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The Moral Challenge in Cultural Migration

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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 borderless 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). 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 education 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.