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INTRODUCTION

Consider the following hypothetical:

A person from a minority culture commits an act that is a crime under the laws of the country they resides in, but the act is either mandated or permitted by their culture as they understands it. Should that person be punished for it? In other words, should the cultural motivation or circumstances of the person committing the act be considered when the judge is determining guilt? This question is at the heart of the 'cultural defense' debate.

The next level of questioning is about what I call the nuts and bolts of the cultural defense, and this relates to the application of the cultural defense by courts and the use of expert witnesses. If cultural factors are to be considered, then at what stage should they be considered, and what cultural factors should be relevant and to what extent? Further, if a consensus is reached regarding how these cultural factors are to be considered, by what means can the legitimacy of these cultural claims be examined? It is important to find balanced and efficient answers to these questions for courts to be able to meaningfully apply the cultural defense.

Cultural defense debates are charged with political, racial and feminist undertones. While there is a fear that the legal system would be threatened by making these accommodations for minority cultures, there is also a feeling of the cultural defense being something bestowed upon inferior races and immigrants. On the other hand, proponents of the cultural defense feel that the value systems of minority cultures are marginalized. Further, there is an argument that the cultural defense will lead to people from minority cultures being stereotyped. Overall there is skepticism about the court making a determination about the culture of a minority it knows nothing about. There is also feminist resistance to the recognition of cultural factors in crimes where victims are women, as it would perpetuate practices of patriarchal cultures seen as antithetical to the feminist movement.

This paper examines the cultural defense discourse in the U.S., situating it in the context of Asian Americans, and proposes a cultural defense test consisting of four questions as a guide for courts applying the cultural defense in criminal law cases. It also proposes that the appropriate expert for cultural defense cases would be an anthropologist, and puts forth guidelines for an expert in these cases so as to enable the court to use their testimony to apply the four question cultural defense test.

While cultural factors might become relevant in a wide array of both civil and criminal cases, like cases involving treatment of children, use of certain drugs, attire, public health, etc., I have chosen to focus, in this paper, exclusively on cultural defense cases in the criminal justice context. This is because, in criminal cases, the consequences of either denying the cultural defense or allowing it (without limitation) could be severe. Since criminal justice is not an exact science and involves the consideration of context and state of mind, the consideration of cultural evidence in these cases helps understand the context and state of mind of the specific person informed (Renteln, 2004: p. 23).

This paper further focuses its study of the cultural defense in criminal cases in the specific context of Asian Americans,[1] because while Asian Americans are definitely not a homogeneous group, they tend to be treated collectively as one minority group.

Part I of this paper introduces the concept of the cultural defense and the arguments surrounding it. It calls for the cultural defense to be recognized by courts after an evaluation of all the normative arguments both for and against the cultural defense. Part II briefly situates the cultural defense discourse in the context of Asian Americans. Part III studies three cases where the cultural defense was used with varying outcomes and where the defendants were Asian Americans. Part IV proposes a cultural defense test consisting of four questions that the court needs to apply while applying the cultural defense. Part V examines the role of an expert witness in cultural defense cases and also examines who would be an appropriate expert witness in cultural defense cases. Part VI briefly looks at whether the cultural defense must be given statutory authorization, and whether it should play a role in the prosecution stage or the sentencing stage of the criminal process.

I. THE CULTURAL DEFENSE DISCOURSE

The cultural defense is really a misnomer and is not a defense by itself.[2] Instead, it is the term used to describe the ability of a person belonging to a minority culture[3] to introduce cultural factors to defend his actions with respect to the offence he is being tried or sued for. While there is no single universal definition of culture, scholars writing on the cultural defense have defined it as "a dynamic value system of learned elements, with assumptions, conventions, beliefs and rules permitting members of a group to relate to each other and to the world, to communicate and develop their creative potential" (Gordon, 2009, p. 8).

So if culture is such a dynamic value system, how can the existence of particular cultural factors be definitively proven at any given point of time in court, even if they are allowed to be introduced? The key to this is that an individual of a minority culture in

[1] In this paper I use the term Asian Americans to encompass both Asian immigrants in America, and Americans of Asian origin.

[2] Elaine M. Chiu is the only scholar who supports a complete cultural defense. See discussion *infra* Part VI.

[3] I use the term minority culture not to mean a minority in numbers, but to mean any culture that is not the dominant culture in the country. This is relevant because the law of any country would already have internalized the dominant or mainstream culture, while people belonging to minority cultures do not have this benefit. In the U.S., the cultural defense is used in the context of many immigrant groups, Asian Americans being one of them.

the U.S. is either an immigrant or a member of a diasporic community that once immigrated from another country, and such an individual tends to have a point of reference fixed to the time of either her immigration or the first immigration of the diasporic group that she belongs to and interacts with (Kumaralingam, 2009: 44). Further, if culture informs the interaction of the members of a group, with each other and with the world, and the communication and development of the creative potential of each person, then different individuals must necessarily be influenced differently by culture based on personal attributes such as age, gender, class, race or sexual orientation (Leti Volpp, 1996: 92). In this way, different individuals may be influenced by the same cultural practices to varying degrees.

This Part I argues that courts should consider cultural factors motivating a defendant's acts. Not doing so goes against the principle of accommodation, and instead ensures that the dominant culture in the country is imposed on people from other cultures.

ARGUMENTS IN SUPPORT OF THE CULTURAL DEFENSE

Well-established legal principles of individual justice and equality require that cultural factors are at least considered by courts (Leti Volpp, 1996: 96). This is also supported by the international human rights law discourse, which states that cultural minorities have a right to follow their traditions (Renteln, 2004: p. 212). Alison Renteln, one of the major proponents of the cultural defense, argues that cultural information is relevant because individual justice demands that the actor, the act and motive of the actor in doing the act must be looked at by the court (Renteln, 2004: p. 187). Additionally, the presentation of cultural factors helps the court obtain a more accurate picture of the circumstances surrounding the case, rather than have defendant's counsel try to artificially fit the fact pattern into one of the permitted defenses, which more often than not is the insanity defense, even though the defendant is sane (Sikora, 2001: p. 1707).

Situating these arguments in the U.S., proponents reason that American society, being multicultural and pluralistic, must allow minority cultures to show how their cultures have influenced their actions (Lee, 2007: p. 911, 917).

AN EVALUATION OF THE ARGUMENTS AGAINST THE CULTURAL DEFENSE

One popular argument amongst critics of the cultural defense, and also a reason cited by most commentators for the cultural defense being used unsuccessfully even where it was permitted, is the 'when in Rome do as the Romans do' perception that people have about the law. This argument also draws from the maxim, *ignorance of law is no excuse,* inasmuch as it seeks to convey that people from minority cultures might have differing practices, but by virtue of living in a country they are expected to be aware of the laws of that country Lee, 2007: p. 920). To put it differently, there is an implied assumption that everyone should assimilate into the mainstream culture (Renteln, 2004: p. 193).

The part of this argument that draws from the '*ignorance of law is no excuse*' is not applicable here, because the cultural defense does not actually go against this. Instead, the cultural defense addresses the issue of the law being at odds with a practice that may be permitted, accepted or even mandated by a certain culture. The assimilationist

part of this argument is problematic, firstly because it is biased against minority cultures retaining their practices, and secondly because such an attitude results in the coercive assimilation of minority cultures (Renteln, 2004: p. 197).

Turning the equal protection argument around, opponents argue that the cultural defense goes against the anti-discrimination principle of the equal protection clause and favors people belonging to minority cultures over other Americans (Lambelet, 1996: p. 1093, 1097). However, this argument overlooks the fact that American law already internalizes mainstream American culture, and the cultural defense is needed to give cultural minorities 'equal protection' under those laws (Lee, 2007: p. 911, 918).

Another concern articulated by opponents is that deterrence, which is an essential feature of criminal law, will be undermined by the cultural defense, which would reduce the sentence or be a mitigating factor in the trial. Thus members of that minority culture would continue to commit such acts and law enforcement will not be strong enough to deter them (Renteln, 2004: p. 192). Since cultural defense cases apply only to the cultural minority, the deterrence argument cannot be raised for people not belonging to that cultural minority (Renteln, 2004: p. 195). Further, in cultural defense cases, actions by members of a minority culture are motivated by the dictates of their culture, and in most cases punishment will not matter to them. For example, in cases where an action is motivated by a need to 'save face' (respect in one's community), punishment will be less important to such a person as compared to 'losing face' in the community (Chen, 2009: 250–251). Even if not, accepting the cultural defense would ensure deterrence to a limited extent, the important question to be asked against this deterrence argument is whether achieving this limited deterrence is more important than according equal access to justice to everyone? Also important to note is the fact that the cultural defense rarely leads to a full acquittal, and usually only serves to reduce the sentence, in which case the deterrence argument carries less weight as there is still some punishment (Renteln, 2004: p. 196).

Another argument against the cultural defense is that it would result in negative stereotyping, because courts would present minority cultures in a bad light. Further, it would lead courts to stereotype minority cultures in terms of how much they do or do not fit into the majority culture (Sikora, 2001: p. 1709). However, this argument hardly has any merit since American mainstream society already perpetuates and carries a number of stereotypes about minority cultures and especially about Asian Americans, as will be clear in part II of this Paper. Should the cultural defense then be denied to people from these groups just to avoid more stereotyping? In my opinion, if a systematic model for applying the cultural defense by courts is put in place, culture will be presented in an informed and sensitive manner by an expert, usually an anthropologist, and with reference to a particular individual, thereby possibly reducing the negative stereotyping already prevalent in society. I will demonstrate how this could be done in Part IV, where I lay out a model for courts to apply the cultural defense.

Concerns have also been raised about women and children from minority cultures. One of American society's most fundamental progressive goals is to empower women and children, and the cultural defense would go against this (Coleman, 1996: p. 1093, 1095). As a reply to this, Letti Volpp quotes Mari Matsuda who takes the position that focusing on women's rights in cultural minorities takes away attention from the criminal justice system, rendering radicalized justice, which in effect is what would result if the cultural defense is denied to minority cultures (Volpp, 1996: p. 73, 87). It is my

opinion that recognizing a full cultural defense (which is not what I am proposing), where the defendant is given absolutely no punishment for a culturally motivated act, and where the victim is a woman or child, would definitely be opposed to the rights of women and children. However, most scholars do not advocate such a complete cultural defense and merely propose cultural factors being considered by the court during the trial phase.

Arguments about the rights of victims find favor with critics of the cultural defense. They argue that victims of the same crime receive different levels of protection based on whether the cultural defense applies or not (Renteln, 2004: p. 193).

This argument does not hold much sway because it defeats the purpose of criminal law, which is to ensure just punishment for the defendant by focusing on the defendant's state of mind. If all victims of the same crime are entitled to the same sentence being awarded to the defendant, even traditional defenses under criminal law like insanity would not be valid (Renteln, 2004: p. 196).

NEED FOR THE A CULTURAL DEFENSE

The above discussion makes it clear that the cultural defense is necessary in order to protect the rights of minority cultures. Most of the normative arguments articulated against it stem either from a faulty understanding of the cultural defense, or a failure to consider rights of cultural minorities, or misplaced concern for negative stereotyping of these minority cultures.

However, other concerns on a more practical level have been raised with regard to how the cultural defense is applied by courts. These issues have been discussed in Part IV of this paper.

II. CULTURAL DEFENSE IN THE ASIAN AMERICAN CONTEXT

Immigrants are not new to America. In fact, America prides itself on being the land where "people from all over the world will come and their differences will be accepted and embraced" (Sikora, 2001: p. 1708). How much has the Asian American difference been accepted and embraced in America?

Answering this question is extremely pertinent to a study of the cultural defense for Asian Americans in criminal cases. This is because the cultural defense seeks to accommodate beliefs and practices of minority cultures at the stage of either trial or sentencing since the law has not internalized them.

THE ASIAN AMERICAN EXPERIENCE

The Asian American experience has historically been one of exclusion on the one hand, and forced assimilation on the other.

Asians, as a group, are stereotyped as having such a heightened loyalty to family and tradition that it is impossible for them to blend into mainstream society (Volpp, 2010: p. 63). However, there have also been success stories of Asian Americans studying and working hard and improving their economic standing. For this, ironically, the stereotype perpetuated in that Asians and Asian Americans as a group are minority with

a culture that encourages them to work hard and achieve the American dream of economic success, and this makes them a 'model minority' in America.[4]

Thus, on the one hand Asian Americans have been considered incapable of assimilating into mainstream society because of their culture, while on the other hand they are seen as the model minority that has succeeded in America, which is also attributed to their culture (in this case consisting of positive attributes like hard work and perseverance), and hence an example of a minority having access to the great American dream.

EXCLUSION

Asians were perceived by American society as 'different' and 'the others' right from the 1800s when the first Chinese immigrants arrived in Hawaii and California during the gold rush (Chiu, 1994: p. 1053, 1055). This perception was manifested in various pieces of legislation and norms that resulted in excluding Asians from mainstream society. Some early examples of these early exclusionary regulations are those denying naturalized citizenship to Asians[5] by classifying Asians as not belonging to the Caucasian race[6] and being non-white,[7] thereby linking race to geographical location in (Chiu, 1994: p. 1061). As a consequence of being ineligible for citizenship, Asians were denied access to a wide range of employment positions and from owning real property in (Chiu, 1994: p. 1064). Asians were prevented from marrying white people, and were not allowed to attend schools attended by white children in (Chiu, 1994: p. 1065). Further, both laws and social exclusion resulted in the ghettoization of Asians, i.e. the creation of China towns, Korea towns etc. in most American cities, where Asians lived outside of mainstream society (Chiu, 1994: p. 1065).

FORCED ASSIMILATION

Parallel to the laws that aimed to exclude Asians from mainstream society, there were also laws that tried to force Asians to confirm to the norms of mainstream American society. Instead of accepting that Asians were influenced by a different set of cultural values, Asians in America were forced to confirm to mainstream society's norms through various laws and regulations. Ordinances passed to compel the Chinese to change their living arrangements in San Francisco (the Cubic Air Ordinance, which required every living house to provide 500 cubic feet of air space per adult lodger) and legislation frustrating Chinese burial practices in California (requiring a permit from the county officer for the disinterment of a body) are some examples of this (Chiu, 1994: pp. 1076–1077).

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[4] *See generally*, Wu, *Asian Americans and the 'model minority' myth*, LA Times, Jan 24, 2014, available online at http://www.latimes.com/opinion/op-ed/la-oe-0123-wu-chua-model-minority-chinese-20140123-story.html.

[5] Naturalization Act of Mar. 26, 1790, ch. 3, ? 1, 1 Stat. 103, repealed by Act of Jan. 29, 1795, ch. 20, 1 Stat. 414 (granting naturalized citizenship to alien whites). Immigration and Nationality Act of 1952, Pub. L. No. 82–414, 66 Stat. 163 (codified as amended at 8 U.S.C. 1422 (1988) finally eliminated the provision against the naturalization of nonwhite aliens. Cited in (Chiu, 1994: p. 1061).

[6] *Ozawa v. United States*: 260 U.S. 178 (1922).Cited in (Chiu, 1994: p. 1061).

[7] *United States v. Thind*: 261 U.S. 204 (1923).Cited in (Chiu, 1994: p. 1061).

MODEL MINORITY MYTH

Asian Americans are regarded as a model minority in the U.S. due to their economic and professional achievements, which is attributed to their hard work and discipline. This, like most generalizations, is a myth; the reality being that many Asian Americans suffer from extreme poverty.[8] However, even where the reference to economic success is true, this myth ignores the total lack of political success of Asian Americans in the U.S. Even where political lack of participation of Asian Americans is spoken of, it is in terms of their being disinterested in American society and their clannish predisposition. Therefore, today's stereotypes of Asian Americans reinforce the same perception of them as 'others' or 'different', despite some Asian Americans having lived in the U.S. for two or three generations.

The model minority stereotype promotes a mistaken notion that Asian Americans have assimilated in mainstream society and adopted white values, while in reality Asian Americans have retained their values to varying degrees (Chiu, 1994: p. 1082). Thus there is a constant push to force Asian Americans to assimilate, and the model minority myth is used as a tool to convey the bitter-sweet message – 'conform and succeed or be left behind'. Examples of this in contemporary times can be found in the workplace, where employees are expected to dress in such a way as to appear American.[9]

This is definitely not a story of differences being accepted and embraced, but rather one of the coerced elimination of those differences, and otherwise blaming the culture for being too excessive.

THE CULTURAL DEFENSE FOR ASIAN AMERICANS

It is apparent from the above discussion that Asian Americans have been forced to assimilate, while at the same time being historically excluded from mainstream society. Notwithstanding whether this is due to historical reasons or due to 'excessive' culture, the fact remains that Asian Americans are informed by different cultural values than mainstream society, and no efforts have been made to accommodate these practices.

By recognizing the cultural defense in criminal cases, some accommodation is being made to Asian Americans, at least in this context. Conversely, denying them the benefit of the cultural defense then translates into forced assimilation, as they would be punished for committing acts that are either permitted or mandated by their culture. Most culturally motivated criminal acts fail to achieve the 'state of mind' required in criminal law, and in order for the defendant to be able to defend himself in such a case, it becomes essential to present cultural evidence and motivations. Therefore, not recognizing the cultural defense would prevent the defendant from being able to present cultural evidence in order to defend himself.

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[8] *See* supra note 5.

[9] http://www.forbes.com/sites/evangelinegomez/2012/01/31/should-businesses-worry-about-appearance-based-discrimination-in-the-workplace/ (visited, May 2nd, 2012).

III. CASE STUDIES

This part will present three cultural defense cases in a criminal justice context that are relevant to the study of an Asian American perspective of the cultural defense. The first two of these cases are unpublished, and the third was later de-published. This in itself underlines the nebulous attitude of courts towards the cultural defense, and at the same time casts uncertainty about its use in subsequent cases. A study of these cases also helps throw light on how different approaches of courts and experts in the application of the cultural defense can lead to different outcomes.

People v. Dong Lu Chen[10]

Facts

One day, Dong Lu Chen confronted his wife about their sexual relationship and she confessed to having an extra-marital affair. Hearing this, he left the room and returned with a claw hammer and, after knocking her onto the bed, hit her on the head eight times until he finally killed her (Goldstein, 1994: pp. 141, 151).

Defendant's specific situation

Dong Lu Chen was an immigrant from Canton, China, and had immigrated one year earlier before the crime in question was committed (Choi, 1990: p. 84).

Cultural factors and how it played out in the court room

The defense argued that cultural pressures had resulted in Dong Lu Chen's diminished capacity, thereby rendering him unable to form the necessary intent for premeditated murder (Goldstein,1994: p. 152). Expert testimony on traditional Chinese culture was introduced, in support of this argument. The expert was Dr. Burton Pastemak, a professor of anthropology. He testified that in Chinese culture, a woman's adultery is considered as proof of her husband's weak character and that it brings shame upon the husband's ancestors. He explained that a husband is usually enraged upon learning of his wife's infidelity and threatens to kill her, but that the close-knit Chinese community intervenes and offers help to the family before the husband can carry out the threat. However in this case, there was no community to intervene and protect Dong Lu Chen's wife (Goldstein,1994: p. 151).

Based on this, Judge Pincus found that Dong Lu Chen was guilty of the lesser crime of second degree manslaughter (Goldstein,1994: p. 151). Further, the judge imposed probation rather than grant a sentence, justifying it with the argument that the defendant here was a victim too, as there was no 'community' to calm him down and stop him from killing his wife (Volpp, 1996: p. 73). In fact, the judge was so persuaded by the expert testimony that he stated that had Dong Lu Chen been born and/ or raised in an American, or even a Chinese community in America, the decision would not have been the same.[11]

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[10] *People v. Chen,* No. 87-7774 (New York Superior Court, 1989).

[11] "Were this crime committed by the defendant as someone who was born and raised in America, or born elsewhere but primarily raised in America, even in the Chinese American community, the Court [sic] would have been constrained to find the defendant guilty of manslaughter in the first degree. But, this Court [sic] cannot ignore… the very cogent forceful testimony of Doctor Pasternak, who is, perhaps, the greatest expert in America on China and interfamilial relationships." cited in (Volpp, 1996: p. 73).

Current position in China

The expert witness testifying for Dong Lu Chen in this case himself admitted that he could not actually recall a single instance of a man killing his adulterous wife in China (Volpp, 1996: p. 70).

People v. Kimura[12]

Facts

This was a case of *oyako-shinju* or parent-child suicide. Fumiko Kimura, a Japanese American woman living in California waded through the Pacific Ocean with her two children when she heard of her husband's infidelity. The two children died but she survived and was charged with first degree murder (Renteln, 2010, p. 427).

Defendant's specific situation

Fumiko Kimura had been living in the U.S. for many years, but had not assimilated due to her cultural isolation (Renteln, 2010, pp. 428–429).

Cultural Factors

The cultural background to this was that Fumiko Kimura, being despondent after having learnt of her husband's infidelity, committed *oyako-shinju* to save herself from shame and humiliation, and to save her children from future shame and humiliation. Commentators have opined that in Japan a mother considers her children an extension of herself, and *oyako-shinju*is thus caused by the inseparable parent-child bond (Choi, 1990: p. 82). A mother committing suicide and leaving her children behind is seen as dooming them to the disgrace of living in an orphanage, or with a single parent, and is seen as a demon-like person (Goldstein, 1994: p. 147).

How it played out in the court room

A petition signed by 4000 Japanese Americans was sent to the district attorney, appealing that modern Japanese law be applied to the case; however, the prosecutor, defense attorney and judge declined(Goldstein,1994: p. 148).

Instead, the strategy adopted by Fumiko Kimura's defense lawyer was to plead the insanity defense. Six psychiatrists testified that Fumiko Kimura was suffering from temporary insanity, some of them basing their opinion on her inability to distinguish between her life and her children's lives (Renteln, 2010, p. 428). Finally, a plea bargain was entered into according to which her charge was reduced from homicide to voluntary manslaughter; she was sentenced to one year in county jail, which had already been served during the trial, five years' probation and psychiatric counseling (Renteln, 2010, p. 428).

How Japanese law deals with oyakoshinju

While *oyakashinju* is illegal in Japan, it is fairly common. While a parent who survives it is charged with homicide, the sentence is usually suspended (Choi, 1990: p. 82).

People v. Helen Wu[13]

Facts

Helen Wu was a native Chinese woman living in the U.S. She was upset because Gary, the father of her son, had promised to marry her but then broken that promise. Then he

[12] *People v. Kimura*, No. A-091133 (Los Angeles Superior Court, 1985).

[13] Court of Appeal of California, Fourth Appellate District235 Cal. App. 3d 614, 286 Cal. Rptr. 868 (1991) Pursuant to *California Rule of Court 976(c)(2)*, the California Supreme Court has ordered this opinion depublished.

had agreed to marry her only when she promised him a sum of money. On the eve of the homicide, her son told her that his father was living in the house of another woman, and that he was beaten regularly China (Volpp, 1996: p. 85).

This made her agitated and depressed, and ultimately led her to strangle her son with a rope from the window. She then wrote a note to Gary saying that he had bullied her too much and that "now this air is vented. I can die with no regret." She then tried to strangle herself and, when she failed, slashed her wrists and lay down next to her son to die China (Volpp, 1996: p. 86).

Defendant's specific situation

Helen Wu was a native of China and had first come to the U.S. when Gary contacted her and promised to divorce his wife and marry her. She arrived in the U.S. in 1979, and conceived a child with Gary in 1980, though he had not yet married her. Helen Wu did not speak English, did not drive and had no other support system in the U.S. but Gary. So she returned to China and returned eight years later when he proposed marriage China (Volpp, 1996: p. 85).

Cultural factors and how it played out in the courtroom

The defense for Helen Wu argued an automatism defense (meaning that the acts were done in an unconscious state of mind) and a cultural defense; however, the trial court did not accept this, as that would approve actions that, even if acceptable in China, are not acceptable in the United States (Renteln, 2010, p. 430). The Court of Appeal held that the trial court should have instructed the jurors that they could choose to consider Helen Wu's cultural background in determining the 'state of mind' necessary to be determined for murder. It also held that there was evidence of Helen Wu's background and the impact her background may have had on her mental state.

Significantly, the court also distinguished between admitting cultural evidence for the purpose of proving 'state of mind' from admitting it to for the purpose of showing that defendant was ignorant of the law, and therefore excused from it. It clarified that the former was permitted and the latter was not (Taylor, 1998: pp. 445, 450). While the California Supreme Court declined to review the case on the merits, it ordered the depublication of the opinion by the Court of Appeal. Despite this, Helen Wu was entitled to a new trial wherein the jury convicted her of voluntary manslaughter, as it saw the cultural factors as being a partial excuse for her actions (Renteln, 2010, p. 431).

In this case, cultural evidence was presented by experts on 'transcultural psychiatry', who testified that Helen Wu's emotional state was intertwined with and explained by her cultural background. One expert, Dr. Chien, said he drew not only from transcultural psychiatry, but also from his expertise in Chinese culture and from his interview with Helen Wu.[14] The expert testimony essentially established that Helen Wu's act of killing her son did not stem from an evil motive, but instead from love for her son, a feeling of failure as a mother and a desire to be with him in another life (Volpp, 1996: p. 88).

Current position in China

Nothing was presented here about the law in China for an act similar to Helen Wu's committed by a person in her circumstances.

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[14] "[I]n my expertise as a transcultural psychiatr[ist] . . . with my familiarity with the Chinese culture . . . and from the information interview I obtain from Helen, she thought she was doing that out from the mother's love, mother's responsibility…" as cited in (Volpp, 1996: p. 88).

IV. APPLICATION OF THE CULTURAL DEFENSE BY COURTS

[I]f respect for an individual also requires respect for the culture in which his identity has been formed, and if that respect is demanded in the uncompromising and non-negotiable way in which respect for rights is demanded, then the task may become very difficult indeed, particularly in circumstances where different individuals in the same society have formed their identities in different cultures. – Jeremy Waldron[15]

As Jeremy Waldron says, it becomes very difficult to have an uncompromising and non-negotiable cultural defense, as there are other concerns (discussed in Part I of this paper) that must be taken into account. In this Part IV, I will first discuss the suggestions and views of scholars about the extent of the cultural defense, most of whom favor a limited cultural defense, and then present a model for courts to apply the limited cultural defense.

As the cases examined in Part III show, cultural factors are, in fact, considered by courts, but there is no general rule with respect to its application. The way it has played out in courts is not out any fixed pattern. Lawyers may, at their discretion, choose to introduce cultural evidence, and judges may or may not admit that evidence. Even if the evidence is admitted, there is no certainty as to how it will be applied. Again, there is no certain rule establishing how or at what stage courts will admit such evidence. It may be admitted as part of expert testimony at trial, or as part of jury instructions, or as mitigating factors during sentencing, or maybe even in the plea bargaining phase (Volpp, 1996: pp. 95–96).

Therefore it is necessary for a model to be formulated whereby courts can uniformly apply the cultural defense. Such a model must obviously take into account all the concerns surrounding the cultural defense debate to be accepted.

Most scholars in favor of the cultural defense have called for the establishment of a limited cultural defense, and have suggested different ways to limit it so that it does not end up being a slippery slope of sorts. However, there has been one proposal to make the cultural defense a complete defense or justification.

THE CULTURAL DEFENSE AS A COMPLETE JUSTIFICATION – IS THIS JUSTIFIED?

Uninspired by the way in which courts have been using their discretion to apply the cultural defense, Elaine M. Chiu proposes that culture should be a complete justification rather than just a defense. In support of her proposal, she argues that if the use of the cultural defense is discretionary, then it results in fitting it under one of the existing criminal defenses, as was done in the *Kimura* cases (Chiu, 2006: p. 1321). There is merit in this argument as, for instance, in *Kimura*, while pleading insanity and linking cultural factors helped reduce Kimura's sentence drastically, she was also given psychiatric counseling which was not appropriate for her.

She makes another argument that one of the main purposes of criminal law is determination of blameworthiness, which is not achieved by recognizing a limited cul-

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[15] Jeremy Waldron, *Cultural Identity and Civic Responsibility,* in*Citizenship In Diverse Societies* Will Kymlicka& Wayne Norman eds., Oxford University Press 2000, p. 160, cited in (Chiu, 2006 : pp. 1317, 1318).

tural defense where the act is still determined to be wrong but cultural factors would reduce the sentence (Chiu, 2006: p. 1322). In my opinion, however, the purpose of the cultural defense is to accommodate people of minority cultures in America, and a limited cultural defense achieves this inasmuch as a person is not made to suffer an excessive sentence for an act which, in their mind, was permitted or mandated by their culture. In doing what Chiu proposes, if a complete cultural defense were to result in the act of a defendant being considered not morally blameworthy merely because the defendant belongs to a certain minority culture, it would result in that culture being stereotyped as morally lacking. Further, for an act like Chen's, i.e. a man killing his wife because she committed adultery, not being held to be blameworthy because of cultural factors would undermine women's rights in particular, and victims' rights in general. Thus, while Chiu's approach of culture being a complete justification may be appropriate in other walks of life, it cannot be accepted in the context of criminal law.

IN DEFENSE OF A LIMITED CULTURAL DEFENSE – DEVELOPING A MODEL FOR IMPLEMENTATION

The limited cultural defense balances the dangers of an unlimited cultural defense or justification with the need for the cultural accommodation of minorities. Most scholars therefore favor a limited cultural defense, but have proposed different models in terms of how and when cultural factors must be considered by the court. What is required is a balanced model that all courts would apply in order to have certainty, and prevent any misuse of the cultural defense.

Renteln suggests a cultural defense test that courts can use to avoid a potential abuse of the cultural defense. Under this test, the courts have to answer three queries, in applying the cultural defense namely: (1) Is the litigant a member of an ethnic group? (2) Does the group have such a tradition? (3) Was the litigant influenced by the tradition when he or she acted? (Renteln, 2004: p. 207). These three queries, constituting the test, act as an excellent starting point for a judge to determine, in a structured way, whether the cultural defense applies. For instance, had this test been followed by the *Dong Lu Chen* court, Judge Pincus would have had to first determine whether Dong Lu Chen was a member of 'Chinese culture'. The answer to this would have been yes, as Dong Lu Chen had immigrated to China only a year previous. Next, the judge would have had to determine whether there was a tradition in Chinese culture where the husband kills his wife if he learnt that she was committing adultery. The answer to this, according to the expert witness in that case, would probably have been yes, based on his testimony that a husband in china is usually enraged on learning of his wife's adultery and threatens to kill her, but is then stopped by his community. Therefore, as Judge Pincus reasoned, since Dong Lu Chen lacked this community support that would have been available to him in China, he ended up killing his wife. The final question that the court would have had to answer is whether Dong Lu Chen was influenced by the tradition when he acted, which the court would have most likely have answered in the affirmative, going by the expert testimony and Judge Pincus's reasoning. Thus, even applying this test, the *Dong Lu Chen* case would have determined that the cultural defense is applicable and the outcome would in all probability have been the same.

Cher Weixia Chen has tried to address the issue of the relevance of the current law on the particular issue in the home country of the minority culture. She suggests that, in addition to presenting the cultural background of the defendant, there should be a comparative study of the law in the home country of the culture, in order to determine whether the cultural defense must be adopted. She supports this suggestion with the argument that the law in any legal system reflects the value system and morality of that territory (Chen, 2009: p. 256). Applying this suggestion to the *Dong Lu Chen* case, she explains that Prof. Pasternak, the expert witness for the case, could not answer the question about the status of law and the legal consequence of divorce in China, which a lawyer or a legal scholar from China could have answered. According to Chen, had a lawyer or legal scholar from China testified, the outcome of this case would have been very different that the law in any legal system reflects the value system and morality of that territory (Chen, 2009: p. 256).

Her argument is very attractive, because one of the basic justifications for adopting the cultural defense is the fact that American law would necessarily have internalized American values, and that cultural accommodation must be given to people belonging to minority cultures who do not share this privilege. However, her argument overlooks the fact that culture is a dynamic concept and that immigrants or diasporic communities, when asserting their cultural identity, tend to have a point of reference that is fixed to the time of the first wave of emigration or dispersion (Kumaralingam, 2009: 44). This means that, while current laws in the home country of the particular minority culture might reflect the current values and beliefs of the people, the defendant's point of reference might be to a culture fixed in a different time. This means that merely a legal scholar or lawyer from the home country of the minority culture will not suffice to make an accurate determination of whether the cultural defense is applicable in the case. Yet, her analysis that the *Dong Lu Chen* case could have come out differently had a legal scholar or lawyer from China testified, instead of an anthropologist, holds some promise. As she points out, the Judge did ask the anthropologist about the current status of marriage law and the legal consequences of divorce in China. This aspect is extremely important and could have turned the decision around, particularly in this case because the defendant had immigrated from China only a year previous. This aspect is vital to a cultural defense case, which the court did not consider.

Therefore, in my opinion, in addition to Renteln's three questions, a fourth question must be considered by the court namely, what period of time the defendant uses as his fixed point of reference when asserting his cultural identity. This is a particularly hard question to answer, because the time of emigration from the home country might not always be the only thing to be considered. The cultural background of the defendant might be more nuanced, like in the case of *Fumiko Kimura*, who had been living in the U.S. for many years, but still remained isolated from mainstream society and had not assimilated. In this case, she was probably influenced by the Japanese American community in the U.S. that she might have interacted with, and her actions might be influenced not only by her understanding of her culture at the time she immigrated, but also from the beliefs she might have gleaned and shared with her immediate community. While something of this nature is admittedly hard to determine, the expert in the Helen Wu case stated that he drew his conclusions from transcultural psychology, his expertise in Chinese culture and personal interviews with the defendant. I propose that the expert must necessarily interview the defendant personally to understand her spe-

cific time of reference when making the cultural claim. The expert can make this determination by drawing from his expertise and the personal interview with the defendant, as was done in the Helen Wu case.

V. EXPERT WITNESS IN CULTURAL DEFENSE CASES – QUALIFICATION AND TESTIMONY

Experts played a critical role in all three cultural defense cases discussed in this paper. Both Renteln's model and the model I have proposed here, presuppose that the court receives expert testimony. Cher Waxia Chen too focuses on what sort of expert is appropriate for a cultural defense case. This raises two important questions, namely, who is best suited to be an expert in cultural defense cases, and what role should such an expert play in these cases? In this Part V, I consider each of these questions and propose that an anthropologist is best suited to be an expert in cultural defense cases, and recommend that the court must instruct the expert to examine certain specific issues. I end this part with a recommendation to develop rules of guidance for experts in such cases.

WHO SHOULD BE AN EXPERT IN CULTURAL DEFENSE CASES?

Historically, anthropologist testimony has been accepted in a number of cases, including racial discrimination cases, cases related to miscegenation laws, child custody cases, etc. and date back to the landmark case of *Brown v. Board of Education*, where expert testimony was relied on to make the argument that racial segregation was unconstitutional if it lacked any rational basis (Rosen, 1977: pp. 555, 571)[16]

While mostly anthropologists have been appointed as experts in cultural defense cases, arguments have also been made for the use of members of the minority culture as experts, as they would be in a position to explain the significance of traditions to courts (Renteln, 2004: p. 206). As is apparent from the type of experts used in the cases discussed in Part III above, anthropologists tend to be more accepted by the courts as compared to members or leaders of the community. This is because anthropologists are seen as qualified social scientists who can testify objectively, whereas a member of the same minority culture as the defendant might succumb to political pressures, or might themselves, being insiders to the community, be biased in favor of people belonging to their community. Further, the testimony of a member of the minority culture might not be easily accepted as expert testimony without a standard to show the person as an expert in the culture.

However, there are also concerns with respect to anthropologists' testimony in cultural defense cases. Since anthropology, as a disciple (and therefore anthropologists), has its roots in colonial conquest, it could be seen as remaking 'other' cultures as per colonial pragmatics as a means to better subjugate them.[17] This would mean that anthropology, as a discipline, is biased against 'other' cultures, and thus anthropologists testifying in cultural defense cases must necessarily be biased against the other culture. If this is true, there is a danger of perpetuating the biases inherent in the discipline into

[16] *Brown v. Board of Education* 347 U.S. Supreme Court 483 (1954).

[17] http://slavic.lss.wisc.edu/~tlongino/ctp/whitehead.shtml (visited on May 22nd, 2012).

courts in cultural defense cases, by relying on the testimony of anthropologists. While this may have been true earlier, anthropology has evolved, to some extent, since its colonial origins, so that the relationship between 'who is doing the study' and 'who is being studied' is changing.[18] However, there could be some instances of anthropologists, like Dr. Pasternak in the *Dong Lu Chen* case, emphasizing how different Chinese culture was from American culture and painting a picture of Chinese culture that was far from present day reality. Therefore, it is prudent to weigh the merits of using anthropologists' objective and scientific testimony against this danger of further perpetuating 'othering'. To balance out the two, it may be useful to adopt certain procedural safeguards in terms of laying out precise parameters to be followed by an anthropologist giving expert testimony in cultural defense cases. For instance, every assertion about a minority culture by the expert must necessarily be substantiated by concrete evidence. This would ensure that the judge weighs the testimony of the expert as per these parameters, rather than accept the testimony based mostly on the reputation of the anthropologist, as was probably true in the *Dong Lu Chen* Case. In that case, the Judge explicitly stated: "… this Court [sic] cannot ignore… the very cogent forceful testimony of Doctor Pasternak, who is, perhaps, the greatest expert in America on China and interfamilial relationships" (Volpp, 1996: p. 73).

If the court has to apply the cultural defense as per the model I proposed in Part IV above, an anthropologist specializing in that particular minority culture would be the most appropriate expert. I will substantiate this by examining who is suited to answer each of the four questions in my model.

The first question to be answered is, '*is the litigant a member of the ethnic group?*' Ethnography being one of the subjects anthropologists study, an anthropologist would be able to answer this question.

The second question to be answered is, '*does the group have such a tradition?*' While this question could also be answered by a member of the minority culture, there is always the possibility that these community experts might succumb to pressure from inside the community to save the defendant from prison (Renteln, 2004: p. 206). On the other hand, an anthropologist who has an expertise in that particular culture would be able to answer this question more objectively.

The third question is, '*was the litigant influenced by tradition when he or she acted*?' Anthropologists who study culture also focus on the importance of its influence on human thoughts, feelings and behavior (Caughey, 2009: p. 326). This would make them the most appropriate experts to answer this question. However, since this question involves some element of second-guessing the defendant's thoughts, perhaps the use of a psychologist or a transcultural psychologist (as seen in the Kimura case) can be used in conjunction with the anthropologist's testimony if the case calls for it. John L. Caughey, an anthropologist with interests in South Asian cultures, recounting his experience as an expert witness for a cultural defense case in Maine opines that it might have been better if he could have interacted with the psychiatrist testifying about the defendant's psychological state, as cultural matters are intertwined with an individual's personal psychology and state of mind (Caughey, 2009: p. 329).

[18] "World anthropologists and current trends", available online: http://sc2218.wetpaint.com/page/World+Anthropologies+and+Current+Trends (visited on May 22nd, 2012).

The last question is '*what is the period of time that the defendant uses as his fixed point of reference, while asserting his cultural identity*?' The answer to this question is to be determined by a study of the defendant's background and a personal interview with the defendant. Here too, an anthropologist would be appropriate for the same reasons as in answering the previous question.

In the *Dong Lu Chen* case, despite an anthropologist testifying as the expert, both his testimony and the outcome of the case have been criticized. The expert in that case, Dr. Pastemak, placed too much emphasis on the difference between American and Chinese, and that the Chinese must necessarily be constructed as an 'in-assimable alien' thereby further perpetuating the feeling of immigrants being the 'other' in mainstream America (Volpp, 1996: p. 67).

In contrast, the experts in the Helen Wu case, who were transcultural psychiatrists, based their opinion on extensive interviews with the defendant to see how the culture had influenced her. This had the benefit of focusing on the individual, rather than drawing out perceptions about the culture itself, and ensuring that the trial remains a trial of the individual and not the culture in question. Although Dr. Pastemak in the Chen case did not do this, an anthropologist is equipped to assess the influence of culture on human thoughts and behavior, and hence can provide a more individualized testimony (Caughey, 2009: p. 326). The important question one should ask is how we can ensure that the anthropologist, in his role as an expert, does not end up alienating and 'othering' the culture, and instead applies his expertise to the individual's specific circumstances.

The other problem with Dr. Pastemak's testimony was that he did not focus on the time period that should be the fixed point of reference for Chen when claiming the cultural defense, which in this case should have been current Chinese culture, as Dong Lu Chen had immigrated only a year ago. Instead Dr. Pastemak made general comments about American stereotypes about the hyper-sexualized Chinese woman, and Chinese men finding it hard to find a Chinese wife after his first wife had committed adultery, as he could not maintain a minimum level of control. His source for this information, by his own admission, was field work he had done 'between the 1960s and 1988,' and could not cite a specific similar incident, let alone a recent incident. (Volpp, 1996: p. 70).

This takes us back to the question of how we can ensure that the anthropologist, in his role as an expert witness, does not draw generally from his knowledge of the culture, but focuses on the specific time period applicable to the defendant in question.

WHAT ROLE SHOULD THE EXPERT PLAY IN CULTURAL DEFENSE CASES?

The above discussion underlines the importance of the role of the expert witness in enabling the court to apply the 'four question' test model I have proposed. How can the court ensure that it receives the necessary and appropriate guidance from the expert testimony? This is not the only problem that needs to be addressed when considering the role of an expert witness in cultural defense cases. There is a concern about anthropologists testifying as expert witnesses being considered as merely 'hired guns' for lawyers on either side (Renteln, 2004: p. 206). There is also the problem of anthropologists not being willing to testify in cultural defense cases, since it generally involves a 'difficult, adversarial, disturbing and depressing' trial process at the end, during which their testimony may

be challenged and excluded (Caughey, 2009: p. 322). This problem is accentuated by the fact that selection of anthropologists as expert witnesses is generally haphazard, and there is easily accessible list of experts available on various cultures (Renteln, 2004: p. 206).

Addressing the latter two issues is necessary to try and find an answer to the first issue of ensuring the anthropologist enables the court to follow the four step test I have proposed. To address the issue of anthropologists merely being 'hired guns', the formulation of a code of ethics for expert witnesses has been suggested (Renteln, 2004: p. 206). In my opinion, this is a suspicion one can have about any expert witness, for instance a medical expert or a forensic science expert. However, an anthropologist, like any other expert, would worry about his reputation more than the monetary incentive for testifying a certain way, and that would be the greatest check against an anthropologist merely acting as a 'hired gun'.

The next concern to be addressed is that of anthropologists not being willing to testify in a cultural defense case. Apart from anthropologists finding the adversarial court room environment unattractive, the fact there is no clarity about how courts will apply the cultural defense as yet, might be a reason for this. Many feel that the cultural defense is merely a 'culture-made-me-do it excuse' and that it has been wrongly used to excuse crimes against women and children (Caughey, 2009: p. 324). From an anthropologist's point of view, if they feel that the cultural defense is being misused, and rightly so in a number of cases, it is all the more reason for them to involve themselves and help bring about a change (Caughey, 2009: p. 324). Renteln also proposes that professional associations like the American Anthropological Association, including region specific cultural studies organizations, could compile lists of experts on different cultural groups (Renteln, 2004: p. 206). These groups could also increase awareness by organizing talks by legal scholars and practitioners about the use of the cultural defense, so that anthropologists are aware and open to the idea. Caughey says that his involvement in a cultural defense case, the study it entailed and the trial process, helped him learn about cultural matters and how they play out in court (Caughey, 2009: p. 323). Even if we are assured of the availability of anthropologists to testify in cultural defense cases, how can the court ensure that it receives the necessary and appropriate guidance from their testimony in order to be able to apply the four question test proposed?

Typically, anthropologists are asked to serve by the defense and they have to combine their independent cultural assessments with what the defense wants of him or her (Caughey, 2009: p. 324). This is hardly an ideal scenario to ensure a uniformly structured opinion answering the four questions that the judge has to make a determination on. Suggestions have been made to hold a pre-trial conference in which all the experts, representatives of the parties and the presiding judge would be involved in order to narrow factual issues and for experts to discuss the possibility of filing a joint report (Rosen, 1977: 571). I support this suggestion and also suggest that at this pre-trial conference, the judge outline the four questions he intends to make a determination on so as to prompt the experts – both the anthropologist and psychiatrist (where present) – to structure their opinion on those lines.

This process would prevent unstructured and non-individualized expert testimony of the sort rendered by Dr. Pastemak, and would enable judges to follow the four question cultural defense test. This process might also have the added benefit of preventing the testimony of the anthropologist from merely being biased against the 'other' culture, as a more specific and structured analysis would be required.

VI. MISCELLANEOUS DETAILS RELEVANT TO IMPLEMENTING THE CULTURAL DEFENSE

Apart from developing the cultural defense test that courts must apply, and expert testimony to enable that test, there are several other miscellaneous issues that would have to be addressed in implementing the cultural defense. This part tries to account for these issues namely, whether there needs to be statutory authorization, how much discretion courts should have and, once a determination is made as to the applicability of the cultural defense, whether it should be accounted for during the trial and prosecution, or merely during sentencing.

Statutory authorization or common law defense?

Elaine M. Chiu, who proposes a complete cultural defense, which she calls a justification, suggests that a completely new cultural justification be drafted as an additional defense in criminal law (Chiu, 1994: p. 1343).

With a caveat that it is merely a first effort, she proposes the following definition:

"*A defendant is not guilty of an offense if a reasonable person of a similar cultural background to the defendant believes that the harm caused by the conduct of the defendant was outweighed by some other imminent harm prevented by the same conduct. A defendant cannot claim this defense if there was a way, other than their conduct, to prevent the harm sought to be avoided*" (Chiu, 1994: p. 1343).

While the first part of this provision rightly takes into account that fact that the 'reasonable person' standard does not include people of a different cultural background, the 'imminent harm' might not be an adequate standard to encompass situations as diverse as 'loss of face', as seen in Chen, or feelings of disgrace and concern for the future of one's children, as seen in Kimura. The second part of the provision makes a requirement of there being no other way to prevent the harm sought to be avoided, in other words there has to be 'necessity' to commit the act. This is extremely problematic, because in these cases the defendant usually feels compelled to commit an act due to the forces or dictates of his cultural beliefs. The 'necessity' is felt in the mind of the defendant, and there is no way to test this other than through expert testimony. The testimony would try to answer whether the particular culture has practices in the time period that the defendant feels anchored to, and whether in the specific case the defendant feels compelled by that practice. However, Chiu was trying to use this provision to bring in a complete cultural defense.

A provision dealing with a limited cultural defense must deal with the circumstances under which the cultural defense may be made available, as the cultural defense test suggested in this paper does.

It is my belief that a statutory provision will expressly grant courts the authority to apply the cultural defense, but the details of the mode of application will have to develop though case law. However, statutory authorization will put an end to the hesitation of courts to apply the cultural defense, which would definitely be a big step forward.

Is the cultural defense to be accounted for at trial or sentencing?

The next issue that comes up is the stage at which a determination of the applicability of the cultural defense must be accounted for. In other words, once the judge determines that the cultural defense is applicable, and cultural accommodation has to be made for the defendant, at what stage should this be made?

While some have suggested taking it into account as a mitigating factor, others suggest that cultural accommodation should be given effect in the sentencing stage. In this Part VI, I propose that the cultural defense be given effect at the determination of guilt stage, by considering it as a mitigating factor rather than in the sentencing stage.

In the past two decades, criminal defenses have been generally given a subjective evaluation of their conduct in the sentencing phase of their prosecution (Taylor, 1998: 449). Therefore a case can be made for cultural factors playing a role in the sentencing phase. However, this would not be consistent with the court making a determination of the applicability of the cultural defense using the four-question model if it is only taken into account in the sentencing phase.

One of the main elements of a crime is *mens rea* which means a culpable or guilty mind (Sheybani, 1987: pp. 751, 753). The cultural defense takes account of the cultural background of the defendant, for culturally motivated crimes, in order to evaluate the state of mind of the defendant. This strikes at the heart of the elements required for an act to be considered a crime. As per the four-question cultural defense test, the expert opines on the cultural background motivating the defendant's particular acts, and the judge makes a determination on this. This means that the cultural defense is reducing the amount of culpability or intention on the part of the defendant. Therefore, it is my submission that any determination based on the cultural defense must be considered as a mitigating factor in the prosecution stage, rather than merely being considered at the sentencing stage.

Those in favor of taking the cultural defense into account only at the sentencing stage argue that that is the best way to keep the determination of 'guilt' or 'innocence' untouched by cultural factors, while still accommodating for the cultural circumstances of the defendant (Sikora, 2001: pp. 1715–1716). However, this would just be a half-hearted accommodation by the state, almost as state benevolence, rather than as recognition of the rights of minority cultures in a multicultural society.

CONCLUSION

In this paper I have tried to go beyond the cultural defense discourse centering round the need for a cultural defense in a multicultural society like American society, and have dealt with the issues arising with regard to the implementation of the cultural defense. This is crucial as a faulty application of the cultural defense could result in many harms, such as the perpetuation of stereotypes about minority cultures, undermining the rights of women belonging to minority cultures, the exoneration of terrible crimes by blaming it on culture, the wrongful use of expert testimony etc. Thus the right balance needs to be struck, and for this the consideration of specific tests to be applied by courts and guidelines to be followed by experts becomes relevant.

The current uncertainty with regard to its application by courts and the role of experts in these cases needs to be addressed, and this paper, apart from formulating a model cultural defense test to be applied by courts, presents suggested steps towards the formulation of guidelines for experts in these cases. Through this study of the nuts and bolts of implementing the cultural defense, this paper has attempted to ponder the issues and offer solutions to both policy level and practical concerns.

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