstream cultural beliefs and practices about work and family, or stay away—is not just a European attitude. "Cultural differences are beautiful," comments Marceline Walter, who directs community education in the New York State Administration for Children's Services, "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" (quoted in Ojito 1997).

The strong assimilationist stance (a drive towards a destructive integrity?) of the sort expressed in those comments is not the only possible response to immigrants who bring with them unfamiliar or even alien beliefs and practices. National attitudes towards cultural differences tend to be contingent on current social, economic, and political circumstances, on the history of the nation's engagement with minority groups, and on the legal and ethical normative regime in place. Nevertheless, a more facilitative, "live and let live," pluralistic or accommodative impulse of the sort expressed, for example, by Supreme Court Justice William Brennan has also been voiced in some liberal democracies. Justice Brennan (in *Michael H. v. Gerald D.*, 491 US 110, 141 [1989], dissenting) remarks: "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." I

am reminded here of a remarkable public service advertisement in the early days of television in the 1950s. During my childhood in the New York metropolitan area, a jingle that was played on the air linked patriotism to tolerance: "George Washington loved good roast beef. Chaim Solomon loved fish. When Uncle Sam served liberty, they both enjoyed the dish." It also seems noteworthy that as we entered the twenty-first century, the Immigration and Naturalization Service (INS) of the United States published a document titled "What Are the Benefits and Responsibilities of Citizenship?" This states that "America becomes stronger when all its citizens respect the different opinions, cultures, ethnic groups, and religions found in this country. Tolerance for differences is also a responsibility of citizenship."

In this chapter I try to address, in part, the pluralist challenge of Clifford Geertz and Mr. Justice William Brennan. I was greatly assisted in this task by my participation in recent years in a Social Science Research Council Working Group, "Ethnic Customs, Assimilation and American Law" (recently renamed "Law and Culture") ([www.ssrc.org](http://www.ssrc.org)). The Working Group has brought legal scholars, normative theorists, and empirical social scientists (mostly anthropologists and social psychologists) in contact with one another's way of thinking and talking about diversity. In the context of Working Group meetings, legal scholarship and social science research are brought to bear on the practical question of what shape multiculturalism can, and should, take in liberal democratic societies in the contemporary world. Variations are examined in the legal resources and ethical traditions of different liberal democracies with regard to the question of how much cultural diversity will be possible, given the history of this or that particular normative (legal/ethical) regime in this or that particular land (see Shweder, Minow, and Markus 2002).

We have taken a look at how liberal democracies handle key issues such as church and state, parental rights and children's rights, and individual rights and group rights. How do countries distinguish between matters that should be kept private (and, therefore, away from the gaze of the state) and matters that should be public (therefore becoming candidates for government surveillance, scrutiny, regulation, or intervention)? Are the techniques used by parents to socialize, discipline, and develop moral character in their children (for example, spankings

or tests of courage involving ordeals) a private family affair, or should these be monitored and subject to regulation by the state? Any physical punishment of children by their parents is a crime in Norway, but not so in India or the United States. How do the legal and ethical resources and traditions of different nation-states with regard to those issues (church/state, individual rights/group rights, parental rights/children's rights, private matters/public matters) have a bearing on the social and political management of diversity when dominant cultures and minority cultures collide?

As Geertz implies (more or less as an aside), it is "not altogether the same sort of thing" as one migrates away from the normative regime of one liberal democracy (for example, Norway or Germany) and becomes a subject of the normative regime of another (for example, India or the United States). In this instance, at least, in cases involving the management and treatment of cultural differences, national borders do matter and no global normative regime exists.

Just ask the Turks living in Berlin. Many will tell you that they are freer to practice and promote Islam in public spaces in Germany than in Turkey. In Turkey, religion is officially considered a totally private matter that should be kept at home and out of all public domains. In Germany, Christianity (and perhaps some day soon, Islam) is legitimately (that is, legally) promoted in the public schools (Ewing 2000). In other words, different normative regimes are associated with the relationship of the mosque/church/temple and the state in Turkey and Germany. Looking at church/state norms in the United States, one finds that they differ in various ways from the normative regimes defining and constraining the debates about the issue in both Germany and Turkey. The normative/legal/moral regimes regulating and managing "difference" are not the same, even across liberal democracies.

#### THE SCOPE AND LIMITS OF TOLERANCE— A NORMATIVE AGENDA FOR ANTHROPOLOGY

My main aim in this chapter is to raise a normative question: How much cultural diversity ought to be possible within the confines of a liberal democracy such as the United States of America? Also, I want to point to instances where cultures have collided, resulting in deep reflection on what one might mean by *pluralism* or *tolerance* in a

liberal democracy such as the United States.

Let me start by acknowledging that the type of normative question I am raising is not the type that anthropologists are accustomed to analyzing systematically. Of course, many anthropologists hold strong personal views on the topic. Most non-anthropologists probably assume that most anthropologists have high regard for cultures other than their own and are prepared to offer a defense of other ways of life against any "drive towards a destructive integrity."

This assumption, however, is not necessarily correct. Within the discipline of American anthropology are activists involved in the international human rights movement. The use of a discourse of human rights within anthropology is complex, and that discourse is by no means consistent, rigorous, or intellectually coherent (for a discussion of the muddles in the past and present official stances of the American Anthropological Association (AAA) towards a human rights perspective, see Engle 2002). Nevertheless, among contemporary American anthropologists are human rights activists who reject the notions of group rights, or parental rights, or rights to local self-determination and are suspicious of the idea of a basic "right to culture" (see Cohen and Bledsoe 2002; Wikan 2000). They are far more interested in the application of some notion of universal individual rights to "save the children" of other cultures from their own parents and to legitimize "humanitarian interventions" by international organizations. They want to use the idea of universal human rights to protect individuals, especially women and children, from cultural practices that are thought to be patriarchal, oppressive, or inequitable in some regard. These cultural practices include polygamy, bride price, arranged marriage, veiling, the sequestering or seclusion of females, and the cosmetic genital surgeries associated with gender identity ceremonies or adult initiation in parts of East and West Africa. (For an overview of the human rights-versus-culture debates, see Minow 2000; Okin 1999; for a critique of the supposed opposition between rights and culture, see Volpp 2001). Such human rights activists can be quite scornful of other cultures and may even be interested in sanctioning or criminalizing those who engage in what they take to be "barbaric practices." These days, at least some anthropologists embrace one form or other of what was once called "the civilizing project."

Moreover, within American anthropology are significant theoretical currents and principled positions running against the professional posing of questions about the legitimate scope for cultural tolerance. One such current, the neo-positivists in anthropology, might well reject the question precisely because it is normative instead of empirical. Stay away from moral or normative questions about what ought to be, the principled positivist might declare, for such questions are outside the realm of any anthropologist's scientific competence.

Another current—the postculturalists, anti-culturalists, and skeptical postmodernists in anthropology—has, in so many ways (and by now, for so many years), been calling for a deeply corrosive reading of all representations of “others.” These anthropologists have raised doubts about the reality and existence of bounded groups. Under the banner of a critique of “essentialism,” “monumentalism,” or “Orientalism,” or of just plain stereotyping, they have become critical of all attempts to portray members of other cultures with any characteristic face. The postculturalists have been working very hard to subjectivize or dissolve the very ideas of ethnic group “identity” and of objective ethical “truth.” At this point, one can hardly expect them to see the point of trying to give an answer to moral questions about how much cultural diversity ought to be allowed within the confines of a liberal democratic nation state. Nevertheless, in our current splintered world, this is the kind of question that anthropologists—at least those who continue to be pro-cultural—are going to have to address more and more, if for no other reason than that in a splintered world, cultures sometimes collide, often to the detriment of immigrant minority groups.

#### A LIBERAL DEMOCRACY SUCH AS THE UNITED STATES OF AMERICA

At the moment, legal scholars in the United States are far ahead of anthropologists in constructing a normative language or justificatory discourse for addressing issues of cultural accommodation and the limits of tolerance (for example, see Stolzenberg 1993). This is not surprising. A liberal democracy such as the United States imagines itself to be a haven for religious and cultural diversity. It imagines itself to be a land where the state does not take collective, official, or public positions (and is therefore “neutral”) concerning the religious beliefs and

related practices and cultural traditions of those entitled to citizenship and political participation. It imagines itself to be a place where citizenship as an American has only weak or minimal implications for the way you lead your private life, for the type of associations you form, for the way you raise your children. It imagines itself to be a “law and order” society, in which, at the end of the day, the interpretation, refinement, and redefinition of the limits of liberty and pluralism within the liberal democratic framework of the United States are left to the courts and legal scholars.

For the sake of argument, let me say more about what I mean by “the framework” of liberal democracy in the United States. In Michael McConnell's monumental essay on the origins of the Exercise of Religion clauses of the First Amendment of the Constitution of the United States (“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”), he writes the following: “The central conception of liberalism, as summarized in the Declaration of Independence, is that government is instituted by the people in order to secure their rights to life, liberty and the pursuit of happiness. Governmental powers are limited to those needed to secure these legitimate ends. In contrast to both ancient and modern non-liberal regimes, government is not charged with the promotion of the good life for its citizens. Except as needed for mutual protection and a limited class of common interests, government must leave the definition of the good life to private institutions, of which family and church are the most conspicuous. Even in the absence of a free exercise clause, liberal theory would find the assertion of government power over religion illegitimate, except to the extent necessary for the protection of others” (McConnell 1990:1465).

McConnell's condensed description of the character of liberal democracy in the United States is useful for several reasons. First, it reminds us that not every democratic society is liberal. Democratic societies are those in which the reigning norms, laws, rules, and regulations express the will of the people (typically, but not always, as determined by a majority vote), but there is no guarantee that the will of the people will be liberal in character. Democracies, that is, polities, whose norms express the will of the people become liberal democracies precisely to the extent that people will their society to be organized in a particular

way, namely, in a way that guarantees certain basic liberties (freedom of association, freedom of expression, freedom of religious practice, freedom to have and raise a family) and various protections (against harm, discrimination, coercion, abuse) to all members of the society in their pursuit of a good life.

Second, the statement reminds us that in any liberal democracy a balance must be struck between two, often contradictory, liberal impulses. On the one hand is the impulse to leave individuals free to live their lives by their own personal, cultural, or religious lights. On the other hand is the equally liberal impulse to protect those who are vulnerable from harm, exploitation, and abuse and to make use of the coercive power of the state in the furtherance of certain "common interests."

Third, McConnell's formulation leaves unspecified the exact content and limits of that "limited class of common interests" that are the legitimate objects of government power. Even given McConnell's conception of the importance of limiting government power in a liberal democratic society, at least some aspects of life that might be thought to be part of a definition of the good life are ceded by him to the public realm. In other words, there are exceptions to the principle that "government is not charged with the promotion of the good life for its citizens"; the discovery, definition, and defense of goodness is not entirely a private affair.

By McConnell's own account, aspects of the good life that are in the public realm include a common interest in safety, life, and liberty and in maintaining the conditions (nondiscrimination, protection from abuse or exploitation) that make the pursuit of happiness possible for individuals. Other aspects (McConnell, writing as a neo-conservative, implies *most* aspects) of the good life are left to private institutions—individuals, families, and religious organizations—to define and promote by and for themselves.

Yet, quite notably, little is said about how to determine the scope and limits of those common interests that legitimate the state's involvement. Is one's personal health a private matter? Is it a common interest justifying government surveillance and regulation in the name of public health? How about the religious training or moral education of one's children? How much, and which part, of a child's general educa-

tion is part of the common interest? How much, and which parts, should be shielded and protected from state intervention? Should the definition and promotion of virtue be handed over to the public realm in the name of justice and the defense of common interests, or should character development and value training be left in the control of families and parents?

McConnell's description of the nature of liberal democracy in the United States is useful precisely because a crucial and difficult question appears to be left wide open: What are the rightful limits on the power of those who govern to define and promote the good life? This is the philosophical territory where much of the ideological action and political dispute within liberal democracies take place, over questions about whether to extend or restrict the use of the state's coercive power to define the obligations and duties of its citizens in various aspects of their lives (sexuality, dress, discipline, health, work, family, education, religion, values, and so forth).

For a variety of reasons, I believe that no transcendental, purely objective, or universal answer exists to the question regarding which parts of the definition of the good life should be privately defined and which publicly defined. If an answer exists, it is not an answer that can be known with certainty, at least not by mere mortals. In this area of political and social theorizing, there is much room for disagreement. The boundary between what ought to be private and what ought to be public is fuzzy. It is drawn at different points in different legal and moral traditions, which is one reason that liberal democratic societies are not identical in the extent to which the role of those who govern is kept limited. If nothing else, liberal democratic nations are likely to differ in the extent to which the meaning of a good life is left up to individuals, families, and religious organizations to define privately. Such differences among liberal democracies produce different experiences for immigrant minority groups when public conflicts arise over cultural practices that offend the sensibilities of mainstream or dominant groups. The focus in this chapter, however, is on the normative scope of multiculturalism within one particular liberal democracy, the United States. How should that liberal democracy, given its legal and ethical traditions and unique history of encounters with "others," react to recently arrived minority groups whose cultural beliefs (ideas about

what is good, true, beautiful, and efficient) and related practices collide with the cultural beliefs and practices of dominant or mainstream cultural groups? I engage that question by interrogating four cases from the recent history of the United States.

### THE AMISH IN WISCONSIN

I am going to start with the famous and relatively recent prosecution of a cultural minority group that migrated to the United States more than two hundred years ago and whose members fundamentally reject the beliefs, values, and way of life of most contemporary Americans. In 1972, the US Supreme Court reviewed a legal case (*Wisconsin v. Yoder et al.*, 406 US 205; all relevant quotations here are from that Court decision) in which Amish parents who were members of the Old Order Amish religion and the Conservative Amish Mennonite Church were indicted for violating the state of Wisconsin's compulsory school attendance law. The law required that all children in Wisconsin go to school until age sixteen. Three Amish parents were prosecuted for failing to send their sons and daughters to school beyond the eighth grade and for keeping them on the farm. By staying on the farm, the boys learned the skills associated with occupational life in a rural Amish community, and, crucially, they learned to value manual work and physical labor (and perhaps bible reading) over other types of human pursuits. The girls learned the skills associated with domesticity and the responsibilities of motherhood and family life. Both the boys and the girls were prepared for a voluntary, late-adolescent baptism (a kind of religious and cultural commitment ceremony) and were more fully initiated into the beliefs, virtues, and values of the Amish way of life.

The Amish, as you probably know, are Mennonites and trace their spiritual lineage back to the Swiss, German, and Dutch Anabaptists of the sixteenth century, a heterodox Christian sect. As described by the US Supreme Court, the Anabaptists "rejected institutionalized churches and sought to return to the early simple, Christian life, de-emphasizing material success, rejecting the competitive spirit, and seeking [even back then] to insulate themselves from the modern world." An essential feature of the Amish defense was their dedication to a long-standing tradition or way of life that, in itself, was a way of

making manifest and expressing certain sincerely held religious beliefs that had remained more or less constant for centuries. They claimed that exposing their kids to the values, practices, social environment, and curriculum of a modern Wisconsin high school would threaten their way of life.

The First Amendment to our Constitution bars the government from either establishing religion (for example, favoring one religion over another, creating a state religion, providing sponsorship or financial support to religion) or interfering with the free exercise of religion. At this moment in the evolution of our legal tradition, two interpretations of the true meaning of the free-exercise clause are hotly contested (Eisenberg 2002; Eisgruber and Sager 1994a and b, 1996; McConnell 1990; Souter 1993).

According to one interpretation (which I shall dub *the authority of religious conscience* interpretation), the injunction that Congress shall make no law prohibiting the free exercise of religion has the following meaning: In the absence of a sufficiently compelling, secular public need (for example, public safety), the government should grant exemptions (for example, to the Amish) from general legal obligations that conflict with religious duties, assuming that those religious duties are matters of conscience that can be traced to sincerely held religious beliefs.

According to the second interpretation (which I shall dub *the nondiscrimination* interpretation), the injunction has the following meaning: All citizens are entitled to equal liberty such that no law shall be written that deliberately discriminates against them or displays hostility towards them because of their sincerely held religious beliefs (and related practices).

According to the second view, the free-exercise clause expresses a principle of nondiscrimination, and little more. It should not be interpreted as a statement of privilege (a claim for exemption from general legal obligations) for practices related to sincerely held religious beliefs or perceived obligations to God. According to that (nondiscrimination) interpretation, a law that happens to have a negative effect on the practices of a particular religious group does not necessarily violate constitutional guarantees of religious freedom. By that reading of the free-exercise clause, a law—for example, one prohibiting all forms of animal slaughter (perhaps on grounds of cruelty to animals)—would

not necessarily be a violation of religious liberty, even if, in effect, it criminalized the ritual sacrifice of animals in religious ceremonies. It would not run afoul of the free-exercise clause as long as the law was formally neutral (displayed in its wording, or on its face, no particular hostility to religion or to particular religious groups) and was generally applied to all citizens (hunters, pest-control experts, slaughter houses, members of religious groups, and so on).

Whatever one's interpretation of the true meaning of the free-exercise clause, any challenge to the constitutionality of a law or statute in the name of free exercise of religion must begin with the identification of the sincerely held religious beliefs associated with a group, community, or "church." In relationship to those sincerely held religious beliefs, conscientious assertions of religious duties of various sorts (obligations to God in contrast to obligations to the state) can then be derived and assessed, and questions concerning the interests of the state, the degree of facial neutrality of the law, and so forth, can be evaluated.

In the case of the Amish, the relevant sincerely held religious belief was their literal interpretation of a particular biblical injunction from the Epistle of Paul to the Romans, which, in the context of studies of immigration, reads like a fundamental anti-assimilation principle. That injunction, "be not conformed to this world," was held by the Amish parents, by expert witnesses, and ultimately by the Court to be central to the Amish faith and was identified as a pervasive religious principle regulating the entire Amish way of life.

Any anthropological or historical summary of the Amish is likely to make note of certain distinctive features of their cultural community, including a religiously motivated pacifism, a rejection of the idea of oaths, and the conduct of religious services (often in the German language) at home rather than in churches. One central aim of the Amish cultural community (its core rationale) is to restore a way of life that members of the Amish community associate with the Christianity of apostolic times. Therefore, they reject many beliefs, values, virtues, and material objects (telephones, radios, cars, televisions) we associate with life in the modern world, and they strictly limit their contacts with the non-Amish world. Parents want to perpetuate their way of life by passing on their own way of seeing and being in the world to their children. In that regard, they strongly discourage certain kinds of exposure to

the outside world and disapprove of marriage outside the faith. They have an interest in preserving their religious and cultural tradition, which depends, in large part, on their ability to recruit adherents from the next generation.

The state of Wisconsin thought that the Amish, like everyone else, should send their kids to school beyond the eighth grade. Also, the state thought that Amish parents, like everyone else, should not be permitted to shield their children from useful knowledge and keep them "ignorant." The state argued that its system of compulsory education was uniformly and generally applied to all families in Wisconsin. They argued that the system was not created with any animus towards the Amish and (it was argued) that the educational system served important public needs, providing not only preparation for intelligent citizenship and a productive life in society but also the opportunity to benefit from a modern secondary school education, regardless of the wishes of one's parents.

Justice White put it this way: "In the present case the State is not concerned with the maintenance of an educational system as an end in itself, it is rather attempting to nurture and develop the human potential of its children, whether Amish or non-Amish: to expand their knowledge, broaden their sensibilities, kindle their imagination, foster a spirit of free inquiry, and increase their human understanding and tolerance. It is possible that most Amish children will wish to continue living the rural life of their parents.... Others, however, may wish to become nuclear physicists, ballet dancers, computer programmers, or historians, and for these occupations formal training will be necessary."

Justice William O. Douglas, in his famous partial dissent from the opinion of the Court, wondered whether there really is or should be an identity of interest between parents and their children. The required high school education would make transcending one's family and social background easier. He wanted to hear more from the kids, only one of whom, Frieda Yoder, had testified about her own degree of commitment to the Amish way of life. "The parents are seeking to vindicate not only their own free exercise claims, but also those of their high-school-age children," Justice Douglas wrote in his dissent. "If the parents in this case are allowed a religious exemption, the inevitable effect is to impose the parents' notion of religious duty upon their

children.... I think the children should be entitled to be heard. While the parents, absent dissent, normally speak for the entire family, the education of the child is a matter on which the child will often have decided views. He may want to be pianist or an astronaut or an oceanographer. To do so he will have to break from the Amish tradition. It is the future of the student, not the future of the parents that is imperiled by today's decision. If a parent keeps his child out of school beyond the grade school, then the child will be forever barred from entry into the new and amazing world of diversity that we have today."

It is not very difficult to imagine contemporary human rights activists extending Justices White and Douglas's "there but for fortune goes you or goes I" line of argument and expressing a related sense of regret about Frieda Yoder's loss of certain options. Frieda Yoder might well have become a feminist activist, scornful of the sex-role differentiation within the Amish community, if only the state had been able to compel her parents to enroll her in a Wisconsin secondary school in the late 1960s and early 1970s.

As you have undoubtedly inferred, the US Supreme Court granted the Amish an exemption from the compulsory education laws of Wisconsin. In an opinion written by Justice Burger (but supported by most of the liberal judges on the Court), the Court balanced the interests of the state in universal education against the rights of American citizens to religious liberty and to follow the dictates of a religious conscience. The state's interest in education was fully acknowledged by the Court. Nevertheless, the required extra years of schooling beyond eighth grade did not seem essential because the Amish learned useful skills at home and were self-sufficient and potentially employable (as carpenters or farmers, for example) had they chosen to venture out into the modern world. By eighth grade, they knew how to read, write, and count, and there was no evidence that they could not discharge the responsibilities of citizenship.

Moreover, their religious beliefs were sincere. Their way of life, which gave substance to their beliefs and made manifestly obvious their sincerity, was a recognizable, long-standing, and, the Court seemed to suggest, even an admirable tradition, which was truly threatened by the compulsory education law of Wisconsin. If Amish children are forced to go to school until age sixteen, the Court concluded, "they must

either abandon belief and be assimilated into society at large or be forced to migrate to some other, more tolerant region." Therefore, in 1972 the scale tilted heavily on the side of the Amish, although that Court decision remains controversial to this day.

Notably, the decision granting an exemption to the Amish relied on an authority of religious conscience interpretation of the free exercise of religion clause of the Bill of Rights and expressed some skepticism about the nondiscrimination point of view. In the opinion of the Court, the Wisconsin school-attendance requirement did apply uniformly and generally to all citizens of the state. It did not, on its face, discriminate against religions or against the Amish (it made no mention of the Amish and was not written with the Amish in mind). Also, it was motivated by a perfectly legitimate secular concern.

However, those conditions of generality and formal neutrality—and, therefore, apparent nondiscrimination—were judged to be insufficient for disposing of the case. According to the Court, "a regulation neutral on its face may, in its application, nonetheless offend the constitutional requirement for government neutrality, if it unduly burdens the free exercise of religion." (See Markus, Steele, and Steele 2000 on problems with formal neutrality, or "colorblindness," in the treatment of racial minorities.) The Court called for doctrinal flexibility and a realistic, case by case-based application of the First Amendment's religion clauses. The opinion went on to say that "the Court must not ignore the danger that an exception from a general obligation of citizenship on religious ground may run afoul of the Establishment Clause [favoring Amish Mennonites over other religions, who have not been exempted from the law, for example], but that danger cannot be allowed to prevent any exception no matter how vital it may be to the protection of values promoted by the right of free exercise."

Anthropology has much to learn from the careful study of cases such as *Wisconsin v. Yoder et al.* (1972) and, also, much to contribute to the development of the normative discourse about "difference" that emerges out of cases of this type.

For example, the Court was impressed that the Amish had remained committed to religious beliefs to which their forebears had adhered for 300 years and to a way of life that had remained constant ("perhaps some would say static," the Court wrote) for a long time. In

several ways, a conception of culture (as a shared and relatively stable conception of the sacred made manifest in everyday practice) not unlike that developed by Emile Durkheim in *The Elementary Forms of the Religious Life* (and also not unlike the conception of culture disparaged by skeptical postmodernists and anti-culturalists in contemporary anthropology) carried the day for the Amish in their fight against the state. Had a skeptical postmodern anthropologist or human rights activist been called as an "expert witness," what would he or she have said? That Yoder is merely an individual who has multiple selves and has manufactured or socially constructed a fictive communal past? That Amish practices are in constant flux and don't deserve deference or protection? That the less control any parent has over a child's socialization the better, especially for those antiquated Amish patriarchs?

The Court reasoned as follows:

In evaluating those claims [the alleged violation of their religious freedom by the compulsory education law] we must be careful to determine whether the Amish religious faith and their mode of life are, as they claim, inseparable and interdependent. A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief. Although a determination of what is a "religious" belief or practice entitled to constitutional protection may present a most delicate question, the very concept of ordered liberty precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests. Thus, if the Amish asserted their claims because of their subjective evaluation and rejection of the contemporary secular values accepted by the majority, much as Thoreau rejected the social values of his time and isolated himself at Walden Pond, their claims would not rest on a religious basis. Thoreau's choice was philosophical and personal rather than religious, and such belief does not rise to the demands of the Religion Clauses.

That comment, distinguishing between religious versus non-religious sincerely held beliefs, bothered Justice Douglas. In his partial dissent, he reminded the Court that in other decisions the Court had already expanded the concept of religious belief to include any sincere and meaningful belief that occupied a parallel place in the conscience of its possessor to that filled by the idea of "God." Justice Douglas had in mind a Supreme Court decision concerning conscientious objection to military service (see Eisenberg 2002 for an argument about the expansion of the free-exercise clause to include all conscientious beliefs, whether or not theologically based). Emile Durkheim's anthropological approach to the analysis of cultural communities as "churches" based on a core set of shared ideas held to be "sacred" and set apart from the profane aspects of life would seem to provide a firm anthropological basis for this type of judicial reasoning.

An instructive feature of the opinion of the Court, at least for minority groups seeking to position themselves within American society, is that the Court seemed to be impressed with the Amish way of life, perhaps even to the point of romanticizing Amish culture. This was not a court that was in the mood to take a decision that might bring an end to the Amish way of life. Not only were the judges impressed that the Amish had been around a long time or that their religious beliefs were sincere, but the Court also noted that "the Amish qualities of reliability, self-reliance and dedication to work" would be readily marketable in today's society. The Court remarked that the Green County Amish (of Wisconsin) had never been known to commit crimes or receive public assistance, and none were unemployed. In fact, the Court commended Amish communities and asserted that they are "singularly parallel and reflect many of the virtues of Jefferson's idea of the 'sturdy yeoman' who would form the basis of what he [Thomas Jefferson] considered as the ideal of a democratic society. Even their idiosyncratic separateness exemplifies the diversity we profess to admire and encourage." One is tempted by the following speculation: The Amish might have been assisted in their case by the Court's perception that they were a small, industrious, non-threatening, and virtue-minded minority group. The Court seemed to value having Amish in our midst, nostalgically reminding us of an imagined time when the world was less competitive, less hectic, and less modern.

Stating its judicial opinion in a way that warms the heart of at least this anthropological pluralist, the Court wrote as follows: "We must not forget that in the Middle Ages important values of the civilization of the Western World were preserved by members of religious orders who isolated themselves from all worldly influences against great obstacles. There can be no assumption that today's majority is 'right' and the Amish and others like them 'wrong.' A way of life that is odd or even erratic but interferes with no rights or interests of others is not to be condemned because it is different."

Finally, the Court rededicated itself to what it saw as an enduring principle of the constitutional tradition of the United States: The government's role is not to save children from either their parents or themselves (by requiring Amish children to be educated in Wisconsin high schools or increasing the odds that Frieda Yoder will grow up to become a cosmopolitan feminist). It is up to parents, not the state, the Court argued, to raise children and guide their religious education, and we should not leave it up to the government to determine the religious future of a child. In the United States, it is presumed that children belong to their parents and not to the state.

### A SANTERIA CHURCH IN FLORIDA

I have discussed the Amish schooling case at some length because it represents a moment in legal history when the authority of religious conscience interpretation of the free exercise of religion clause was put to work in defense of a minority cultural tradition. Also, it is a model case for a pluralistic anthropology of cultural migration. The 1972 case of *Wisconsin v. Yoder et al.* concerned a long-residing, unorthodox, white Christian minority group of Northern European origin whose members were "different" because they refused to be up-to-date in the modern world. The next case (*Church of the Lukumi Babalu Aye and Ernesto Pichardo, Petitioners v. City of Hialeah*; 508 US 520 [1993]), which I shall merely sketch, is even more recent. (All relevant quotations here are from that court decision.) It concerns new immigrants from Cuba (and Haiti) who moved into the city of Hialeah, Florida, and proposed to start a Santeria church (the Church of the Lukumi Babalu Aye, Inc.), in which their worship and devotion would include the ritual sacrifice of animals. In particular, within the confines of their

religious establishment, they planned to feed their hungry gods (or *Orishas*) by means of the sacrifice of goats, sheep, chickens, pigeons, doves, ducks, guinea pigs, and turtles.

Santeria ("the way of the Saints") is a syncretic religion combining aspects of West African Yoruba spiritualism with a Catholic iconography of saints. A devout member of a Santeria church believes that he or she has a personal relationship to the *Orishas*—who are powerful, but not immortal, spirits represented through the figures of Catholic saints—and that the *Orishas* depend for their survival on animal sacrifice. It is a religious duty of believers in the Santeria religion to nurture the *Orishas*, to feed them and keep them alive. The Santeria religion originally developed in Cuba among former slave populations and has spread to Haiti, Brazil, and more recently to the United States, especially New York and Florida.

When the newly arrived *Orisha* worshippers of Florida proposed to open a church, they quickly discovered some hazards of living in a local democracy that is not liberal. The city council of Hialeah held an emergency public meeting at which, in a democratic atmosphere conducive to expressions of religious intolerance, the chaplain of the local police department declared that Santeria was a sin, "foolishness," "an abomination to the Lord," and the worship of "demons." He told the city council, "We need to be helping people and sharing with them the truth that is found in Jesus Christ." He exhorted the city council "not to permit this church to exist."

Shortly after the emergency public meeting, the city council zoned out the Santeria church by means of an ordinance prohibiting animal slaughter outside areas designated for slaughterhouses, although an exception was made for the practice of Jewish Kosher slaughter in the City of Hialeah. Additionally, the city council criminalized the Santeria religious rituals by means of ordinances making it illegal to kill animals for reasons other than food consumption. The newly enacted laws were written in such a way as to protect the practices of various interested parties. Exemptions were granted to local hunters, those who construct buildings in which they slaughter animals for human consumption, pest-control specialists who kill mice, skunks, squirrels, and other animals, and local farmers who kill small numbers of hogs and cattle for purposes other than food consumption.

The Santeria church challenged the ordinance in court. A number of animal rights organizations sided with the city and opposed the Santeria immigrants. The Supreme Court of the United States ultimately ruled unanimously in favor of the church, after six years of litigation. Although the decision of the Supreme Court was unanimous, it is noteworthy that they had to reverse earlier decisions of the US District Court and the US Court of Appeals. Both lower courts had ruled in favor of the city and against the church.

This decision has several other noteworthy features. The Court made note of the role of animal sacrifice in the history of religions. It pointed out, reiterating a core principle of "free exercise" legal doctrine, that "although the practice of animal sacrifice may seem abhorrent to some, religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection."

Despite the fact that both lower courts had supported the city ordinances, the Supreme Court justices thought that the case was easy, precisely because the ordinances were neither neutral nor general in their application and seemed to have as their object "the suppression of Santeria's central element, animal sacrifice." The Court opinion states, "the latter ordinances' various prohibitions, definitions and exemptions demonstrate that they were 'gerrymandered' with care to proscribe religious killings of animals by Santeria church members but to exclude almost all other animal killings." The Court also judged that various legitimate government interests, such as public health issues with respect to the disposal of organic garbage, could be served without a prohibition on all Santeria sacrificial practice. If the free exercise clause of the First Amendment was intended to do anything, the Court asserted, it was to protect religious minorities from precisely this type of persecution by the state. Why that was not obvious to the lower courts is not explained.

A less obvious although crucial feature of the Santeria decision is the historical shift in the normative status of the nondiscrimination interpretation of the free-exercise clause that had taken place since 1972. The *Wisconsin v. Yoder* Court of 1972 leaned heavily on the authority of religious conscience interpretation and was prepared to weigh and balance the claims of religious obligation related to sincerely held

religious beliefs against the legitimate claims and important interests of the secular state. By 1993, however, much had changed.

In a watershed case in 1990 (*Employment Division v. Smith*; 494 US 892 [1990]), in a plurality decision written by Justice Antonio Scalia, the multiply divided Court adopted the nondiscrimination approach to religious liberty jurisprudence. It announced that under the free-exercise clause, a law that burdens religious practice need not be justified by a compelling government interest if it is formally neutral and of general applicability. In the case of *Smith*, members of the Native American Church in the state of Oregon were denied government employment benefits because they had engaged in work-related misconduct; namely, they had violated an Oregon law prohibiting the use of illegal drugs (in this case, peyote). The Court supported that denial of benefits. It argued that the law making peyote use (and other drugs) illegal was not a violation of the free-exercise rights of members of the Native American Church because the point of the free-exercise clause is to prohibit discrimination or persecution on religious grounds. Because the law was formally neutral (no animus to Native Americans was apparent in its wording) and was generally applied to all citizens of the state, it did not run afoul of the First Amendment.

The *Smith* ruling produced a storm of protest from Congress and from religious organizations around the country. The Court's nondiscrimination approach to religious liberty resulted in the following normative rule: A formally neutral, generally applicable law does not violate the free-exercise clause even when no compelling government interest is at stake and even when the law has the (unintended) effect of treating a religious practice, such as Native American peyote use, as against the law. Under that interpretation, as Justice David Souter has suggested, even Catholic communion might be vulnerable to legal penalties, should the age of Prohibition return and a law be written that neutrally and generally prohibits all consumption of alcohol. By the way, during the last age of Prohibition in the United States, the law forbidding the consumption of alcohol was written with an explicit exemption for "wine for sacramental purposes." Dominant, powerful, or well-connected groups (for example, the Catholic Church during the age of Prohibition) have a way of getting their interests represented to lawmakers, who either do not pass the law, out of fear that it might be

universally applied, or pass the law with explicit exceptions and exemptions. This is one of the ways that small immigrant minority groups, whose interests may be poorly represented in the halls of government, are at a disadvantage in a law-and-order society.

In outraged response to the 1990 Smith Peyote case decision, Congress passed the Religious Freedom Restoration Act (RFRA), which President Clinton signed into law. The act mandated for the courts something very much like the authority of religious conscience reading of the free-exercise clause, in which the clause (as Justice Souter has put it) "safeguards a right to engage in religious activity free of unnecessary governmental interference." The US Supreme Court subsequently declared RFRA unconstitutional, a violation of the separation of congressional powers from judicial powers. (For a variety of views on Smith, RFRA, and the meaning of the religion clauses, see Eisenberg 2002; Eisgruber and Sager 1994a and b, 1996; McConnell 1990; Sager 2000.)

In any case, the Smith ruling and its nondiscrimination interpretation of religious liberty was the law of the land when the City of Hialeah tried to prohibit Santeria animal sacrifice within its territory. In that case, the nondiscrimination interpretation of religious freedom worked well to protect the Santeria church, precisely because the city ordinances were neither neutral (hostility towards a religion was facially apparent) nor generally applied. The case seemed easy. Nevertheless, the minority on the Smith Court, of whom Justice Souter is perhaps the most outspoken and eloquent, is clearly waiting for an opportunity to revisit the Smith decision. This is apparent from Justice Souter's concurring opinion in the Santeria animal sacrifice case, in which he outlines a line of attack on the nondiscrimination interpretation of religious freedom in the United States. He leaves us wondering what the Smith plurality on the Court would have said about ritual sacrifice in a Santeria church if the City of Hialeah had passed a formally neutral law prohibiting all animal slaughter for any purpose and applied it generally and across the board, with no exemptions for anyone, including the Santerias.

The normative regime that is going to emerge out of current conflicts over the interpretation of that single important clause in the First Amendment to the Constitution is going to be consequential. It is

going to make a difference in the scope permitted to unfamiliar or alien cultural practices related to sincerely held and self-defining sacred/religious-cultural beliefs. It is going to make a difference in the construction, management, and handling of "differences" in an increasingly multicultural national scene.

#### AFGHANS IN MAINE

My next example comes from a legal case in the state of Maine (*State of Maine v. Mohammed Kargar*, 679 A.2d 81). In a multicultural, law-and-order society such as the United States, the law of the land often presupposes and codifies the substantive beliefs, values, emotional reactions, aesthetic standards, and pictures of the world peculiar to those cultural groups who are mainstream and have the most power. This can be hazardous for members of immigrant minority groups, as was the case in 1985, when the state legislature of Maine wrote a law making criminal any sexual act with a minor (non-spouse) under the age of fourteen. Those who wrote the law went on, in their wisdom, to define a sexual act as, among other things, "direct physical contact between the genitals of one and the mouth...of another."

Hence, in 1993, when Mr. Mohammad Kargar, an Afghani refugee who had been residing in the United States for three years, was seen kissing the genitals of his eighteen-month-old son, he found the police descending on his home. He was arrested, convicted of gross sexual assault in Superior Court, and prohibited from seeing his family while the case was appealed. Three years later, his conviction was overturned by the State Supreme Court, which relied heavily on cultural analysis. In this case, fidelity in ethnographic representation made a difference in the outcome of the case.

As it turns out, kissing the genitals of a young child is commonplace in Mr. Kargar's cultural community and is viewed there as a sign of love and affection. It is precisely the father's willingness to kiss what is viewed as an unclean or unholy part of the body (a place where urination takes place) that makes the act such a powerful display of love. The gesture is so socially endorsed and "normal" in Mr. Kargar's local Afghan community that pictures representing that type of show of affection are proudly displayed in family photo albums. After taking testimonies from members of the relevant local cultural network and

expert witnesses, it was possible for the Supreme Court of Maine to construct an alternative understanding of Mr. Kargar's act. With insights into local meanings and the "native point of view," they were able to view it as a symbolic action with positive connotations rather than as an act of physical abuse.

Although the Supreme Court of Maine ultimately vindicated Mohammad Kargar, the whole process and legal ruling were at great cost to the defendant. The court made no suggestion that the law be amended to make room for alternative cultural understandings of sexuality and touching and gave no assurance that other Afghani residents of Maine will not have the police knocking on their doors.

Perhaps this case seems exotic to you. Perhaps it makes you nervous, given your own local cultural sensibilities. Given that many of you are anthropologists or social scientists, perhaps you are especially alert to the hazards of ethnocentrism and are able, or at least willing, to try to bracket your own socialized moral and emotional reactions and see things from an alternative point of view. Unfortunately for immigrant minority groups, feeling-laden and morally outraged ethnocentric misreadings of their customary or habitual actions and underlying intentions by members of dominant majority groups are more common than one supposes. The consequences can be devastating, especially for members of minority groups. That alone ought to be reason enough for cultural anthropologists (at least those who are still pro-cultural) to share what we know about other cultures with the public and play a part in normative public policy debates. Being slow to judge others and getting one's ethnographic facts straight can be virtues, as will become even more apparent in a moment.

### SOMALIS IN SEATTLE

My fourth and final example is not yet a legal case in the United States, but now on the books is a federal law criminalizing a particular cultural practice that is commonplace among immigrants from certain parts of Africa. Sooner or later some African parent is going to be prosecuted, and at that time the constitutionality of the law may well be tested.

Unless you are an anthropologist who knows a good deal about East and West African gender identity and coming-of-age ceremonies, you may find this final example very difficult to think about in an open-

minded way. I believe that this is largely because of the way the practice has been represented in a global discourse that bears little relationship to informed anthropological accounts. Many Americans who cherish their liberal democracy like to think of themselves as pluralists who value diversity and believe that tolerance of cultural differences is good. Nevertheless, when families arrive in their midst from Somalia, Egypt, the Sudan, Sierra Leone, Mali, the Gambia, or Ethiopia, these same liberal Americans begin to sound like that police chaplain from the City of Hialeah—the one who called Santeria animal sacrifice a sin, an abomination, who said not to let it happen here. I have in mind the reaction of dominant groups in the United States to families such as the Somali refugees who arrived in Seattle in the early 1990s. These families wanted to continue doing what is done in Somalia. They wanted (by their own lights) to improve the bodies and further the normal social development of both their sons and daughters by means of a cosmetic genital surgery.

When a doctor at the Harbor View Medical Center in Seattle asked a pregnant Somali woman whether she would like to have her child circumcised if it is a boy, the woman replied, "Yes, and if it is a girl, too" (Coleman 1998). The hospital happened to be one that is sensitive to cultural issues and has a significant inner-city minority group clientele. A committee was formed to look into the possibility of a minor, medically safe female circumcision procedure that might be made available to immigrants from cultures in which circumcision for both males and females is the cultural ideal and is viewed as an essential ingredient of normal growth and gender development. The Harbor View committee proposed to do the procedure, with the informed consent of both the parents and the child, when the child became approximately twelve years old, under hygienic conditions and with a local anesthesia. From a medical point of view, the proposed procedure was less intrusive than a typical male circumcision performed in the United States. Nevertheless, when news was leaked that Harbor View, a respected medical institution affiliated with the University of Washington, was contemplating this step, the local mainstream non-immigrant community went ballistic. Congresswoman Patricia Schroeder warned the medical center that it might be prosecuted under a federal law that she herself had sponsored.

The relevant law was passed by Congress in September 1996 and went into effect in March 1997. The law criminalizes “female genital mutilation” and penalizes with fines and/or prison sentence (up to five years) anyone who knowingly engages in surgery on any parts of the genitals of a female who is under eighteen years of age. The law explicitly states that in punishing offenders, no account shall be taken of their belief that the surgery is required as a matter of custom or ritual. Such wording suggests a law written with the explicit aim of suppressing a cultural practice associated with immigrants from Africa. It is noteworthy that the law was passed without any public hearings. It was passed without seeking expert testimony from any anthropologist who had studied female initiation or gender identity issues in East and West Africa, or from anyone else. Absolutely no attempt was made to represent or understand the point of view of the many African peoples for whom cosmetic genital surgery (for males and females) is as central to their cultural identities and sense of well-being as (male) circumcision is for Jews and for Muslims.

Faced with a potential lawsuit, negative publicity on the local news channels nightly, and many expressions of intolerance toward African peoples who “mutilate” their own children, the Harbor View Medical Center withdrew its tentative proposal for a genital surgery option for the female children of African immigrants.

The reasons for the intolerance are obvious and can be directly related to the representations of the practice of female genital surgeries that have dominated the press in the First World and have been widely disseminated by anti-FGM (female genital mutilation) activist organizations and lobbying groups. If you read and believe the literature put out by anti-FGM activists, what African peoples are said to do is, indeed, horrifying. If you read and believe that literature, you must think that Africa is a “dark continent” where for hundreds, if not thousands, of years African parents have been murdering and maiming their daughters and depriving them of the capacity for a sexual response. You must believe that African parents (mothers and fathers) are either monsters (“mutilators” of their children) or fools (incredibly ignorant of the health consequences of their own child-rearing practices and the best interests of their children) or that African women are weak and passive and live under the thumb of cruel, loathsome, or barbaric African men.

There is a powerful impulse within a liberal democracy such as the United States to leave people free to live their lives according to their own views of what is good, true, beautiful, or effective—but not if what they choose to do does great harm to those who are innocent, vulnerable, and not in a position to make choices for themselves. If such representations were accurate, who would not want to “save the children” and bring the practice of cosmetic genital surgeries to an end. But are they accurate? Compare such horrifying representations of the African “other” in our midst with the accounts of four anthropologists who know something about Africa, the practice of female circumcision, or both. (For a more detailed and thorough examination of this topic, see Shweder 2002.)

This is what Robert Edgerton (1989:40), an expert on East African history and contemporary society, says about the practice of female circumcision in Kenya in the 1920s and 1930s, at a time under British colonial rule when Christian missionaries and colonial administrators tried unsuccessfully to wipe it out. Then, nearly half of all Kenyan ethnic groups circumcised both girls and boys. In Kenya in the 1920s and 1930s, the surgery typically occurred around adolescence. It should be noted that across and within African ethnic groups, the age at which cosmetic genital surgeries for boys and girls are performed varies (any time from birth to the late teenage years) and the style and degree of surgery vary, too (in the case of girls, from a cut in the prepuce covering the clitoris to the complete “smoothing out” of the genital area by removing all visible parts of the clitoris and all external labia). In a few ethnic groups (especially in the Sudan and Somalia), the smoothing out operation is sometimes concluded by stitching closed the vaginal opening with the aim of enhancing fertility, protecting the womb, and tightening the vagina (so as to increase the capacity to give and experience sexual pleasure during intercourse in high-fertility populations of women whose vaginal canal has been widened or loosened by multiple births) (see Boddy 1982, 1989, 1996; Gruenbaum 2001). The stitching (aimed at creating something like a truss), referred to as “infibulation” or “Pharaonic circumcision,” has received enormous attention (much of it lurid and sensational) in the global anti-FGM literature. In reality, this procedure is rare or non-existent in most parts of Africa and is the exception, not the rule, across the continent. In Kenya and most parts of East and West Africa, a more typical cosmetic genital surgery might

involve the removal of some or all of the visible parts of the clitoris and either partial or complete removal of the labia minora. In general, and at a minimum, any form of African genital surgery leaves in tact at least 50 percent of the total tissue structure of the clitoris. This is because much of the tissue structure of the clitoris (at least 50 percent) is internal, below the surface, and not readily visible and is therefore not removed during the surgery, which may help to explain why circumcised women can experience sexual pleasure and have orgasms.

Assessing the consequences of female genital surgeries in Kenya during the 1920s and 1930s, Edgerton remarks that the operation was performed without anesthesia and was very painful, "yet most girls bore it bravely and few suffered serious infection or injury as a result. Circumcised women did not lose their ability to enjoy sexual relations, nor was their child-bearing capacity diminished. Nevertheless the practice offended Christian sensibilities." Edgerton's is but one of several anthropological statements that call into question the accuracy of the nightmarish discourse of the current global anti-FGM campaigns.

This is what Sandra Lane and Robert Rubinstein (1996:35) say about the practice today in Egypt, where approximately 85–90 percent of females and males are circumcised:

An important caveat, however, is that many members of societies that practice traditional female genital surgeries do not view the result as mutilation. Among these groups, in fact, the resulting appearance is considered an improvement over female genitalia in their natural state. Indeed, to call a woman uncircumcised, or to call a man the son of an uncircumcised mother, is a terrible insult and noncircumcised adult female genitalia are often considered disgusting. In interviews we conducted in rural and urban Egypt and in studies conducted by faculty of the High Institute of Nursing, Zagazig University, Egypt, the overwhelming majority of circumcised women planned to have the procedure performed on their daughters. In discussions with some fifty women we found only two who resent and are angry at having been circumcised. Even these women do not think that female circumcision is one of the most critical problems facing Egyptian women and girls.

In the rural Egyptian hamlet where we have conducted fieldwork some women were not familiar with groups that did not circumcise their girls. When they learned that the female researcher was not circumcised their response was disgust mixed with joking laughter. They wondered how she could have thus gotten married and questioned how her mother could have neglected such an important part of her preparation for womanhood.

This is what Carla Obermeyer (1999:92, 95), an epidemiologist and medical anthropologist at Harvard University, says after a recent massive review of the medical and demographic literature on the health consequences of the cultural practice: "On the basis of the vast literature on the harmful effects of genital surgeries, one might have anticipated finding a wealth of studies that document considerable increases in mortality and morbidity. This review could find no incontrovertible evidence on mortality, and the rate of medical complications suggest that they are the exception rather than the rule.... In fact, studies that systematically investigate the sexual feelings of women and men in societies where genital surgeries are found are rare, and the scant information that is available calls into question the assertion that female genital surgeries are fundamentally antithetical to women's sexuality and incompatible with sexual enjoyment."

Arguably the most systematic, large-scale, and scientifically rigorous study of the medical consequences of female genital surgeries in Africa is the Medical Research Council investigation of the reproductive health consequences of the practice (Morison et al. 2001). The study was published after Obermeyer's literature review, although its findings are consistent with her conclusions. The study was conducted in the Gambia, where the surgery most typically involves an excision of the visible part of the clitoris and either a partial or complete excision of the labia minora. The study systematically compared circumcised with uncircumcised women. More than 1,100 women (ages fifteen to fifty-four) from three ethnic groups (Mandinka, Wolof, and Fula) were interviewed and given gynecological examinations and laboratory tests. In the annals of the literature, this is rare data on the consequences of female genital operations.

Overall, very few differences were discovered in the reproductive health status of circumcised women versus uncircumcised women. Of the women who were uncircumcised, 43 percent reported menstrual problems, compared with 33 percent for circumcised women. The difference was not statistically significant. Of the women who were uncircumcised, 56 percent had a damaged perineum, compared with 62 percent for circumcised women. Again, the difference was not statistically significant. There were a small number of statistically significant differences, for example, more syphilis (although not a lot of syphilis) among uncircumcised women and a higher level of one particular kind of bacterial infection among circumcised women. In general, from the point of view of reproductive health consequences, there was not much to write home about. As noted in the research report, the supposed morbidities (such as infertility, painful sex, vulval tumors, menstrual problems, incontinence, and most endogenous infections) often cited by anti-FGM advocacy groups as common long-term problems of female circumcision did not distinguish women who had the surgery from those who did not. Yes, 10 percent of circumcised Gambian women in the study were infertile, but the level of infertility was exactly the same for the uncircumcised Gambian women in the study. The authors (Morison et al. 2001:651) caution anti-FGM activists against exaggerating the morbidity and mortality risks of the practice. In addition, circumcised Gambian women expressed high levels of support for the practice. The authors of the study write, "When women in our study were asked about the most recent circumcision operation undergone by a daughter, none reported any problems" (2001:651).

Finally, this is what Fuambai Ahmadu (2000), an anthropologist at the London School of Economics and Political Science, says about her own ritual initiation in Sierra Leone: "It is difficult for me—considering the number of ceremonies I have observed, including my own—to accept that what appear to be expressions of joy and ecstatic celebrations of womanhood in actuality disguise hidden experiences of coercion and subjugation. Indeed, I offer that the bulk of Kono women who uphold these rituals do so because they want to—they relish in the supernatural powers of their ritual leaders over against men in society, and they embrace the legitimacy of female authority and particularly, the authority of their mothers and grandmothers."

Ms. Ahmadu grew up in the United States after her parents migrated here when she was five years old. As a young adult, at age twenty-two, she returned to Sierra Leone to be initiated like all other Kono women. Speaking at the AAA meetings in Chicago four years ago, she remarked, "I also share with feminist scholars and activists campaigning against the practice a concern for women's physical, psychological and sexual well-being, as well as with the implications of these traditional rituals for women's status and power in society. Coming from an ethnic group [the Kono of Eastern Sierra Leone] in which female (and male) initiation and circumcision are institutionalized and a central feature of culture and society and having myself undergone this traditional process of becoming a 'woman,' I find it increasingly challenging to reconcile my own experiences with prevailing global discourses on female circumcision."

None of this type of testimony was sought or heard before Patricia Schroeder and the Congress wrote a law designed to make this type of initiation illegal. For the most part, anthropologists who are most knowledgeable about African circumcision practices have been hesitant to step forward, speak out, and educate the public about this cultural practice, although this may be changing (for example, see Obermeyer 1999; Shell-Duncan and Hernlund 2000).

Consider two types of hypothetical cases (also described in Shweder 2002), a real instance of which may one day come forward in our courts.

Imagine an African mother who lives in the United States and holds the following convictions: She believes that her daughters, as well as her sons, should be able to improve their looks and their marriage prospects, enter into a covenant with God, and be honored as adult members of the community, via circumcision. Imagine that her proposed surgical procedure (for example, a cut in the prepuce that covers the clitoris) is no more substantial from a medical point of view than the customary American male-circumcision operation. Why should we not extend that option to the Kono parents of girls, as well as to the Jewish parents of boys. Principles of gender equity, due process before the law, religious and cultural freedom, and family privacy would seem to support the option. Or is one going to argue that gender equity requires that male circumcision be criminalized as well, thereby attempting (as anti-male circumcision activists in Canada and the

United States are promoting) to eradicate a practice that has been central to Judaism and Islam for thousands of years?

Imagine a sixteen-year-old female Somali teenager living in Seattle who believes that a genital alteration would be "something very great." She likes the look of her mother's body and her recently circumcised cousin's body far better than she likes the look of her own. She wants to be a mature and beautiful woman, Somali-style. She wants to marry a Somali man or, at least, a man who appreciates the intimate appearances of an initiated woman's body. She wants to show solidarity with other African women who express their sense of beauty, civility, and feminine dignity in this way, and she shares their sense of aesthetics and seamliness. She reviews the medical literature and discovers that the surgery can be done safely, hygienically, and with no great effect on her sexual capacities. After consultation with her parents and the full support of other members of her community, she elects to carry on the tradition. In a society that endorses sex-change operations, breast enhancements, nose jobs, and a vast array of cosmetic surgeries, what principle of justice demands that her cultural heritage and ideals for the human body be criminalized and brought to an end?

## CONCLUSION

In this chapter on the moral challenge of cultural migration for liberal democracies, I have discussed four types of controversial cases: school refusal among the Amish of Wisconsin, animal sacrifice in a Santeria church in Florida, touching and physical contact among Afghans in Maine, and female genital surgeries for Somalis in Seattle. I have focused on these four cases with a very special purpose in mind: to draw attention to aspects of the ethical and moral national regime that delimits the space within which tolerance of cultural difference is possible in the United States. In examining these cases, I do not mean to suggest that immigrant minority groups have had an unusually hard time maintaining their cultural practices in the United States. Indeed, some have argued that the United States has been far more accommodating of difference than have other societies in the world and has absorbed large numbers of immigrants without great difficulty (Cohen and Bledsoe 2002). To the extent that this is true, it may have something to do, in part, with the way US legal and ethical traditions treat

issues such as the free exercise of religion, family privacy, parental rights, and so forth. It may have something to do with the relatively decentralized nature of normative regimes in the United States, where it is sometimes possible to change location and migrate to "a more tolerant region." Nearly half the states in the United States, although not Oregon, have made legal exceptions for the sacramental use of peyote by members of the Native American Church.

My main aim, however, has been merely to raise questions about the scope of cultural tolerance in a liberal democracy such as the United States. Whether anthropology as a discipline will rise to the moral challenges posed by cultural migration remains to be seen. Inevitably and increasingly, public policy debates will address difficult issues about the shape multiculturalism ought to take. Will anthropology discipline itself to be a scholarly discipline that faithfully represents the native point of view? Will it work to combat ethnocentrism in the law by educating the general public about the moral decency and rationality of "others"? Will anthropology engage a normative agenda for a multicultural society in an informed and rigorous way, trying to distinguish between a defensible pluralism and the indefensible position of radical relativism that says whatever is, is okay? Or will the main message of contemporary anthropology be that we should live in a world of individuals without groups? That everything is in flux and unbounded? That Frederick Nietzsche was right about custom being false consciousness and tradition bad faith? That not only is the idea of God dead but also the idea of culture? Will the message of cultural anthropology be that attachment to the heritage of one's ancestors does not and should not matter any more? I hope not. This is a good time for anthropology to reclaim and defend its interest in the value of cultural differences, which is one way American cultural anthropology can begin to rediscover its soul.

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