

Essays

Blaming Culture for Bad Behavior

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INTRODUCTION

When do we call behavior “cultural”? And when do we not? Why do we distinguish behavior in this way? And what are the consequences of this difference in recognition and naming? This Essay examines narratives that emerge in cases of forced and voluntary adolescent marriage. These narratives suggest that behavior that we might find troubling is more often causally attributed to a group-defined culture when the actor is perceived to “have” culture. Because we tend to perceive white Americans as “people without culture,” when white people engage in certain practices we do not associate their behavior with a racialized conception of culture, but rather construct other, non-cultural explanations. The result is an exaggerated perception of ethnic difference that equates it with moral difference from “us.”

In this Essay, I examine discursive representations—the narratives

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that underlie public perception, legal discourse, and scholarly writings. I interrogate the way in which identity casts certain individuals outside the boundaries of our social body. Differentiation can occur through numerous identity-based distinctions—class and sexuality, for example. Here my focus is on race and immigrant status.

This Essay compares narratives in which two groups of adolescent women marry older men: girls who are white, and girls who are immigrants of color. In Part I, an examination of two cases of voluntary marriage reveals that when the actors involved are immigrants of color, we label behavior that we consider problematic as “cultural,” and understand this term to mark racial or ethnic identity. Thus, we consider early marriage by a Mexican immigrant to reflect “Mexican culture.” In contrast, when a white person commits a similar act, we view it as an isolated instance of aberrant behavior, and not as reflective of a racialized culture. Under this schema, white people are individual actors; people of color are members of groups. This Part examines why we equate race and culture and selectively blame culture for bad behavior.

Part II contrasts two cases of forced marriage to examine how the equation of race and culture in these cases relates to the interplay of nationalism, gender, and sexuality. This is significant because the terrain on which we articulate and understand racialized difference is frequently that of gendered treatment. The two cases of forced marriage show that prohibited behavior—parental coercion of a daughter’s marriage—is conceptualized as a threat to “American” values when the perpetrator is an Iraqi immigrant, but not when the perpetrator is white. National identities, expressed here in the form of “American values,” often coalesce around women’s bodies and incorporate racial judgments. Thus, we project problematic behavior beyond the borders of the idealized nation by locating bad behavior on the bodies of racialized immigrant subjects.

Finally, Part III examines the consequences of selectively blaming culture by asking what we miss when we misread in this fashion. Selectively blaming culture leads to the misapprehension that certain immigrant cultures are fundamentally different from “our” culture. Ethnic difference is equated with moral difference, with which we must struggle in a multicultural state. Specifically, commentators depict the sex-subordinating practices of certain immigrants as creating an irreconcilable tension between the values of feminism and multiculturalism. The presumed existence of this conflict leads to policy proposals and theoretical conclusions that exaggerate differences between “us” and “them.” Such misreadings prevent us from seeing, understanding, and struggling against specific relations

of power—both within “other” cultures and our own.

I. VOLUNTARY MARRIAGE

A. *Tina Akers and Wayne Compton*

In September 1998, the front page of the *Washington Post* announced, “Girl, 13, Marries into Controversy.”¹ Tina Akers, a thirteen-year-old, had married twenty-nine-year-old Wayne Compton in Maryland.² After they had dated for a few months, Tina became pregnant; she bore their son three weeks after the wedding.³ At the time, Maryland law provided no minimum legal age of marriage: Anyone younger than sixteen with parental consent and proof of pregnancy could be legally married.⁴ Critics called for Wayne Compton to be investigated for sexual assault, Tina’s parents to be investigated for child abuse, and state lawmakers to outlaw such unions.⁵ To date, Wayne Compton has not been prosecuted,⁶ but in April 1999, Maryland legislators passed a bill raising the age of consent for minors to marry.⁷ While the original bill introduced would have prohibited marriage for anyone younger than sixteen, legislators’ concerns that the bill would result in more births out of wedlock led to a final version allowing fifteen-year-old girls to get married if they are both pregnant and have parental consent.⁸

Nowhere in the sound and fury over the Akers/Compton case was there any reference to their marriage as a cultural phenomenon.⁹

1. Amy Argetsinger, *Girl, 13, Marries Into Controversy: Arundel Says It's Legal, But Critics Say It's Child Abuse*, WASH. POST, Sept. 29, 1998, at A1.

2. *See id.*

3. *See id.* The baby subsequently died in his sleep. An autopsy gave the cause as sudden infant death syndrome, but police launched an investigation. *See* Amy Argetsinger, *Assembly Votes to Ban Some Teen Marriages*, WASH. POST, Apr. 11, 1999, at C4.

4. *See* MD. CODE ANN., FAM. LAW § 2-301 (1991).

5. *See* Argetsinger, *supra* note 1, at A10; Editorial, *Assembly's Home Stretch*, BALT. SUN, Mar. 22, 1999, at 8A (describing “shocking news” of Akers-Compton marriage and opining that it is against social norms for a 13-year-old to marry and have children).

6. Prosecutors declined, noting that Compton and her family have not filed a complaint nor shown any willingness to testify against him. *See* Argetsinger, *supra* note 3, at C4.

7. *See* H.B. 388, 413th Leg. (Md. 1999) (amending MD. CODE ANN., FAMILY LAW § 2-301 to absolutely prohibit an individual under age 15 from marrying, to require an individual between ages 15 and 16 to have parental consent and proof of pregnancy, and to require 16- and 17-year-olds to have either parental consent or proof of pregnancy); *see also* *Close to Home, Unhappily Ever After in Maryland*, WASH. POST, Apr. 4, 1999, at B8 (excerpted testimony on House Bill 388 of the clerk of the Anne Arundel Circuit Court before the Maryland House Judiciary Committee).

8. *See* Argetsinger, *supra* note 3, at C4. The fact that 15-year-olds can still marry puts the bill in conflict with the state’s sexual offense laws. *See id.*; *see also* MD. ANN. CODE art. 27, § 464B (1999).

9. In addition to sources already cited, *see* Mary Allen, *Probe Goes on in Case of Married Mother, 13*, CAPITAL, Sept. 30, 1998, at A1; *Political Notes: 13-Year-Old Girl's Marriage to Be Discussed on Radio*, CAPITAL, Oct. 15, 1998, at A8.

While the two were both white, no one considered this marriage to be a moment that defined white American culture. Instead, the media, the public, law enforcement, and lawmakers understood the marriage as an example of aberrant behavior, which they variously characterized as child abuse, sexual perversion, and corruption of a minor.¹⁰

B. Adela Quintana and Pedro Sotelo

In contrast, when fourteen-year-old Adela Quintana and twenty-two-year-old Pedro Sotelo had a child in Texas, reporters described the case as “exposing a cultural divide,”¹¹ as demonstrating “a clash between two different cultures,”¹² and as engendering “public discussion about how to bridge cultural chasms.”¹³ In January 1996, police and child welfare officials in Houston, Texas, launched a massive search to locate Quintana, a pregnant runaway then believed to be ten years old, and her boyfriend.¹⁴ Quintana, an undocumented immigrant, had first come to the state’s attention when she attempted to apply for welfare by using a fraudulent birth certificate.¹⁵ After Child Protective Services placed Quintana in an emergency shelter for abused children and the District Attorney charged Sotelo with aggravated sexual assault of a child, the couple fled.¹⁶ When authorities captured them, they put Sotelo in a maximum security facility and placed Quintana in a foster home. The charges against Sotelo were dropped after a family court judge ruled that the couple had a valid common-law marriage under Texas law.¹⁷ In Texas, children younger than fourteen cannot consent to sexual intercourse;¹⁸ however, the statutory rape law defines a child as “a person younger than 17 years of age who is not the spouse of the actor.”¹⁹ Although for formal marriage in Texas both bride and

10. See Argetsinger, *supra* note 1, at A13.

11. Sandra Sanchez, *In Texas, Worlds Collide: Expectant Couple Caught in Clash of Two Cultures*, USA TODAY, Jan. 29, 1996, at 1D.

12. *Id.*

13. Syd Kearney, *Heroes and Heartaches: Putting 1996 in Perspective*, HOUS. CHRON., Jan. 2, 1997, at 5.

14. See generally Nina Perales, *Cultural Stereotype and the Legal Response to Pregnant Teens*, in MOTHER TROUBLES: RETHINKING CONTEMPORARY MATERNAL DILEMMAS 81 (Julia E. Hanigsberg & Sarah Ruddick eds., 1999). Perales’s essay is an excellent and incisive critique of assumptions about pregnant Latina teenagers.

15. The birth certificate identified her as 10-year-old Cindy Garcia. See Jo Ann Zuniga, *Deportation Hearing for Young Couple Could Be Trying for Judge*, HOUS. CHRON., Mar. 28, 1997, at 30.

16. See Perales, *supra* note 14, at 82.

17. See *id.* at 85-86.

18. See *May v. State*, 903 S.W.2d 792, 794 (Tex. Ct. App. 1995).

19. TEX. PENAL CODE ANN. § 22.011(c)(1) to (2) (West 1997).

groom must be at least eighteen,²⁰ Quintana's age was no bar to the common-law marriage; at the time, the state had established no minimum age of consent to common-law marriage.²¹

Sotelo's civil attorney described Quintana as a physically mature "buxom lass."²² She stated that, in rural Mexico, "once a girl hits puberty she is fair game."²³ Sotelo's criminal attorney declared that the case "was a cultural collision" and that his client was not guilty of statutory rape because he was following the customs of his rural village in Mexico.²⁴ The press also depicted the case as a clash of American and Mexican cultures. *Dateline NBC* sent a reporter to Mexico to interview people in Sotelo's home village about their awareness of early marriage. The program referred to Sotelo as "an innocent player in a big cultural misunderstanding."²⁵

In her critique of the Quintana/Sotelo case, Nina Perales points out that it was Texas culture, embodied in statute, rather than Mexican culture, that resolved the dispute. Marriage at a young age is hardly an anomaly in Texas: Annually an average of 470 girls fourteen and younger marry there.²⁶ In fact, Mexican law actually provides stricter age requirements for marriage than Texas law.²⁷ Nevertheless, this case was understood as a definitional moment of Mexican culture.

C. Contrasting Narratives

What explains the different narratives that emerged from these

20. See TEX. FAM. CODE ANN. § 2.101 (West 1997). In Texas, one can marry at 14 with the consent of a parent, see *id.* § 2.102, or at 13 with a court order, see *id.* § 2.003.

21. See *id.* § 2.402(c). Following this case, a bill was filed to eliminate common-law marriage as a defense to statutory rape. *Bill Bars Common-Law Marriage as Rape Defense*, HOUS. CHRON., Feb. 4, 1997, at 17. The bill was enacted in 1997. See 1997 Tex. Sess. Law Serv. 1362 (West) (as codified at TEX. FAM. CODE ANN. § 2.401 (West 1999)) (amending the law to exclude individuals under the age of 18 from common-law marriages).

22. Perales, *supra* note 14, at 87.

23. *Id.*

24. *Id.* at 83.

25. The *Dateline NBC* program (February 1996) is described in Perales, *supra* note 14, at 84.

26. See Nicole Koch, *Letting Young Girls Marry Gets Another Look in Utah: Opponents Fear the Weddings Are Forced on Child Brides*, DALLAS MORNING NEWS, Sept. 27, 1998, at 10A.

27. I am indebted to Iqbal Gulati for suggesting this point. In Mexico, the age requirement for formal marriage is 18. With parental consent, or, if parents are unavailable, with the consent of grandparents, one can marry at 16 if male, 14 if female. See CÓDIGO CIVIL PARA EL DISTRITO FEDERAL arts. 148-49 (Mex.) (1996 WL 920101-2), translated in MEXICAN CIVIL AND COMMERCIAL CODES arts. 148-49 (1996 WL 915520-1) (describing the law in Mexico City). In the state of Guerrero, the home state of Pedro Sotelo, the minimum age at marriage is the same as in Mexico City. See CÓDIGO CIVIL GUERRERO art. 412; see also Navegador Jurídico Internacional, *InfoJUS* (visited Oct. 5, 1999) <<http://www.juridicas.unam.mx>>. Many thanks to Carolina Sevilla for her assistance in researching the Mexican law.

two cases? Examining the way culture is conceptualized and linked with race provides an explanation. We sometimes assume culture to be static and insular, a fixed property of groups rather than an entity constantly created through relationships. This assumption is made much more frequently for outsider communities such as communities of color. Culture, for communities of color, is transformed into what Paul Gilroy calls a “pseudo-biological property of communal life.”²⁸ Under such a paradigm, culture for communities of color is a fixed, monolithic essence that directs the actions of community members. Racialized culture thus becomes an essence that is transmitted in an unchanging form from one generation to the next.²⁹ We can contrast this racialized culture to culture that is considered to be “hegemonic”—the culture established as the norm.³⁰ Hegemonic culture is either experienced as invisible³¹ or is characterized by hybridity, fluidity, and complexity.³² The sophistication with which

28. As Gilroy writes:

Culture is conceived along ethnically absolute lines, not as something intrinsically fluid, changing, unstable and dynamic, but as a fixed property of social groups rather than a relational field in which they encounter one another and live out social, historical relationships. When culture is brought into contact with “race” it is transformed into a pseudo-biological property of communal life.

PAUL GILROY, *SMALL ACTS: THOUGHTS ON THE POLITICS OF BLACK CULTURES* 24 (1993).

29. Lisa Lowe makes the helpful suggestion that we recognize “the ways in which [culture] is imagined, practiced, and continued. . . . [Culture] is worked out as much ‘horizontally’ among communities as it is transmitted ‘vertically’ in unchanging forms from one generation to the next.” LISA LOWE, *IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS* 64 (1996).

30. Hegemonic culture is characterized less by what it is than by what it is not: raceless, classless culture that could not be attributed to any particular “subculture” of American society. What is considered to be hegemonic culture, the culture of the norm, is a flexible concept that constricts and expands in different contexts, depending upon who “we” are considered to be.

31. Generally, “white” culture is not marked or noted, an absence connected to the invisibility of whiteness as a race. On whiteness, see generally GEORGE LIPSITZ, *THE POSSESSIVE INVESTMENT IN WHITENESS: HOW WHITE PEOPLE PROFIT FROM IDENTITY POLITICS* (1998); IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996); DAVID ROEDIGER, *TOWARDS THE ABOLITION OF WHITENESS: ESSAYS ON RACE, POLITICS, AND WORKING CLASS IDENTITY* (1994).

32. The work of anthropologists such as James Clifford, George Marcus, and Renato Rosaldo has been foundational in developing a critical anthropology that subjects our own culture to the same level of scrutiny to which anthropologists had traditionally only subjected “other” cultures. See generally JAMES CLIFFORD, *THE PREDICAMENT OF CULTURE: TWENTIETH-CENTURY ETHNOGRAPHY, LITERATURE, AND ART* (1988); WRITING CULTURE: *THE POETICS AND POLITICS OF ETHNOGRAPHY* (James Clifford & George E. Marcus eds., 1986); RENATO ROSALDO, *CULTURE AND TRUTH: THE REMAKING OF SOCIAL ANALYSIS* (1993).

More recently, in the legal literature, norms theorists have begun to examine the way in which our society is shaped by extra-legal norms. This work could be considered a helpful step toward examining our behavior, although it is limited by its account of the development and entrenchment of norms solely in rational choice terms. For a discussion of why engaging in the insights of anthropology and sociology would be profitable for norms theory, see Mark Tushnet, “*Everything Old Is New Again*”: *Early Reflections on the “New Chicago School,”* 1998 WIS. L. REV. 579.

we understand hegemonic culture to be complicated and contradictory—something with which we actively negotiate—is unmatched by an equally complicated understanding of outsider cultures.

These visions of culture influence our perceptions of individual acts. For communities of color, a specific individual act is assumed to be the product of a group identity and further, is used to define the group. Thus, people perceive Adela Quintana's early sexuality and marriage to be the product of Mexican identity and definitive of Mexican identity.³³ In contrast, the media does not present early sexuality and marriage by Tina Compton as the product of white identity, and thus her case does not perpetuate any perception that teen marriage is a phenomenon of "white culture."

This cultural identification may change, though, if her behavior is associated with a white identity that is differentiated from the "norm" by her class position. While narratives of the case did not explicitly highlight the couple's working-class white identity, class was a subtext in the media's description of Tina and Wayne Compton.³⁴ Many of the behaviors attributed to people of color are similarly ascribed to working-class whites, e.g., early marriage and excessive promiscuity.³⁵ Assumptions about class frequently operate to thrust working-class whites out of the presumptive normalcy of "our" culture.

However, in this case teen marriage was only implicitly presented as a phenomenon associated with class, and not explicitly named as such. Instead, Tina Akers and Wayne Compton were configured, despite their working-class identity, to be a part of "us." So long as Tina Compton belonged to "our culture," her behavior was not

33. The practices of the Orange County Social Services Agency between 1994 and 1996 demonstrated the assumption that early sexuality and marriage are part of Latino/a or Mexican culture: The agency encouraged approximately 15 pregnant adolescent girls under its protection to marry or live with the men who fathered their children. All but one of the girls were Latina. Some were as young as 13. See Vincent J. Schodolski, *Making a Family, But at a Cost? Pregnant Teens Pushed to Marry Adult Lovers*, CHIC. TRIB., Sept. 4, 1996, at 1. The Orange County Agency director had believed for a period that the age of consent to marriage in Mexico was 12. See Matt Lait, *Agency Helps Some Girls Wed Men Who Impregnated Them*, L.A. TIMES, Sept. 1, 1996, at A1. While some agency social workers said that the arrangements reflected the "cultural" mores of Mexico, others charged in internal memos that the agency's approach smacked of racism. See Matt Lait, *O.C. Agency Report Urges Change in Teen Wedding Policy*, L.A. TIMES, Sept. 7, 1996, at A1. See also Perales, *supra* note 14, at 88-89.

34. The *Washington Post* described a "pickup truck and fish tank" sitting in the front yard of her mother's house in "a dusty Annapolis suburb," and the reporter noted that she had dropped out of seventh grade the previous spring; her husband was described as an "unemployed roofer" who dropped out of school in the eleventh grade. Argetsinger, *supra* note 1, at A1.

35. For a description of how working-class whites were historically assumed to be sexually promiscuous, see Jane E. Larson, "Even a Worm Will Turn at Last": Rape Reform in Late Nineteenth-Century America, 9 YALE J.L. & HUMAN. 1, 30 (1997).

perceived to reflect norms associated with race. Instead, media accounts explained her behavior as reflecting trends in a national, presumptively raceless culture,³⁶ or ascribed her actions to a lack of rationality. In the latter construction, Tina Compton and her husband are personally dysfunctional, “perverse,” and “irresponsible.”³⁷ They are individual actors whose behavior is not the product of a group identity. Their behavior, in this view, does not reflect an ethnic or racial identity, nor is it used to define “whiteness.”

We do not perceive adolescent marriage to be a property of whiteness, nor to be a classless, white cultural norm. Behavior that causes discomfort—that we consider “bad”—is conceptualized only as culturally canonical for cultures assumed to lag behind the United States. This tendency to submerge only certain groups into the forces of culture is linked to the assumption that the behavior of devalued and less powerful groups is somehow more culturally determined—that they behave in certain ways and make particular choices because they follow cultural dictates.³⁸

Cultures that are thought to lag behind are often differentiated from the hegemonic culture by race. When people of color are assumed to “lag” because they are governed by cultural dictates, their cultural values stand in stark contrast to reason, supposedly a characteristic of the West. The notion that non-Western people are governed by culture suggests they have a limited capacity for agency, will, or rational thought.³⁹

The assumption that people of color are governed by cultural dictates is not only dehumanizing, it is also depoliticizing because such thinking often leads us to neglect the power of “noncultural”

36. See, e.g., Argetsinger, *supra* note 1, at A1 (describing a shift in attitudes toward teen marriage, connected to industrialization and child labor laws, that pushed young people off farms and into high schools, and noting that by 1990 only 3.7% of first-time brides were younger than 18, down from 13% in 1970).

37. See *id.* at A1, A10 (describing perspectives that marriage was sexually abusive, predatory, and pedophilic).

38. Rosaldo describes the inverse relationship between power and possession of “cultural” traits:

In “our” own eyes, “we” appear to be “people without culture” [F]ull citizenship and cultural visibility appear to be inversely related. . . . [A]nalytists rarely allow the ratio of class and culture to include power. Thus they conceal the ratio’s darker side: the more power one has, the less culture one enjoys, and the more culture one has, the less power one wields.

ROSALDO, *supra* note 32, at 198, 202 (1993).

39. For a description of how this operates in the Western perception of China, see Teemu Ruskola, *Taking Chinese Law Seriously: Towards a Critical Theory of Comparative Law 52* (unpublished manuscript, on file with author) (describing the following “ingredients” of a noxious stew that is still served today as “China”: “China is changeless, the West progressive[;] the Chinese are passive, Westerners active[;] the Chinese are lemmings, Westerners individuals[;] the Chinese state is despotic, the Western state democratic[;] the Chinese are irrational, Westerners rational[;] the Chinese are ruled by morality, Westerners by law”).

forces in shaping reality.⁴⁰ Cultural explanations for a particular problematic situation attribute responsibility to a static and insular “culture,” and not, for example, to government policies. Take the idea that there exists in the United States a racialized underclass submerged in a “culture of poverty.”⁴¹ Suggesting that a pathological and dysfunctional “culture” is to blame for poverty obscures the role of, for example, state-sponsored segregation and private discrimination in creating poverty. Similarly, Lino Graglia has suggested that the primary explanation for lower test scores of Blacks and Hispanics is their membership in cultures that neither encourage achievement nor condemn academic failure.⁴² Pointing the finger at culture in this way excludes the role of gross and systemic disparities in school funding and resources.⁴³

The idea that nonwhites are more culturally determined can be traced to historical antecedents in colonialist and imperialist discourse. This discourse contrasted tradition and modernity in the service of justifying the conquest and subjugation of the colonized.⁴⁴

40. For example, explaining gender subordination as “cultural” may erase linkages of this subordination with the denial of economic and political agency due to global inequalities, new articulations of patriarchies in specific regions, the legacies of colonization, or the flows of transnational capital. See Inderpal Grewal & Caren Kaplan, *Warrior Marks: Global Womanism's Neo-Colonial Discourse in a Multicultural Context*, 39 CAMERA OBSCURA 5, 14-15 (1996).

41. See DANIEL P. MOYNIHAN, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965); CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980*, at 145-91 (1984) (arguing that post-1960 social welfare policies have encouraged self-destructive behavior among blacks and poor people). For a critique of the “culture of poverty” thesis, see ROBIN D.G. KELLEY, *YO' MAMA'S DISFUNKTIONAL!: FIGHTING THE CULTURE WARS IN URBAN AMERICA* (1997) (arguing that social scientists have contributed to a construction of the ghetto as a reservoir of pathologies and bad cultural values).

42. Professor Graglia's remarks spawned a national controversy. As the *National Law Journal* described:

[Professor Graglia] was asked if lower test scores of blacks and Mexican-Americans are caused by genetic or cultural differences. “Blacks and Mexican-Americans are not academically competitive with whites in selective institutions,” he replied. “It is the result primarily of cultural effects. They have a culture that seems not to encourage achievement. Failure is not looked upon with disgrace.” He later said he didn't see any benefit in mixing white children with “lower classes” because they “perform less well in school and tend towards greater violent behavior.”

Rights, Wrongs, NAT'L L.J., Sept. 29, 1997, at A20. Graglia asserted afterwards that he had misspoken, and attributed the performance gap instead to the average amount of time spent in school or doing school work. He also said that “his own cultural background—Sicilian—had similar ‘cultural’ deficiencies” and that he “should have kept his mouth shut.” *Id.*

43. See, e.g., Elvia R. Arriola, *Difference, Solidarity and Law: Building Latina/o Communities Through LatCrit Theory*, 19 CHICANO-LATINO L. REV. 1, 65 (1998) (describing research indicating that disparities in test scores between minorities and white students is dependent on the demographics of the school as a “white” or “minority” school and related policies of placing the least experienced and worst paid teachers at “minority” schools).

44. See, e.g., Ruskola, *supra* note 39, at 44 (quoting GEORG WILHELM FRIEDRICH HEGEL, *THE PHILOSOPHY OF HISTORY* 103, 142 (J. Sibree trans., Dover Public. 1956) (1837)) (“The history of the world travels from East to West, for Europe is absolutely the end of History, Asia the beginning. . . . It is the necessary fate of Asiatic empires to be subjected to Europeans.”).

Colonialism associated tradition with colonized peoples, ancient ritual, despotism, and barbarity, while connecting modernity to Western progress, democracy, and enlightenment.⁴⁵ According to the West, culture—not the high culture of opera, but the culture of daily activities, quotidian practices and rites—did not rule the lives of the rational thinkers of the West as it did those who were governed by tradition, folk ways, and tribal affiliations. Because the association of culture with tradition continues to linger, people tend to forget that culture undergoes constant transformation. A sophisticated and accurate understanding of culture requires us to recognize its fluidity. We are all agents who define our culture and identity, not solely marionettes positioned and directed by our culture.⁴⁶ At the same time, we must recognize that our society tends more readily to identify those who deviate from the hegemonic norm, who are perceived to inhabit outsider communities, to inherit culture that we assume to be monolithic, fixed, and dysfunctional.⁴⁷

Of course, “our” hegemonic culture is also characterized by dysfunction. We recently came to a long-overdue realization that rates of gun-related violence are completely out of control in the United States. The spate of school shootings by white, middle-class children has led to anguished discussions about what is “wrong” with “our” culture.⁴⁸ These incidents have led to a recognition that either our culture is deeply flawed or its integrity is threatened by the

45. See generally CULTURES OF UNITED STATES IMPERIALISM (Amy Kaplan & Donald E. Pease eds., 1993); EDWARD W. SAID, CULTURE AND IMPERIALISM (1993); EDWARD W. SAID, ORIENTALISM (1978). The construction of this discourse, which Said described as “Orientalism,” was a complex process. In presenting this simple, bifurcated description, I do not intend to suggest that this was not a hybrid, contradictory process that varied across time and space. For a study of the heterogeneity of Orientalism, see generally LISA LOWE, CRITICAL TERRAINS: FRENCH AND BRITISH ORIENTALISMS (1991).

46. See Stuart Hall, *Cultural Identity and Diaspora*, in IDENTITY, COMMUNITY, CULTURE, DIFFERENCE 222, 225 (Jonathan Rutherford ed., 1990).

47. See KELLEY, *supra* note 41, at 22 (critiquing the assumption that there is one identifiable ghetto culture, and asserting that this assumption can be partly attributed to ethnographers’ training in the West). Kelley notes that James Clifford has observed that anthropologists studying non-Western societies are compelled to describe the communities they study not only as completely foreign to their own, but also as possessing an identifiable, homogenous culture. Kelley argues that the same holds true for interpretations of black urban America, since ethnographers can argue that inner city residents, as a “foreign” culture, do not share “mainstream” values. Their behavior is understood as shaped by unique cultural “norms,” rather than reflecting individual responses to specific circumstances. See *id.* at 22-23.

48. We even have a new noun, “school shooters.” The columnist Leonard Pitts noted the irony in the life of one shooting victim, Richard Peek. The first time Peek was shot, in a school shooting by Kipland Kinkel, “you heard all about it.” After Peek was shot by Kinkel, Peek said that if he could, he would “make it harder for kids to get guns.” The second time Peek was shot, he was killed by his 17-year-old brother in a hunting accident. Pitts asserts that we have learned to live with shootings that constitute the mundane face of American gun violence. In 1997, a mindboggling 10,369 people were murdered by firearms in the United States. See Leonard Pitts, *Shooting Reflects the Real Gun Crisis*, YORK DAILY REC. (Penn.), Oct. 17, 1999, at 2.

Internet, video games, access to guns, Satanic music, and irresponsible parents. Nonetheless, it is important to note that if the school shooters had not been middle-class and white, a different discourse would have emerged. Rather than hand-wringing about “our” culture, there would have been condemnation of “their” culture. Imagine, for example, that the shootings at Columbine High School had been committed by black students.⁴⁹ What narrative would have been told? There would have been less soul-searching about our nation’s cultural values and what is wrong with “us.” Instead, there would have been a discourse that conceptualized the violence as typifying what is wrong with “them.”⁵⁰ The school shootings raise the question of why only certain groups are considered to constitute our social body, so that their achievements are our own, and their pathologies our failures.⁵¹

Considering some groups to be separate from our social body is a form of epistemic violence. Gayatri Spivak describes how the ideologies of colonialism and imperialism define the Other through depictions of the colonized as exotic, primitive anthropological objects.⁵² Institutional violence often accompanies this epistemic violence.⁵³ The experiences of Sotelo and Quintana following the conclusion of criminal proceedings reflect both forms of violence, since their “illegal” status differentiated them from “those who belong.” Despite the fact that their child, Bryant, was born legally blind, in 1998 an immigration judge ordered Sotelo’s deportation because he failed to establish seven years of continuous residency in the United States.⁵⁴

49. Orlando Patterson argues that there is a disturbing double standard in how we label deviant behavior. He writes: “If the terrorist act of white, middle-class teenagers creates an orgy of national soul-searching, then surely the next time a heinous crime is committed by underclass African-American or Latino kids, we should engage in the same kind of national self-examination.” Orlando Patterson, *What If the Killers Had Been Black?*, PLAIN DEALER (Cleveland), May 4, 1999, at 9B.

50. See Courtland Milloy, *A Look at Tragedy in Black, White*, WASH. POST, May 2, 1999, at C1. Milloy writes of hearing comments like “I’m so glad those killers weren’t black. You know we’d all be in trouble if they were.” He posits that if the killers in Columbine had been black, their parents would have been hauled off in handcuffs in front of television cameras, and everybody who knew them would be under suspicion. He notes that the shooters were referred to as members of a “clique,” not a gang, and that one reporter referred to one of the killers as “a gentleman who drove a BMW,” signifying an identification with the killers and a reluctance to demonize them as blacks would have been. *Id.* I am indebted to Mark Niles for calling my attention to this op-ed piece.

51. I borrow this phrasing from Orlando Patterson, *see supra* note 49, at 9B.

52. See Gayatri C. Spivak, *Can the Subaltern Speak?*, in MARXISM AND THE INTERPRETATION OF CULTURE 271, 281 (Cary Nelson & Lawrence Grossberg eds., 1988).

53. As Anne McClintock points out, epistemic violence is all too often supported by the planned institutional violence of armies, law courts, prisons, and state machinery. See ANNE MCCLINTOCK, *IMPERIAL LEATHER: RACE, GENDER AND SEXUALITY IN THE COLONIAL CONTEST* 16 (1993)(discussing this phenomenon in the colonial context).

54. At the time of Sotelo’s application, the continuous residency requirement was seven

II. FORCED MARRIAGE

A. *The Kingston Case*

A second pair of contrasting cases echoes these findings and yields additional observations. In May 1998, a sixteen-year-old in Utah, forced by her father to marry her thirty-two-year-old uncle as his fifteenth wife, called 911 for help.⁵⁵ The uncle, David Kingston, was charged with incest and sexual conduct with a minor, both third-degree felonies,⁵⁶ and received a ten-year jail sentence.⁵⁷ Her father, John Daniel Kingston, the leader of a large polygamist clan, pled guilty to felony child abuse for beating her into unconsciousness when she tried to run away.⁵⁸ In Utah—as in Texas—parental consent or a court order allow marriage at an age younger than eighteen.⁵⁹ Until May 1999, marriages were only prohibited when the male or female was under fourteen years of age.⁶⁰ Since that time, the age of consent has been raised to sixteen, but fifteen-year-olds may still marry with parental consent and authorization from a judge.⁶¹ Before the law was amended, every year about 800 girls aged fourteen through seventeen were reported to marry in Utah.⁶²

Rumors of coerced arranged marriages and children sold by their parents had led to repeated attempts to enact legislation that would outlaw marriages of fourteen- and fifteen-year-olds. A bill was withdrawn in 1997 under pressure from legislators who believed child marriage prevents teen promiscuity.⁶³ Legislators also

years. This is no longer the case, thanks to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (“IIRAIRA”). See 8 U.S.C. § 1254, *amended by* 8 U.S.C. § 1229(b) (increasing the requirement of seven years of continuous residency for suspension of deportation to ten years under what is now called cancellation of removal, see INA § 240A(b)). IIRAIRA also amended the statute to mandate that any departure from the United States in excess of 90 days or any departure in the aggregate exceeding 180 days will preclude a finding of continuous physical presence. See INA § 240A(d)(2). Quintana and their child were allowed to stay pending her application for change of immigration status. See Jo Ann Zuniga, *Mom, Blind Child May Stay in Houston, Judge Orders Immigrant Father to Be Deported*, HOUS. CHRON., May 6, 1997, at 17.

55. See Stephen Hunt, *Kingston Ordered to Trial*, SALT LAKE TRIB., Dec. 11, 1998, at D1.

56. See *Utah Gets Rare Chance to Prosecute Polygamist*, COMMERCIAL APPEAL, Aug. 6, 1998, at A7.

57. See Julie Cart, *Incest Trial Sheds Light on Polygamy in Utah*, L.A. TIMES, June 4, 1999, at A3; Hannah Wolfson, *Alleged Polygamist Gets Up to Ten Years for Having Sex with His Niece*, AP, July 9, 1999, available in 1999 WL 17822686.

58. See Wolfson, *supra* note 57. He was sentenced to 28 weeks in jail, ordered to pay \$2,700 in fines and an unspecified amount in restitution, and to complete an anger-management program. He had faced up to five years in prison. See *Polygamous Leader Sentenced to 28 Weeks in Jail for Whipping*, LAS VEGAS REV.-J., June 30, 1999, at 13A.

59. See UTAH CODE ANN. § 30-1-9 (1953 & Supp. 1999).

60. See UTAH CODE ANN. § 30-1-9 (1953 & Supp. 1998) (repealed in 1999).

61. See UTAH CODE ANN. § 30-1-9 (1953 & Supp. 1999).

62. See Koch, *supra* note 26, at 10A.

63. See *Outrage of the Month, Child Brides—In Utah* (visited Nov. 5, 1998)

expressed concern that such legislation would be unfairly aimed at the state's polygamists.⁶⁴ While the practice of plural marriage was renounced by the Mormon Church in 1890, it has persisted among religious splinter groups⁶⁵ and has not been prosecuted by the state for several decades.⁶⁶ The Governor of Utah, a descendent of polygamists, refused to condemn polygamy at a news conference, suggesting that it may be protected as a religious freedom.⁶⁷ His comments were quickly condemned by an organization of women who have abandoned polygamous relationships. They denounce the practice as abusive toward women and children, both inherently and as it is practiced.⁶⁸ Subsequently, the Women's Religious Liberties Union (WRLU) was founded by a woman in a polygamous relationship who asserted that polygamy appropriately channels men's sexuality. The WRLU called for a repeal of the state law banning plural marriage.⁶⁹

The months after the sixteen-year-old's phone call led to a "raft of questions" about "Utah's dirty little secret."⁷⁰ Allegations included evidence of large-scale welfare fraud by women in plural marriages claiming to be single mothers, rampant incest and child abuse, and girls as young as ten forced into arranged marriages. The media

<<http://www.feminist.com/outrag7.htm>>.

64. See Mike Carter, *Legislator Struggles to Stop Utah's Pre-16 Marriages*, OREGONIAN, Feb. 8, 1998, at A24.

65. An estimated 20,000 to 100,000 people live in polygamous families, more than when plural marriage was official Mormon doctrine, and this population appears to be growing. See Vince Beiser, *The Perils of Polygamy*, MACLEAN'S, July 26, 1999, at 32.

66. See R. Michael Otto, "Wait 'Til Your Mothers Get Home," *Assessing the Rights of Polygamists as Custodial and Adoptive Parents*, 1991 UTAH L. REV. 881, 883 (noting that the last polygamy prosecution in the U.S. took place in 1965); John Hiscock, *Girl's Incest Case Evidence Set to Lift Lid on Mormon Polygamy*, DAILY TELEGRAPH (London), Aug. 6, 1998, at 14 (noting that Kingston case would be the first prosecution for polygamy in 45 years). However, Kingston was not ultimately prosecuted for polygamy.

67. See Mike Carter, *Child Abuse Case Raises Polygamy Questions in Utah*, STATE J.-REG. (Springfield, Ill.), Aug. 3, 1998, at 14.

68. See *id.* Tapestry of Polygamy was founded by six women who left plural marriages. They focus on allegations of sexual abuse, pedophilia, and incest. One of the founders points to the polygamous roots of many members of the state's power structure. "They all have this romantic view of how their grandfathers practiced it. But this is not grandpa's polygamy. As near as I can tell, Brigham Young was not a pedophile." Timothy Egan, *The Persistence of Polygamy*, N.Y. TIMES, Feb. 28, 1999 (Magazine), at 51-53.

69. See James Langton, *Mormon Women Break Silence to Praise the Joys of Polygamy*, DAILY TELEGRAPH (London), Aug. 9, 1998, at 26. The founder of the group, Mary Potter, says that "[i]n polygamy, men are properly channeled." Egan, *supra* note 68, at 54. She and other supporters of polygamy point to recent studies that maintain that men are evolutionarily wired for multiple sex partners. See *id.* An anthropologist, Janet Bennion, who has written about one of the largest polygamous clans, says she believes polygamy can offer a sense of security and a kind of sisterhood to modern women, while she concedes there have been incidents of sexual abuse, marrying of relatives, and ostracizing of older, less attractive wives within the clans. See *id.*

70. Julie Cart, *Tales of Abuse, Incest Frame "Utah's Dirty Little Secret,"* L.A. TIMES, Aug. 15, 1998, at A1.

described the polygamists as a community of people who live as “societal ciphers,” with no birth certificates or driver’s licenses, who do not pay taxes or vote.⁷¹

There has been a discourse of condemnation surrounding both the Kingston case and polygamous Mormon splinter groups more generally.⁷² Historically, Mormons have been subjected to a campaign against polygamy couched in terms of national morality and even national survival,⁷³ rhetoric not unlike that directed against communities of color today. But the current discourse does not include accusations that Mormons, with their failure to assimilate, their failure to Americanize, threaten longstanding American values.⁷⁴ No one asserts that statewide acceptance of these diverse cultural practices is symptomatic of multiculturalism run amok. Nor does anyone characterize this as a collision between multiculturalism and feminism.⁷⁵

71. *See id.*

72. State Senator Scott Howell, the leader of the Democratic legislative minority in Utah, who introduced legislation targeting polygamy, stated: “Here, we’ve got all the world coming to town for the Olympics. Do we really want to be known as the place where we let old men marry little girls?” Egan, *supra* note 68, at 55.

73. As Sarah Barringer Gordon describes, by 1890, when the church capitulated to demands that it abandon polygamy, the federal government had directed much energy toward enacting and enforcing legislation in Utah. Such legislation included the criminal punishment of polygamists, the revocation of the vote for all who could not swear they did not live in a polygamous relationship, and the forfeiture of all but \$50,000 of church property. Polygamy was assumed to be based on uncontrolled male sensuality and to threaten all that was pure in monogamous domesticity. *See* Sarah Barringer Gordon, “Our National Hearthstone”: *Anti-Polygamy Fiction and the Campaign Against Moral Diversity in Antebellum America*, 8 *YALE J.L. & HUMAN.* 295, 306-07, 327-28 (1996). *New York Times* reporter Timothy Egan notes that from the founding of the church in 1830, Mormons have been persecuted, and that their fear of outsiders is integral to their religious identity. *See* Egan, *supra* note 68, at 54.

74. *See, e.g.*, Egan, *supra* note 68, at 50; Bruce Frankel, *Lifting the Veil*, *PEOPLE*, June 21, 1999, at 125.

75. In writing about the Kingston case, Katha Pollitt argues that the ACLU ought to abandon its opposition to laws against polygamy. The ACLU justifies its policy on the basis of religious freedom, freedom of expression, and privacy. Pollitt, on the other hand, argues that polygamy is gender-subordinating in our current universe, whereas it might not be subordinating in a world where the age of consent were, say, 30, where teenage girls had real autonomy, where all women were well-educated and able to support themselves and their children, and where people were less isolated and less easily trapped. When Pollitt prodded the ACLU to consider how polygamy is different from “religious or cultural defenses of child abuse, domestic violence or female genital mutilation,” she was told that “violence is different.” Katha Pollitt, *Polymarily Perverse*, *THE NATION*, Oct. 4, 1999, at 10. While Pollitt is pushing in the direction I want to go, toward recognizing that we tend to respond inconsistently to gender-subordinating behavior, I am not sure if she would endorse my assertion that our divergent responses correlate with the actor’s identity. I also note that the examples she presents as the fixed practices the ACLU must really condemn—religious or cultural defenses of child abuse, domestic violence, or female genital mutilation—constitute the paradigmatic stereotype of sexism by immigrants that is thought to characterize gendered “multicultural” difference from “us.”

B. *The Al-Saidy Case*

In contrast, when two sisters, thirteen and fourteen, were forced by their Iraqi immigrant father in 1996 to marry twenty-eight- and thirty-four-year-old men in Nebraska, critics deemed the case an illustration of “the proper limits of multiculturalism.”⁷⁶ After spending two years in a refugee camp in Saudi Arabia, the Al-Saidy family resettled in Lincoln, Nebraska. Fearing that his daughters were sexually active, the father arranged their marriages to the two men, also refugees from Southern Iraq. After the older daughter ran away to the home of a male friend, the father and husband came looking for the daughters at school, and the police became involved. The girls were placed in foster care, and the parents were arrested and charged with child abuse.⁷⁷ The two husbands, Majed Al-Tamimy and Latif Al-Hussaini, were charged with first-degree sexual assault of a child, faced up to fifty-year sentences, and were eventually sentenced to four to six years in prison.⁷⁸ The elder daughter was sent to a home for girls in Omaha, the younger was placed in foster care.⁷⁹

Attorneys for Al-Hussaini and Al-Tamimy suggested that they had married the sisters in accordance with their religion, asserted that in the “Arab world,” the charges were viewed as religious persecution,⁸⁰ and called the case “a clash between cultural mores and U.S. law.”⁸¹ Predictably, the media reported this to be a case about “Muslim mores” and “Iraqi culture.” However, a spokesperson from the Lincoln Islamic Foundation explained that, while Islamic law does not set a minimum age for marriage, women in contemporary Iraq typically marry at seventeen or eighteen.⁸² Another observer indicated that while thirty years ago marriages of young teenage girls were not uncommon in Iraq, especially in the rural areas, today such practices are rare.⁸³ Nevertheless, as with the Quintana/Sotelo case, many deemed this single incident definitive of Iraqi culture.

76. Margaret Talbot, *Baghdad on the Plains*, NEW REPUBLIC, Aug. 11, 1997, at 18.

77. *See id.*

78. *See Iraqis Who Married Teens Sent to Prison*, SAN ANTONIO EXPRESS-NEWS, Sept. 24, 1997, at 12A. In Nebraska, the crime of statutory rape applies to sex between one person who is 19 years of age or more and another who is 14 years old or younger. *See* NEB. REV. STAT. § 28-320.01 (1999).

79. *See Therapy Ordered for Man Who Made Daughters Marry*, DES MOINES REG., June 14, 1997, at 10.

80. Larry Fruhling, *They Say Marriage; Law Says Rape*, DES MOINES REG., Jan. 5, 1997, at 1.

81. J.L. Schmidt, *Iraqi Father Is Jailed For “Marrying Off” 2 Young Girls*, AUSTIN AM.-STATESMAN, Nov. 20, 1996, at A16.

82. *See id.*

83. *See Iraqi Father of Child Brides Claims Culture as a Defense*, DALLAS MORNING NEWS, Dec. 4, 1996, at 39A.

Moreover, the Al-Saidy incident was almost universally depicted as threatening American values. The media described the incident as “a clash of the culture of newcomers with American mores and law. It is a conflict shrouded in issues of multiculturalism and ignorance of the ways of a strange new world.”⁸⁴ One woman wrote to the *Lincoln Journal-Star*, “We cannot change our laws to suit the backward, primitive values of some immigrants, or we shall find our country in the same shape as Iraq.”⁸⁵ The *Omaha World Herald* editorialized:

[M]ulticulturalism goes too far if it insists that all cultures are equally valid. Or if it requires the dominant culture, the American culture in this case, always to yield in cultural clashes In a Western nation, the West’s cultural traditions undergird the law. People who immigrate to this country and enjoy its opportunity and freedoms need to understand that arranged child marriages won’t be tolerated.⁸⁶

In this view, “newcomers” import primitive and backward values, threatening the Western cultural traditions that undergird America, land of freedom and opportunity.

C. Nation, Gender, and Sexuality

Why are the child marriages of nonwhite immigrants but not white Christian sects perceived as threatening Western cultural traditions? Contrasting “progressive” Western traditions to the “primitive” and “barbaric” lends credibility to the idea that Western culture is progressive.⁸⁷ Though no one depicted the Kingston case as reflecting modern and enlightened practices, the Mormon community was not condemned as a barbaric outsider culture threatening a racialized national narrative of enlightened progress. Significantly, while both the Kingston and Al-Saidy cases conjured the rhetoric of religious freedom, only the Iraqi community possessed, in the eyes of Western observers, the undesirable behavior of a racialized culture.

The contrast between the cultural traditions of the West and those of immigrants with “backward, primitive values” is somewhat ironic,

84. *Id.*

85. Rick Montgomery, *Iraqi Grooms Charged with Raping Brides; Nebraska Case Spurs Argument over Muslim Mores in the U.S.*, KANSAS CITY STAR, Dec. 15, 1996, at A1 (quoting a letter to the *Lincoln Journal-Star*).

86. Editorial, *Marriage Custom of Another Land Puts Political Correctness to Test*, OMAHA WORLD HERALD, Dec. 5, 1996, at 26.

87. As Edward Said has written, Orientalism dichotomizes the human condition into a “we” and a “they,” essentializing the resulting other. When a dominant group essentializes a subordinated group by focusing on selected traits to describe the group as a whole, the dominant group defines its own characteristics—civilized, progressive—in contrast to the group that is subordinated. See SAID, *ORIENTALISM*, *supra* note 45, at 227-28.

as Western cultural traditions include child marriage and early sexuality. Ten years of age was the age of consent under English common law, as well as the age of consent in most states in 1885, when agitation to reform statutory rape law first began in the United States.⁸⁸ At that point the age of consent in Delaware was only seven years of age.⁸⁹

Despite this, many commentators believe that cases such as the one in Nebraska threaten a long-standing Western tradition of valuing women and children. They point to cases of forced marriage,⁹⁰ Asian immigrant parent-child suicide, Hmong marriage by capture, female genital mutilation, and “wife killing” by nonwhite immigrants to assert that multiculturalism has gone too far. In their view, multiculturalism and feminism cannot coexist: Multiculturalism must give way, and feminism must triumph.⁹¹

Admittedly, attorneys are complicit in offering “cultural” explanations for behavior, and in cases involving immigrant defendants attorneys will frequently attempt to introduce cultural evidence to explain the social context of their clients’ acts, and will thus raise the specter of culture.⁹² But attorneys’ “cultural defense” strategies do not seem sufficient to explain the popular assumption that only immigrant cultures originating in Asia, Latin America, Africa, and the Middle East jeopardize feminist progress. For one, any criminal defendant is entitled to raise social context evidence, including cultural factors, to explain her acts.⁹³ Nevertheless, when

88. See Larson, *supra* note 35, at 2.

89. See *id.* at 2 n.9. Until recently, the age of consent was 14 in South Carolina and 13 in North Carolina. See N.C. GEN. STAT. § 14-27.7A (1995) (raising the age of consent from 13 to 16); S.C. CODE ANN. § 16-15-140 (West 1999) (changing the age from 14 to 16 in 1996); Maryanne Lyons, *Adolescents in Jeopardy: An Analysis of Texas’ Promiscuity Defense for Sexual Assault*, 29 HOUS. L. REV. 583, 609 (1992).

90. For example, Doriane Coleman has stated:

Liberals tend to think we should embrace multiculturalism and be more lenient with these people. . . . [However, Iraqi marriage customs] tend to be patriarchal in nature [and] bad for women and bad for children. . . . The interests of our society in protecting women and children and our society’s interest in having uniform laws outweigh our interest in multiculturalism.

Marriage Custom, *supra* note 86, at 26 (quoting Doriane Coleman).

91. See, e.g., Doriane Labelet Coleman, *Individualizing Justice Through Multiculturalism: The Liberals’ Dilemma*, 96 COLUM. L. REV. 1093 (1996).

92. See *supra* Parts I.A, II.A (describing how attorneys representing Pedro Sotelo and the defendants in the Al-Saidy case suggested that their clients were following Mexican culture and religious tradition, respectively).

93. Our criminal justice system allows the admission of any relevant social context evidence. The issue of culture is admissible in criminal cases like any other evidence: It must be relevant, its probative value must outweigh its prejudicial effect, and it must not have the tendency to mislead the trier of fact. What is at issue in cases involving cultural evidence is the weight it is given, the responsibility of prosecutors to introduce additional evidence regarding culture so that perceptions of culture are not distorted, judicial training on cultural issues, and the question of qualifications of expert witnesses, who testify about cultural practices. See

certain immigrant defendants present cultural factors that implicate sex-subordinating practices, we presume them to be the beneficiaries of a special treatment that is tolerated as a necessary concomitant of the pluralistic values of multiculturalism.⁹⁴ What facilitates the assumption that this is special treatment? Why presume that immigrant communities bring to the United States a deviant and demented culture that is fundamentally different from “ours”? Narratives that emerge from these “cultural defense” cases reinforce a pre-existing presumption that misogynist acts are typical of and unique to certain immigrant cultures.

What appears truly to underlie the assumption of a peculiarly misogynistic immigrant culture is the relationship between nationalism, gender, sexuality, and race. National identities, expressed here as “American values,” often coalesce around women’s bodies. Racializing sex-subordinating practices allows problematic behavior to be projected beyond the borders of a nation and located on the bodies of racialized immigrant subjects.

The interaction of these factors deserves scrutiny. The control of women and their sexuality is crucial to maintaining and reproducing the identity of communities and nations.⁹⁵ As Anne McClintock and others have demonstrated, images of nations are constructed in terms of familial and domestic metaphors, where women are located as the symbolic center and boundary marker of the nation.⁹⁶ In this scheme, women are mothers of the nation and guardians of its purity and honor. Purity and honor survive when women engage only in

generally Holly Maguigan, *Cultural Evidence and Male Violence: Are Feminist and Multiculturalist Reformers on a Collision Course in Criminal Courts?*, 70 N.Y.U. L. REV. 36 (1995); Leti Volpp, *Talking “Culture”: Gender, Race, Nation and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996) [hereinafter Volpp, *Talking “Culture”*]. As I have argued elsewhere, I think that defense attorneys should also be cognizant of the broader ramifications, in the form of perpetuating stereotypes, that accompany presenting cultural evidence made up of crass caricatures of an immigrant’s culture, although I also recognize that defense attorneys are ethically bound to represent their clients zealously. See Leti Volpp, *(Mis)Identifying Culture: Asian Women and the “Cultural Defense,”* 17 HARV. WOMEN’S L.J. 57, 93-100 (1994) [hereinafter Volpp, *(Mis)Identifying Culture*]. For further discussion of the risks that accompany presenting evidence that relies on group-based stereotypes, see SHERENE RAZACK, *LOOKING WHITE PEOPLE IN THE EYE: GENDER, RACE, AND CULTURE IN COURTROOMS AND CLASSROOMS* (1998); Leti Volpp, *Gazing Back*, 14 BERKELEY WOMEN’S L.J. 149 (1999) (review of RAZACK, *supra*).

94. Our law is already embedded with cultural norms that reflect gender subordination, such as the doctrine of provocation. The voluntary manslaughter law of most jurisdictions recognizes the sight of a wife’s adultery as a valid motivation to kill. See Donna K. Coker, *Heat of Passion and Wife Killing: Men Who Batter/Men Who Kill*, 2 S. CAL. REV. L. & WOMEN’S STUD. 71 (1992). For the argument that access to cultural evidence is far from special treatment but is, in fact, what is required to assure equal protection, given the existence of the doctrine of provocation, see James J. Sing, Note, *Culture as Sameness: Toward a Synthetic View of Provocation and Culture in the Criminal Law*, 108 YALE L.J. 1845 (1999).

95. See, e.g., JAN JINDY PETTMAN, *WORLDING WOMEN: A FEMINIST INTERNATIONAL POLITICS* 59 (1996).

96. See McCLINTOCK, *supra* note 53, at 354-57.

sexual relations that are heteronormative and occur within the confines of state-sanctioned marriage that controls the reproduction of the state's citizenry.⁹⁷ The nation also depends on the family as a unit through which the stability of gender roles is preserved.⁹⁸ Adolescent premarital sexuality creates anxiety,⁹⁹ so the state seeks to direct this prohibited sexuality into appropriate channels, such as early marriage. Thus, we find statutes that legislate the acceptability of marriage at ages as young as thirteen with proof of pregnancy and/or parental consent, and reluctance to increase the age of consent lest the law promote promiscuity or illegitimate births.

What is the role of race in this process? Nationalist ideologies are often concerned with racial purity and subject women to reproductive and other forms of control¹⁰⁰ to achieve this aim. In the cases of forced and voluntary adolescent marriage discussed here, the racialized bodies and community control over the sexuality of immigrant girls appear to rupture a national fabric that is

97. As Jacqui Alexander points out:

The nation has always been conceived in heterosexuality, since biology and reproduction are at the heart of its impulse. The citizenship machinery is also located here, in the sense that the prerequisites of good citizenship and loyalty to the nation are simultaneously sexualized and hierarchized into a class of good, loyal, reproducing heterosexual citizens, and a subordinated, marginalized class of non-citizens

M. Jacqui Alexander, *Erotic Autonomy as a Politics of Decolonization: An Anatomy of State Practice in the Bahamas Tourist Economy*, in *FEMINIST GENEALOGIES, COLONIAL LEGACIES, DEMOCRATIC FUTURES* 63, 84 (M. Jacqui Alexander & Chandra Mohanty eds., 1997).

98. See Gayatri Gopinath, *Nostalgia, Desire, Diaspora: South Asian Sexualities in Motion*, 5 *POSITIONS* 467, 468 (1997).

99. For discussions of anxieties caused by adolescent sexuality, see Elizabeth Hollenberg, *The Criminalization of Teenage Sex: Statutory Rape and the Politics of Teenage Motherhood*, 10 *STAN. L. & POL'Y REV.* 267 (1999) (describing an increase in statutory rape prosecutions and the adoption of criminal justice policies in the name of social welfare programming); Megan Weinstein, *The Teenage Pregnancy "Problem": Welfare Reform and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, 13 *BERKELEY WOMEN'S L.J.* 117 (1998) (describing debates over the welfare reform act (PRWORA) and provisions of the law that attempt to discourage unwed motherhood).

100. Thus we see mass rape of women by men attempting to destroy communities and nations; for example, Serbian men raped Bosnian Muslim women as part of a policy of "ethnic cleansing." These rapes functioned both to destroy what was symbolically configured as national honor in the form of women's bodies, and to forcibly impregnate women with Serbian babies. See PETTMAN, *supra* note 95, at 101.

An example of other forms of control is the relationship of women and community identity post-Partition in India and Pakistan. Partition and the creation of Pakistan was accompanied by mass abduction and separation of women from their families: An estimated 50,000 Muslim women in India and 33,000 non-Muslim women in Pakistan were abducted, abandoned, or separated from their families. After Partition, both countries pursued "recovery operations" to reclaim these women. Some of these women had married and been absorbed into their new communities, so that their recovery was forced, especially when they were required to leave children behind. Ritu Menon and Kamla Bhasin interrogate why the matter of national honor was so closely bound up with women's bodies, and answer that both governments pursued communal identities—as Hindu (India) or Muslim (Pakistan), despite India's avowed secularism—that located women as boundary markers of identity. See Ritu Menon & Kamla Bhasin, *Recovery, Rupture, Resistance: Abduction of Women During Partition*, *ECON. & POL. WKLY.*, Apr. 24, 1993, at WS-2.

presumptively both white and progressive. The sexuality of immigrant adolescent girls of color is marked as a racialized threat to a national cultural consensus about appropriate female sexuality and responses to that sexuality.

Women's bodies serve as "boundary markers of the nation"¹⁰¹ in the context of charting societal progress. In nationalist discourse the figure of the woman acts as a primary marker of an essential communal identity or tradition.¹⁰² Women, home, family, and nation become conflated so that women serve to signify a community's culture and tradition.¹⁰³ As a result, perceptions of the relative treatment of women have historically been used to assess the progress of a culture and to justify subjugation of different populations in the name of a racialized gender uplift. For example, British colonial rule was justified, in part, in terms of a civilizing mission that cast British colonizers as protecting oppressed native women from their victimization by native males.¹⁰⁴ This construction was accomplished by disregarding the agency of native women and denying the sexism endemic to Britain at the time.¹⁰⁵ Thus, women's bodies frequently serve as the terrain on which progress is measured.

A nation can consolidate its identity by projecting beyond its own borders the sexual practices or gender behaviors it deems abhorrent.¹⁰⁶ Thus, even while voluntary or forced adolescent marriages occur within white American communities, we do not conceptualize these practices as cultural phenomena characterizing white America. Rather, this undesirable behavior is projected beyond U.S. borders and characterized as an abhorrent practice imported by immigrants that undermines enlightened Western norms.¹⁰⁷ This projection allows the United States to maintain a self-

101. Editorial, 44 *FEMINIST REV.* 1, 1 (1993) ("Nationalism is gendered: women's bodies are the boundary of the nation, and the bearers of its future"), *quoted in* PETTMAN, *supra* note 95, at 59.

102. See Gopinath, *supra* note 98, at 468.

103. See PARTHA CHATTERJEE, *THE NATION AND ITS FRAGMENTS: COLONIAL AND POSTCOLONIAL HISTORIES* 116-57 (1993) (describing this process in the Indian context).

104. Another primary justification was the "effeminacy" of the native male that was thought to render him incapable of self-governance. See generally ANTOINETTE BURTON, *BURDENS OF HISTORY: BRITISH FEMINISTS, INDIAN WOMEN, AND IMPERIAL CULTURE, 1865-1915* (1994).

105. As one example, British colonial officials in Egypt specifically invoked the veil and treatment of women under Islam as a justification for colonialism. The British consul general, Lord Cromer, vociferous in making these claims, was also a founding member of the Men's League for Opposing Women's Suffrage in England. See LEILA AHMED, *WOMEN AND GENDER IN ISLAM: HISTORICAL ROOTS OF A MODERN DEBATE* 152-53 (1992).

106. See *Introduction* to *NATIONALISMS AND SEXUALITIES* 10 (Andrew Parker et al. eds., 1992).

107. When African-Americans are the "other" accused of engaging in deviant behavior, the backdrop of normalcy shifts from "Western" values to those of white America.

image as a progressive state with a progressive culture—especially in the arena of women’s rights—by naming as “other” the source of backward behavior.¹⁰⁸ This process occurs even when such practices are not unique to immigrants of color but in fact are legally condoned by statute, as is the case for voluntary adolescent marriage,¹⁰⁹ or, if illegal, appear among native-born whites as well as immigrants.

III. FEMINISM AND MULTICULTURALISM

Advocates and scholars have attempted to problematize the conflation of racialized immigrant communities and regressive sex-subordinating culture in a variety of contexts, including female genital surgeries and so-called “cultural defenses.”¹¹⁰ These

108. Bonnie Honig makes what I see as an important and analogous argument that we press foreigners into service on behalf of certain institutions, such as capitalism, community, and family, that seem incapable of sustaining themselves. This takes both xenophilic and xenophobic turns. An example of a xenophilic turn would be when new immigrants are symbolically mobilized to renormalize the native-born into traditional heterosexual gender roles, while “we” supposedly normalize “them” into a new national citizenship. For this Honig proffers a reading of the film *Strictly Ballroom* and an example of a trade in foreign brides—namely, the way in which immigrant women, supposedly more traditionally socialized into gender roles, properly shore up heterosexual marriages for those men seeking the way marriage is “supposed” to be. An example of a xenophobic turn would be the manner in which patriarchal immigrants are seen as threats to what Honig calls the rough gender equalities that are American liberal democracy’s ambiguous achievement. See Bonnie Honig, *Immigrant America? How Foreignness “Solves” Democracy’s Problems*, 16 SOC. TEXT 56, 63-67 (1998).

109. I recognize that an act may be legally condoned in a statute because it happened historically and rarely occurs in the contemporary moment. However, this is not the case with adolescent marriage. For example, Kentucky amended its marriage laws in March 1998 to outlaw marriage of children under 16—unless the girl is pregnant, and a district judge approves. See KY. REV. STAT. ANN. § 402.020 (1998). Between 1994 and 1996, 1,300 girls who were 15 or younger received marriage licenses in Kentucky; 71 of them were 12 or 13. See Beverly Bartlett, *Three Legislators Bungled Vows on Bill to Ban Child Brides*, COURIER-J. (Louisville, Ky.), Feb. 9, 1998, at 1F; Al Cross, *Bill Limiting Child Marriages Signed into Law by Governor*, COURIER-J., Mar. 27, 1998, at 4B. Significantly, some legislators attempted to sink the bill by tying it to a provision allowing same-sex marriage. See *Legislative Briefs*, COURIER-J., Mar. 20, 1998, at 48. Some legislators argued that the teen marriage provision would infringe on personal freedom. Others said that it should be defended by the First Amendment protection of freedom of religion. See Bartlett, *supra*, at 1F.

In addition, the media reports of the frequency of adolescent marriage in Maryland indicate that until the state amended the law in April 1999, *see supra* note 7, statutory approval of this practice was not solely a historical artifact. See *Close to Home*, *supra* note 7. Robert P. Duckworth, the clerk of the Anne Arundel Circuit Court, in his testimony to the Maryland House Judiciary Committee on House Bill 388 (the bill seeking to amend the state’s marriage laws) reported:

Two weeks ago . . . a very pregnant 15-year-old bride entered our wedding room. Her partner was an immature lad of 16 years, barely able to drive. . . . They were escorted by both sets of consenting moms and dads. . . . But more troublesome than these weddings are the adolescent-adult weddings and child-adult weddings. . . . An expectant, 11-year-old girl arrived at a Maryland courthouse last year to wed a 21-year-old adult. . . . Sadly, the couple tied the knot, and their abominable union was “blessed” by the state under the approving eyes of the pubescent bride’s parents.

Id. at B8.

110. See, e.g., UMA NARAYAN, *DISLOCATING CULTURES: IDENTITIES, TRADITIONS,*

individuals have recognized that culture is neither static nor homogenous and that culture is experienced and described variously by individuals situated differently within a particular community. Further, these commentators have argued that every community is characterized by both patriarchy and resistance to patriarchy, and that women are agents, not just passive subjects of their culture.¹¹¹

But these attempts to create a complex and accurate understanding of culture often go unheard. Susan Moller Okin recently used the Iraqi case as a launching pad to criticize multiculturalism in an essay titled, *Is Multiculturalism Bad for Women?*¹¹² (Her answer: “Yes.”¹¹³) Okin asserts that there are fundamental conflicts between a commitment to gender equity and a multiculturalist respect for minority cultures, as illustrated by the Al-Saidy case, French schoolchildren wearing headscarves, African immigrant polygamous marriages, female clitoridectomy in immigrant communities, Hmong marriage by capture, parent-child suicide by Japanese and Chinese immigrants, and “wife murder by immigrants from Asian and Middle Eastern countries whose wives have either committed adultery or treated their husbands in a servile way.”¹¹⁴ In Okin’s account, these examples reflect ethnic difference, which in turn represents moral difference. Okin then argues that we

THIRD-WORLD FEMINISM (1997); RAZACK, *supra* note 93; SCATTERED HEGEMONIES: POSTMODERNITY AND TRANSNATIONAL FEMINIST PRACTICES (Inderpal Grewal & Caren Kaplan eds., 1994); Lama Abu-Odeh, *Comparatively Speaking: The “Honor” of the “East” and the “Passion” of the “West,”* 1997 UTAH L. REV. 287; Isabelle R. Gunning, *Arrogant Perception, World Traveling, and Multicultural Feminism: The Case of Female Genital Surgeries*, 23 COLUM. HUM. RTS. L. REV. 189 (1991-92); Bonnie Honig, *My Culture Made Me Do It*, in SUSAN MOLLER OKIN, *IS MULTICULTURALISM BAD FOR WOMEN?* (Joshua Cohen et al. eds., 1999); Hope Lewis, *Between Irua and “Female Genital Mutilation”: Feminist Human Rights Discourse and the Cultural Divide*, 8 HARV. HUM. RTS. L.J. 1 (1995); Hope Lewis & Isabelle R. Gunning, *Cleaning Our Own House: “Exotic” and Familiar Human Rights Violations*, 4 BUFF. HUM. RTS. L. REV. 123 (1998); Volpp, *(Mis)Identifying Culture*, *supra* note 93, at 57; Volpp, *Talking “Culture,”* *supra* note 93, at 1573.

111. See generally sources cited *supra* note 110.

112. SUSAN MOLLER OKIN, *Is Multiculturalism Bad for Women?*, in *IS MULTICULTURALISM BAD FOR WOMEN?*, *supra* note 110, at 9.

113. *Id.* Margaret Talbot, writing in *The New Republic*, has similarly used the Iraqi case as a basis to criticize the undermining of the basic precept that immigrants must “respect American laws.” She asserts that this case pits “respect for other cultures and sympathy for miserable refugees against a belief in a certain autonomy—personhood, really—for women and children” and writes that “the girls deserved the protection of American law, even if it embodied a notion of rights that had no place in the world of their father.” See Talbot, *supra* note 76, at 20-22.

114. OKIN, *supra* note 112, at 18. While Okin does write that Western cultures “of course still practice many forms of sex discrimination,” and notes that “virtually all of the world’s cultures have distinctly patriarchal pasts,” she asserts that some cultures—mostly Western liberal cultures—have departed further from patriarchal pasts than others. *Id.* at 16. Her conclusion: Female members of “a more patriarchal minority culture” may “be much better off if the culture into which they were born were either to become extinct,” so its members would be integrated “into the less sexist surrounding culture,” or if the culture were “encouraged to alter itself so as to reinforce the equality of women.” *Id.* at 22-23.

must choose universalist values that respect women rather than succumbing to the multiculturalist or relativist disinclination to judge difference.

To assert that these cases reveal a tension between multiculturalism and feminism is not only to rely upon a caricature of the culture of immigrant communities and communities of color, but also to posit very specific and problematic versions of feminism and of multiculturalism.¹¹⁵ These discussions assume a feminism that replicates the colonialist feminism of a century ago. In the colonialist paradigm, native women were completely passive subjects of a native male subordination that grossly exceeded that experienced by women in the West.¹¹⁶ Colonialist feminism emerged, in this account, in order to uplift the suffering women of the "East."¹¹⁷ This brand of feminism was used to justify colonization as part of a civilizing process, along with the rule of law, education, and Christianity.¹¹⁸

The assumption of this strand of feminist theory, reflected in Okin's perspective, that immigrant women require liberation through induction into the progressive social mores and customs of the metropolitan West, has been subjected to significant criticism.¹¹⁹ Critics have pointed to the manner in which feminists describe "other" women as "always/already victim,"¹²⁰ passively waiting to be rescued from cultural norms that mysteriously impose no restraints on Western feminists.

Just as these discussions perpetuate a distorted feminism, they assume a multiculturalism that resembles crude cultural relativism. Under a multicultural regime, this discourse suggests that we as a

115. See Volpp, *Talking "Culture," supra* note 93, at 1577-84, 1607-11.

116. For example, British suffragist Josephine Butler lamented that Indian women were: indeed between the upper and nether millstone, helpless, voiceless, hopeless. Their helplessness appeals to the heart, somewhat in the same way . . . in which the helplessness and suffering of a dumb animal does, under the knife of a vivisector. . . . Somewhere, half way between the Martyr Saints and the tortured "friend of man" the noble dog, stand, it seems to me, these pitiful Indian women, girls, children, as many of them are. They have not even the small power of resistance [like] the western wom[a]n [who] . . . may have some clearer knowledge of a just and pitiful God to whom she may make her mute appeal.

VRON WARE, *BEYOND THE PALE: WHITE WOMEN, RACISM, AND HISTORY* 156-67 (1992) (quoting Josephine Butler).

117. See generally BURTON, *supra* note 104; WARE, *supra* note 116; WESTERN WOMEN AND IMPERIALISM: COMPLICITY AND RESISTANCE (Nupur Chaudhuri & Margaret Strobel eds., 1992).

118. See sources cited *supra* note 117.

119. See, e.g., NARAYAN, *supra* note 110; Hazel V. Carby, *White Woman Listen! Black Feminism and the Boundaries of Sisterhood*, in *THE EMPIRE STRIKES BACK: RACE AND RACISM IN 70s BRITAIN* 212 (CCCS eds., 1982); Chandra Mohanty, *Under Western Eyes: Feminist Scholarship and Colonial Discourses*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 51 (Chandra T. Mohanty et al. eds., 1991).

120. See generally Lata Mani, *Multiple Mediations: Feminist Scholarship in the Age of Multinational Reception*, 35 *FEMINIST REV.* 24 (1990); Mohanty, *supra* note 119.

society would be unable to critique any culture and would be forced to accept the bizarre customs and behaviors of nonwhites at the expense of long-cherished American principles.¹²¹ This portrayal of multiculturalism relies on problematic assumptions. First, it invents a homogenous, “American” tradition of principles, a monoculturalism of transcendent values with a “we” or “us” at an unwavering center of rationality. This assumption is historically inaccurate, relying upon distortions and marginalizations for its narrative coherence.¹²² Second, this account confuses the multiculturalist valuation of ethnic particularity with a defense of cultural relativism.¹²³ Valuing difference does not destroy our ability to judge among differences.¹²⁴ We need not rely upon “long-cherished Western principles” that masquerade as universal values in order to make critical judgments about gender-subordinating practices.¹²⁵

As Homi Bhabha has recently written, the construction of a conflict between feminism and multiculturalism relies on the monolithic characterizations of minority, migrant cultures.¹²⁶ Such a construction mistakenly presumes the “Western” domestic scene to be egalitarian and empowering; depicts minorities as abject

121. The meaning of multiculturalism has been the subject of enormous debate. For examples of works that examine the various meanings of multiculturalism, see *MAPPING MULTICULTURALISM* (Avery F. Gordon & Christopher Newfield eds., 1996); *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* (Amy Gutmann ed., 1994); *PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS* (1991).

122. For a re-reading of historical experience where the social condition of people is prevalently migratory and heterogeneous, as opposed to homogenous, see David Theo Goldberg, *Introduction: Multicultural Conditions*, in *MULTICULTURALISM: A CRITICAL READER* 1, 20-25 (David Theo Goldberg ed., 1994).

123. *See id.* at 16. As Goldberg points out, the collapsing of ethnic particularity with relativism has been facilitated by the failure of some academics to theorize the implications of a nonessentializing multicultural commitment. *See id.* at 15.

124. Note that if we were to carry the valuing of difference to an extreme, this logic—that we can both value difference and judge among difference—collapses. *See* Stanley Fish, *Boutique Multiculturalism*, in *MULTICULTURALISM AND AMERICAN DEMOCRACY* 69 (Arthur M. Melzer et al. eds., 1998). Fish argues that if one values difference as a general principle so seriously, one becomes unable to value any particular difference seriously, since this embrace of the principle of difference will inevitably involve the suppression of particularized difference. This is because the imperatives of a distinctive culture will impinge on the freedom of some other distinctive culture. If one decides, in response, that a commitment to respecting a particular culture is so strong that one stays the course no matter what, one no longer is a multiculturalist, but becomes a uni- or monoculturalist. As Fish suggests, rather than become lost in this abstracted philosophical maze, it might be more constructive to recognize multiculturalism as a demographic fact and to search for particular solutions to particular problems. *See id.* at 73-75.

125. For an example, see Joan Williams, *Rorty, Radicalism, Romanticism: The Politics of the Gaze*, 1992 WIS. L. REV. 131. In defending a nonfoundationalist ethics, Williams suggests that we are capable of making moral judgments even when we recognize that our moral certainties reflect particular cultural values, rather than perceiving them to be reflective of eternal truth.

126. *See* Homi K. Bhabha, *Liberalism's Sacred Cow*, in *IS MULTICULTURALISM BAD FOR WOMEN?*, *supra* note 110, at 79, 79.

“subjects” of their cultures of origin “huddled in the gazebo of group rights, preserving the orthodoxy of their distinctive cultures in the midst of the great storm of Western progress”;¹²⁷ and assumes that Western liberal values—utterly foreign to immigrant communities—will lead to their salvation.¹²⁸

Juxtaposing these narratives of similar stories differently perceived illustrates how distinctive interpretative lenses are applied to virtually identical behavior according to the actors’ identity.¹²⁹ Our society considers the voluntary pregnancy and marriage of a young teenage girl to an older man to be the act of an aberrant individual when the girl is white, but considers it to reflect a more primitive culture when the girl is a Mexican immigrant. Under the prevailing view, a father forcing his young teenage daughters into marriage is a cultural act demonstrating the evils of multiculturalism when the actors are Iraqi immigrants, but not when they are white and Mormon. Society presumes that immigrants of color are passive victims dominated by their cultural traditions, in contrast to the rational actors of Western liberalism.

The consequences of selectively blaming culture in this way are striking: These discursive practices cause us to overlook specific relations of power, both in “other” cultures and in our own society. In hasty expressions of distaste for other cultures perceived as primitive and backward, we miss the complex ways in which power actually functions in particular communities.

A specific example may help to clarify this point. In a recent article, Katherine Franke examines how our choice to label certain practices as “sexual” eclipses important implications of behavior.¹³⁰ One of her examples is the anthropological report of ritualized practices in a community where boys must fellate older men as part of the process of becoming a man.¹³¹ It is easy to feel disgust at the daily ingestion of semen by seven-year-old boys—to label this

127. *Id.* at 80.

128. *See id.* at 83-84.

129. The assumption that the behavior of white people reflects individual acts, while similar acts committed by immigrants of color reflect group identity, demonstrates the contours of what underlies discrimination.

130. *See* Katherine Franke, *Putting Sex to Work*, 75 DENV. U. L. REV. 1139 (1998) (examining the assault of Abner Louima by white New York City police officers, sex-related violence against civilians in the former Yugoslavia, and ritualized man/boy fellatio in Papua New Guinea).

131. *See generally id.*; *see also* GILBERT HERDT, *GUARDIANS OF THE FLUTE: IDIOMS OF MASCULINITY* (1981); GILBERT HERDT, *SAMBIA SEXUAL CULTURE: ESSAYS FROM THE FIELD* (1999). Many of these practices no longer persist. As Richard Schweder writes, these accounts have had great prominence in the lore of anthropology. Yet after a few years of contact with the West, “almost everything that was exotic about New Guinea seems to have disappeared.” Richard A. Schweder, *Why Do Men Barbeque? And Other Postmodern Ironies of Growing Up in the Decade of Ethnicity*, 122 DAEDALUS 279, 285 (1993).

practice as a symptom of a horrifically bad culture, and to dehumanize those who would engage in such practices.¹³² Alternatively, one could, as various commentators have, describe these practices as fundamentally homoerotic, as evidence of an exotic manifestation of homosexual behavior. Both of these responses distance the observer from the culture observed, connecting the evaluation of the “other” culture to the observer’s self-image. One interpretation is condemnatory, the other laudatory; one unreflectively says “that is not me,” the other says “that is me.”¹³³ The former calls the practice culture, the latter calls it sex. Both miss the way this sexual practice signifies and enforces power relations.

As Franke describes, the fellatio is accompanied by nose-bleeding through the use of sharp grasses, as well as cane-swallowing to induce vomiting and defecation. The purpose of these rituals is to purge female body fluids that the male child inherited from the mother.¹³⁴ Boys are isolated from all women and taught that women are polluters who will deplete their masculine substance, which they must ingest in the form of semen required for boys to grow. Franke writes that, rather than considering these practices principally homoerotic and calling them “sexual,” we can more appropriately understand them as part of a larger indoctrination process whereby boys learn and internalize gender norms premised upon misogyny and male superiority.¹³⁵ We could therefore argue that what is eclipsed in the selective labeling as sexual—or as cultural—is the relation of these practices to the specific manner in which gender structures social relations.¹³⁶

132. In a forthcoming article, Martha Nussbaum describes the role of the emotion of disgust in different legal spheres, and notes that the male ingestion of semen is met with a greater level of disgust than the female ingestion of semen, since females are differentiated from men because they are considered receptacles for disgusting body fluids. See Martha C. Nussbaum, “*Secret Sewers of Vice*”: *Disgust, Bodies and the Law*, in *THE PASSIONS OF JUSTICE* (Susan Bandes ed., forthcoming 2000).

133. Franke writes: “[Gilbert] Herdt . . . was one of the first Western observers to encounter the Sambia practices and declare: Look, homosexuality. Hallelujah, we are everywhere!” Franke, *supra* note 130, at 1146.

134. See *id.* at 1150.

135. See *id.* at 1151-52.

136. How precisely we could understand these practices as relating to the way gender structures social relations may be quite complicated. Marilyn Strathern, attempting to convey Melanesian knowledge practices as though they were a series of analyses for the way things seem from the point of view of Western anthropological and feminist preoccupations, argues that “male” and “female” might be understood not as motivating principles at work in society, but as conventional descriptions of the forms in which Melanesians make persons and things known. See MARILYN STRATHERN, *THE GENDER OF THE GIFT: PROBLEMS WITH WOMEN AND PROBLEMS WITH SOCIETY IN MELANESIA* 309-10 (1988). She writes that understanding male initiation as simply a differentiation from women looks at individuals as they are recruited into their sex as if they are individuals recruited into clan groups. See *id.* at 64. Among the drawbacks of such an approach, she suggests, is the assumption that identity consists in the possession of qualifying attributes, in whether an individual “has” the

The condemnatory reaction, which distances the observer from the practice and defines the observer as the antithesis of that practice, relies upon and perpetuates a failure to see subordinating practices in our own culture when, for example, young girls are forced to engage in non-consensual sex or are battered in the process of “becoming a woman.”¹³⁷ When we gaze with condemnation at other cultures, we can miss the fact that “our” culture is also characterized by problematic, sex-subordinating behavior. The cases of adolescent marriage should make us rethink the belief that culturally-based subordination of women and girls is a phenomenon particular to immigrant communities of color. So long as we chalk up sexist behavior in other communities to their “culture,” we must critically examine the fact that American culture is characterized by, for example, epidemic rates of male violence against women. Alternatively, if we say that we reject sexism as part of “our culture”—that some of us claim that domestic violence, for example, has no part of “our culture”—we should similarly recognize that segments of other communities are also engaged in a process of rejecting sexism as part of “their culture.”

Extraterritorializing of problematic behavior by projecting it beyond the borders of “American values” has the effect both of equating racialized immigrant culture with sex-subordination, and denying the reality of gendered subordination prevalent in mainstream white America. The failure to interrogate these effects has real-life consequences. These assumptions about gender, race, culture, and nation do not solely raise questions of descriptive representation; they result in shifts in material reality and in distributions of power. While the sexist culture of immigrants of

characteristics that make him unambiguously masculine. *See id.* at 64-65.

Strathern argues that this is a naive correspondence between the sexed individual and the autonomy of “male” and “female” viewpoints. *See id.* at 64. For example, she points to the way in which the gender of sexual organs depends on what you do with them. *See id.* at 128, 211. The difference between male and female is created through rites, and it is a difference that turns on interaction, not attributes. Persons are not masculinized, rather persons masculinize their own organs and sexual substance. The rituals occur, not to make boys, as a special category, into men, but to ensure that they will have the internal capacity to procreate, to be fathers. And men do not in any simple way become men. They are androgynous beings composed of male and female elements, and are produced as male out of an opposite, female form. *See id.* at 211-13.

137. Many American teens learn that experiencing domestic violence is part of being a woman. Forty percent of teenage girls aged 14-17 report knowing someone their age who has been hit or beaten by a boyfriend. *See* Family Violence Prevention Fund, *Domestic Violence Is a Serious, Widespread Social Problem in America: The Facts* (visited Nov. 14, 1999), <<http://www.fvpf.org/facts>>. Eight percent of high-school-age girls said “yes” when asked if “a boyfriend or date has ever forced sex against your will.” *Id.* The “most conservative data” available on the prevalence of father-daughter incest suggests that 1.3% of American women will experience it. At this estimate, 1.6 million American women are now or have been victims of incest. *See* Lisa Elder, *Former Miss America to Speak at Forum on Child Abuse*, DAILY OKLAHOMAN, Mar. 6, 1996, at 13.

color is used to justify calls for immigration exclusion (some race-based, some not),¹³⁸ there appears to be little headway against the shocking incidence of domestic violence in nearly one-third of intimate relationships in the United States.¹³⁹ To be perfectly clear, I am not pointing out the problematic discursive representations of racialized communities in these cases in order to assert that these cultures are not sexist.¹⁴⁰ Rather, I am calling for an approach to combat gendered subordination across communities, an approach that neither attacks the cultures of communities of color based on racial assumptions, nor presumes that the United States is always a site of liberation.

138. See Audrey Macklin, *Looking at Law Through the Lens of Culture: 3 Canadian Snapshots 11* (unpublished manuscript, on file with author) (describing the demand in Canada to limit immigration from certain countries because male nationals were assumed to be “wife-beaters”).

The Federation for American Immigration Reform, an organization dedicated to the principle that the “mass immigration unforeseen over the last 30 years should not continue,” invokes the Iraqi case in Nebraska to demonstrate why the United States should curb immigration. Their webpage states:

One of the most immediate effects of the overly high immigration level our country has today is the growth of groups of people who are not well assimilated into our larger national culture. This leads to worsening ethnic separatism and related problems. . . . Language aside, cultural differences alone can create problems. In November 1996, an Iraqi immigrant was jailed in Nebraska for forcing his 13- and 14-year old daughters to marry men more than twice their age, who were also jailed for statutory rape. The men explained that they were following the tradition of their country and did not understand our government’s reaction. As a natural result of cultural conflict, ethnic strife and separatism grow.

FAIR, *Immigration and Ethnic Separatism* (visited Nov. 13, 1999), <<http://www.fairus.org/html/04152803.htm>>.

Along the same lines, but in a more explicitly racist fashion, in his national bestseller, Peter Brimelow called for an immediate moratorium on immigration from non-European countries, arguing that immigration has social consequences, among them the fact that the immigrants who enter today, compared to European immigrants of the past, are unassimilable and cause crime. See PETER BRIMELOW, *ALIEN NATION: COMMON SENSE ABOUT AMERICA’S IMMIGRATION DISASTER* 10, 19, 178-90, 202-21 (1995).

139. Thirty-one percent of American women report being physically or sexually abused by a husband or boyfriend at some point in their lives, according to a 1998 survey. Thirty percent of Americans say they know a woman who has been physically abused by her husband or boyfriend in the past year. Nearly one-fifth of women reported experiencing a completed or attempted rape at some time in their lives. This violence occurs at similar rates across communities. See Family Violence Prevention Fund, *supra* note 137.

140. I will reiterate here that I believe that all cultures are patriarchal. More helpful than the attempt to categorize cultures on a scale of more patriarchal to less patriarchal would be to examine how patriarchy manifests itself in ways that are similar and different across cultures or communities.