

14 Va. J. Soc. Pol'y & L. 1

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CUSTOMS CONTROL: SOME ANTHROPOLOGICAL REFLECTIONS ON HUMAN RIGHTS CRUSADES

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INTRODUCTION

On December 30, 2005, the following three sentences appeared in a *New York Times* article by Sharon LaFraniere:

In Guinea, for example, female genital cutting has been a crime since 1965, punishable by life in prison or death. But in 40 years, says the Center for Reproductive Rights, an advocacy group in New York, no case has ever been brought to trial. The United Nations Children's Fund says 99 percent of women in Guinea are cut, a rate unchanged for decades.¹

I find those three sentences stunning. They stopped me in my tracks when I read them. What struck me most was not the popularity of "female genital cutting" in Guinea or the invitation to feel distressed that its currency had remained "unchanged for decades."² Instead what struck me most about LaFraniere's article was her implied sense of regret that African women were not being executed, or alternatively thrown in prison for life for upholding a socially approved family life practice. The local custom as practiced in the Western and Eastern parts of Africa calls for the cosmetic surgical improvement of the genitals of all children, male and female. Advocacy groups in New York and cosmopolites at a global institution such as the United Nations find female but not male genital modification offensive, consider the practice barbaric, and want to eradicate it by law or force.³ As I read LaFraniere's words quoted above I wondered what happened to the voice of the vast majority of women and men in Guinea who appear to feel at home with their customs. I wondered why human rights organizations (many of whom are opposed to the death penalty in the United States) had been silent about the cruel and unusual punishment mandated by law in Guinea (a law that was enacted or declared without popular support during a time of one party rule and dictatorship); why these organizations seemed to show so little interest in defending the rights of family privacy and democratic self-determination of Guineans. Suddenly, with a shudder, I found myself recalling a line from the famous Old Testament legend of the second century B.C.E. about the Maccabee resistance to the decrees and customs control efforts of the Greek Seleucid King Antiochus IV Epiphanes when he tried to forcefully alter Jewish social and family life: "Women who had their children circumcised were put to death."⁴ I began wondering whether the United Nations Children Fund and the Center for Reproductive Rights in New York would have been on the side of Antiochus IV in his conflict with the Jews. It occurred to me that perhaps one of the reasons I became a cultural anthropologist in the first place was to come to terms with the Maccabee resistance and the many issues it raises about cultural pluralism, human rights, and the reasonable limits on customs control.

I plan to discuss issues concerning the scope and limits of tolerance for diversity in this essay, with some attention to the reactions of mainstream populations in the United States to the family life and social customs of immigrants and

minority groups. In 1878, the United States Supreme Court upheld the constitutionality of a law criminalizing polygamy, even among consenting adults, declaring: "Polygamy has always been odious among the northern and western nations of Europe, and, until the establishment of the Mormon Church, was almost exclusively a feature of the life of Asiatic and of African people."⁵ The federal legislators and judges who sought to eradicate polygamy seemed concerned about not only upholding a uniform definition of normal family life in the United States and preserving a particular conception of the social order, but also about guarding our borders against practices they viewed as un-American and un-modern. The legislators' and judges' decision to cleanse the native landscape of polygamy invites the general question: which culturally endorsed social and family life practices of Asia and Africa ought to be on one's own un-American activities list for un-modern immigrants to the United States? Each of us keeps such a list, whether we acknowledge it or not. Speaking as a cultural anthropologist (or at least speaking for myself, informed by my anthropological work in Asia and Africa, and by my understanding of the ethical and legal principles of a liberal democracy), in this essay I raise the question: what shape should such a list assume in a liberal democracy such as our own? However, I want to start in the second century B.C.E. and then fast forward to two other resonant eras in world history, while drawing some distinctions and proposing some principles along the way.

***5 I. THE ORIGINS OF AN ANTHROPOLOGIST: HELLENIZED JEWS VERSUS JEWISH MACCABEES**

It is only recently that I have wondered if I became an anthropologist because of the Maccabees. Nevertheless, that revelation of continuity between my current concerns about tolerance for diversity and my youthful fascination and sympathy with that Jewish cause may have some validity. When I was eleven or twelve years old, I read a heroic account of the Maccabee resistance to Antiochus IV. At the time I was not yet a cultural anthropologist and I had not thought about the doctrine of cultural pluralism. I am pretty sure that back then I also was not even dimly aware that the Maccabee rebellion (which is celebrated with a happy face in a variety of relatively sanitized ways in the United States these days during the Jewish holiday called Hanukkah), was in fact a defense of parochial Jewish customs against the imperial universalizing force of Hellenic civilization. The Hellenic civilization's missionaries included not only wealthy, powerful, and influential Syrian Greek outsiders but also resident Jewish cosmopolites who were the voices of the "enlightenment" in the second century B.C.E. and thus did not believe in the divine origins of sacred texts or sacramental practices, including those called for in the Torah.⁶ I am quite certain that it never occurred to me that the rebellion by the Maccabees was basically a very "un-modern" (some might say "orthodox" or even "fundamentalist") safekeeping of distinctive Jewish customs (such as circumcising boys, tabooing the eating of pork, mandating a socially enforced no work day, and avoiding contact with non-Jewish outsiders in matters of marriage, education, friendship and social life). Such customs were viewed by Hellenized Jewish elite insiders and "enlightened" Syrian Greek outsiders as ignorant, offensive, superstitious, and barbaric; and they sought to eradicate such customs by force for the sake of promoting human progress." At the time I simply admired the Maccabees' courage, sympathized with their cause (which was framed as an armed resistance *6 to tyranny in defense of a natural and inalienable right to the free exercise of religion and culture), and identified with them as well.

Today, I am a cultural anthropologist who has one foot in the "enlightenment" and one foot in the romantic rebellion against the "enlightenment." It now seems to me that the distinction between the two philosophical territories in which I intellectually set my feet runs roughly parallel to the difference between the world view of the Hellenized Jews and the world view of the very un-Hellenized Maccabees. I spend much of my time these days thinking about both multiculturalism and the limits of tolerance. I spend the rest of my time thinking about the potential tyranny associated with imperial attempts at customs control (even if well-intended and righteously motivated). I try to document various forms of in-group resistance and non-resistance to the universalizing agendas of outsiders (e.g., "first world" human rights organizations in New York) and cosmopolitan insiders (e.g., "third world" elites at the United Nations). I study the reactions of mainstream populations living in pluralistic and tolerant "first world" nations (such as the United States,

Canada, and Europe) to migrants from the “third world” who bring with them cultural beliefs and practices that have not been customary (at least not recently) in those “first world” countries. Sometimes these beliefs and practices are those which those mainstream populations find strange, disturbing or abhorrent - such as polygamy, animal sacrifice, the arranging of marriages, the wearing of head scarves or turbans, and male and/or female genital surgeries. I try to comprehend those mainstream reactions to unfamiliar cultural practices with reference to local existing ethical and legal frameworks. For example, within the United States, there are existing ethical and legal frameworks which have already provided a fair amount of space for the toleration of such practices as “body art” (including piercing, tattooing, scarification and branding), neonatal male circumcision, gay marriage, animal slaughter (kosher and otherwise), and numerous cosmetic surgeries, including breast implants, sex change operations and most recently the increasingly popular body modification known as “vaginal rejuvenation.”⁷ What are these frameworks and how should they be applied to new or less familiar cases?

***7 II. Are You Soft On Superstition?**

Anthropologists are often accused of being soft on superstition. I am sometimes asked: what made you become a cultural anthropologist? or alternatively (it is usually thought to be the same question, which it isn't) are you now or have you ever been a cultural relativist? Both questions inevitably put me on the defensive. The first does so because identifying oneself as a cultural anthropologist is a hazardous thing to do in our anti-essentialist age, and because contemporary American cultural anthropology is not a unified discipline. The second question puts me on the defensive because to answer it I have to explain that there is a big difference between cultural pluralism and cultural relativism, and that each stance has many faces. I am a cultural pluralist, in the sense that, given the nature and limits of human rationality and the exigencies of time and place, I believe there is more than just one way of life that might serve as an ideal for morally decent and reality seeking human beings. I see virtue and reason both in the way of life of the very un-modern Amish and in the way of life of my friends on the Upper West Side of Manhattan, who can't get enough of modernity. Yet, I reject any form of relativism which argues either: (1) that whatever is, is okay; or (2) that anything goes as long as you have the power to enforce it; or (3) that precisely because something is different it is entitled to our respect, or (4) that the grounds for judging a moral claim valid are entirely local. I reject all of those soft propositions of relativism while at the same time endorsing the claims of pluralism that: (1) diversity is inherent in the human condition; (2) securing universal agreement about which particular beliefs, values, goals, and practices are good, true, beautiful or effective in life is rarely possible across cultures, and (3) the ecumenical impulse to treasure uniformity or convergence of customs and convictions and to overlook, devalue, or even eradicate difference or disagreement is not necessarily a good thing. That is what makes me a cultural pluralist and not a cultural relativist.⁸

*8 In his well-known essay, *Anti Anti-Relativism*, the anthropologist Clifford Geertz offers a quote from Montaigne - “Each man calls barbarism whatever is not his own practice. . .for we have no other criterion of reason than the example and idea of the opinions and customs of the country we live in.”⁹ “That notion,” Geertz remarks, “whatever its problems, and however more delicately expressed, is not likely to go entirely away unless anthropology does.”¹⁰ He goes on to say, “[w]hat the relativists, so-called [I would call them the “pluralists”], want us to worry about is provincialism - the danger that our perceptions will be dulled, our intellects constricted, and our sympathies narrowed by the overlearned and overvalued acceptances of our own society.”¹¹

I myself have tried to state that message (which I take to be a fundamental message of cultural anthropology) this way: many of the things we take for granted as natural, divinely given, logically necessary, or practically indispensable for life in an orderly, safe, and decent society are neither natural, divinely given, logically necessary nor practically indispensable for life in an orderly, safe and decent society. Instead these things are products of a local history; they are ways of seeing

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

and being in the world that may lend meaning and value to our own form of life, but they are not the only ways to lead a meaningful and valuable life; they are (in some sense that needs to be spelled out in detail) discretionary forms, not mandatory ones. I hope to illustrate this message with a few examples later in this essay.

Whichever of the above two formulations one prefers, a major aim of cultural anthropology (or at least the type of anthropology I try to practice) is to provide some kind of intellectual or mental antidote to ethnocentrism, or what Cliff Geertz labels, "provincialism" - that all-too-human habit of mind in which one assumes that one's own socially *9 endorsed or approved of goals, values, and pictures of the world (and related customary practices) provide a normative standard for evaluating the truth, beauty, goodness and efficiency of the ways of "others." So although I am not a relativist, and although I most certainly believe there is (or at least can and should be) more to our judgments of barbarism or immorality than just the opinions and customs of the group we live in, I do think there is a problem in the public policy arena concerning mainstream reactions to minority group customs and convictions that is usefully addressed by thinking about the Maccabee's legendary uprising against customs control.

III. FAST FORWARDING: IT'S NOT JUST A JEWISH QUESTION

The particular problem I have invoked here, the underlying logic of the conflict between Hellenized ("enlightened") and un-Hellenized ("orthodox") Jews at the time of Antiochus IV is not uniquely a Jewish question. The Hellenized Jews of the second century B.C.E admired Greek society and culture as a universal ideal for all societies. As Hellenized Jews, they subscribed to interpretive theories that gave "symbolic readings" to scripture (which they viewed as merely a human artifact, written in a poetic or metaphoric language, and not as divinely authored or revelatory texts). Hellenized Jews believed that all individuals should freely affiliate (form friendships, marry, go to school) across group boundaries and overlook the differences between themselves and outsiders. Hellenized Jews also scorned all sacramental practices such as the dietary laws of Leviticus or the sacrifice of the foreskin of infant boys as a sign of a covenant between the Jews and their God. "You want me to do what?!" was the caption under a cartoon of an abashed Abraham looking up towards a voice from the heavens. That cartoon, if I remember correctly, originally appeared in *The New Yorker Magazine*, a contemporary Hellenic publication. Even in the second century B.C.E., however, there were Syrian Greeks and Hellenized Jews who were prepared to assimilate Jewish society, Jewish family life, and Jewish bodies to the Greek ideal, which they assumed was the contemporary historical manifestation of a humane and enlightened thinking in touch with universal truths.¹²

*10 A. India and Macaulay's Imperial Liberal Civilizing Project

Now let's fast forward through world history to India in the 1830s, where there were relatively few Jews. During this era of massive British East India Company economic and political influence and control, Thomas Macaulay, who served on the Supreme Council of the East India Company, successfully promulgated a top-down universal educational agenda for the entire Indian sub-continent.¹³ The agenda was premised on the view that British society and culture was the most highly evolved in the world and should therefore spread its benefits liberally and widely. As described by Lloyd and Susanne Rudolph, Macaulay and other liberal thinkers of his time strove to "liberate Indians from domination by groups, to unravel individuals from the grip of family, caste, and religious community, to strengthen individual choice against collective decision."¹⁴ Macaulay's imperial vision was "to assimilate all mankind into the higher civilization of the educated Victorian" and was thus akin to the ideal of Antiochus IV (and his cosmopolitan Jewish supporters) of a universal Hellenic civilization that would uplift Jewish society and rid it of its parochial barbarisms.¹⁵

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

One can summarize Macaulay's goals for this universal civilizing mission in India by quoting one of his most vivid and provocative statements of purpose. His aim, which was thought to be quite progressive at the time, was to use British wealth, military power, and influence to create "a class of persons, Indian in blood and colour, but English in taste, in opinions, in morals, and in intellect."¹⁶ Macaulay wanted to turn Indians into Englishmen just as Antiochus IV wanted to turn Jews into Greeks. Macaulay and later reform minded British colonialists, succeeded in significant measure at Hellenizing (more specifically "Britishizing", although we now call it "Westernizing" and may soon call it "Americanizing") several generations of cosmopolitan South Asian elites, who typically, through exposure to British education, came to view the customs of their own rural country folk (those in the hinterland) as ignorant, superstitious and backward.

***11** What I want to suggest is this: in that universalizing spirit linking Macaulay and the British civilizing project of the 19th century (the "white man's burden") to Antiochus and the Greek Hellenizing project of the second century B.C.E. (also a "white man's burden") one witnesses the ideal of like minded cosmopolitan citizens of the world united in some essential identity that detaches them from their ancestry and community attachments and renders them equivalent before a common set of laws and a uniform set of standards for what it means to be a fully realized human being. It is an ecumenical utopian vision that many secular individualists, humanists, and human rights activists today continue to find appealing and associate with the very idea of "modernity." It is an ecumenical utopian vision expressed in the dream of an international court of human rights with dominion over all societies on earth and of a United Nations issuing normative declarations and cosmopolitan consensus reports about everything from politics to sexuality and family life. A key aspect of this vision is the presupposition that human reason requires the rejection of both religion and group loyalties; that truly modern persons are those who have been emancipated from any deep commitment to any faith-based or revealed way of life.

The principles and attitudes associated with the above ecumenical utopian vision, which in other contexts I have labeled "imperial liberalism" can be summed up as follows:

1) That it is good for all social institutions and dimensions of social life (not just political life but associational life and family life as well) to be ruled by principles of autonomy, individualism, and equality, and by the particular ordering of values and ideals for gender identity, sexuality, work, marriage, reproduction, and family life embraced by liberal men and women in Europe and the United States today;

2) That the acknowledgement of social or group distinctions is invidious and implies discrimination;

3) That where there are ethnic groups and social categories they should be replaced by individuals;

***12** 4) That where there are individuals they should transcend their "tradition-bound" commitments and experience the quality of their lives solely in secular and ecumenical terms (for example, as measured by pleasure, health, wealth or life expectancy);

5) That those liberal principles and conceptions should be upheld using the coercive power of the State and, if possible, exported to foreign lands using the coercive powers and resources of international institutions.¹⁷

The rub with this vision is that one can't live by ecumenism alone; reason is unable to fully occupy the space taken up by revelation and socially inherited meanings, and one person's dream of an enlightened society, a normal body, a legitimate political authority, reproductive health or a life well-lived may be another person's nightmare. Any idealization of a universal cosmopolitan world order is in potential tension or conflict with an alternative ideal of historically grounded

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

communities, each appealing to some local conception of truth, virtue, and beauty; dedicated to divergent social norms which seem justified in the light of those local conceptions. In the real world, everyone has distinct ancestors, specific community attachments often run deep, and there are many textual (and oral) sources of meaning and traditions of value.

And the potential for inter-group tension and conflict is great, especially when powerful groups which view themselves as liberators or bearer's of the gifts of their own "enlightenment," "progressive struggles," or "sacred texts" (including the Constitution of the United States) fail to distinguish their own historical experiences, received wisdom, revelatory texts, cultural preferences, and often parochial conceptions of things from fundamental or universal truths. Perhaps that is why the political philosopher John Rawls, in his book on the foundations of "political liberalism," cautions us against what I have called "imperial liberalism" (he calls it "comprehensive liberalism") arguing that "it is unreasonable for us to use political power, should we possess it, or share it with others, to repress comprehensive doctrines *13 [conceptions of the world elaborated from different standpoints] that are not unreasonable."¹⁸ Remember the steps taken by Antiochus IV to liberate the un-modern Jews from their supposed backwardness and rid them of their "superstitions" and "barbarisms"-- he desecrated a Jewish holy site by erecting a statue of Zeus (a rather parochial Greek sign of the ecumenical) in the temple in Jerusalem and then imposed a death penalty on anyone living by the rules of the Torah, for example, on mothers who circumcised their sons.¹⁹

B. The West is Best and the Imperial Liberal Civilizing Project Today

Now let's fast forward again to our own historical moment, where normative conceptions very much like Hellenic and Maccabean visions of the good society continue to persist in apparent conflict. Here is a very recent expression of attitudes that might well have characterized the ancient Hellenized Jewish attitude towards orthodox Jewish Maccabees or Thomas Macaulay's British Victorian view of the Hindu and Muslim traditions of India. It appears in an Op-Ed column written by a very Hellenic columnist, Thomas Friedman, who writes for a very Hellenic newspaper, the New York Times. Friedman quotes favorably from an interview given by a very Hellenic sounding Arab-American psychiatrist, Dr. Wafa Sultan to the TV station Al Jazeera:

Dr. Sultan: The clash we are witnessing. . . is not a clash of religions, or a clash of civilizations. It is a clash between two opposites, between two eras. It is a clash between a mentality that belongs to the Middle Ages and another mentality that belongs to the 21st century. It is a clash between civilization and backwardness, between the civilized and the primitive, between barbarity and rationality. It is a clash between freedom and oppression, between democracy and dictatorship. It is a clash between human rights, on the one hand, and the violation of these rights, on the other hand. It is a clash between those who treat women like beasts, and those who treat them like human beings

*14 Interviewer: I understand from your words that what is happening today is a clash between the culture of the West, and the backwardness and ignorance of the Muslims.²⁰

Although Thomas Friedman is clearly delighted by the exchange, I should note that by my lights the interviewer appears to be confused and his or her summary response appears to expose a rather glaring misunderstanding, given that Dr. Sultan had begun her quoted remarks by explicitly stating that the opposition or clash she had in mind was NOT between religions or civilizations. However, Dr. Sultan (who by then had seemingly repressed her own caveats) responded to the interviewer: "Yes, that is what I mean." In other words, the interviewer actually got it right and (despite the caveats) Dr. Sultan really did mean that the 21st century belongs to the West and that the West deserves to own it because contemporary Western civilization is the most advanced. She actually did mean that the West is morally entitled to be

the universal civilization and the sooner we assimilate all of humankind (including the Muslim world) into the higher civilization of the educated American or European, the better. Thomas Friedman seems to mean it too.

In that regard, Thomas Friedman and Wafa Sultan are very much like George W. Bush. For notably the most up-to-date, and arguably the most influential expression of the Hellenic vision in recent years has come from the President of the United States, for example in his powerful post-September 11th State of the Union Address.²¹ On that fraught occasion, President Bush spoke as follows:

America will lead by defending liberty and justice because they are right and true and unchanging for all people everywhere. No nation owns these aspirations and no nation is exempt from them. We have no intention of imposing our culture, but America will always stand firm for the non-negotiable demands of human dignity, the rule of law, limits on the power of *15 the state, respect for women, private property, free speech, equal justice and religious tolerance.²²

I have commented on the many and profound implications of this passage (including the phrase “We have no intention of imposing our culture, but . . .”) and also on the opposing views of Judge Richard Posner, *infra*, in several other publications.²³ Here, I merely wish to point to the general logic of Bush's type of Hellenic stance. It goes something like this: there exists a set of universally binding transcendental or objective moral ideals, which are goods and values that are right and true and very much like universal objective truths about the physical world (for example, the transcendental or objective truth that force equals mass times acceleration everywhere you go on the globe).²⁴ Moreover, the moral judgments made in our society about what is good or bad, right or wrong, and the existing political, social and family life norms and practices of our society are not just matters of local preference or taste, but are accurate representations of those universal moral facts.

In other words, what we in our enlightened society desire is desired primarily because it is objectively desirable, and thus ought to be the kind of thing that any morally decent and fully rational human being, whether a Jewish Maccabee, a Hindu Brahman, an Arab Muslim, an evangelical Christian, or a secular humanist (living on the Upper West Side of Manhattan) ought to desire. Notice that this Hellenistic perspective, which reverberates down through the ages and informs the moral judgments of most contemporary global human rights activists, is not a descriptive claim about what peoples here or there happen to believe, value, desire, or do. It is a claim about what all people universally ought to believe, value, desire, and do, in order to free themselves of their errors, ignorance, superstitions and barbarisms on the *16 way to becoming fully developed human beings. According to this account, you have to first free yourself of your culture in order to become a fully realized human being. Within the terms of this account, “culture” (or “tradition”) becomes a bad word, connoting error, ignorance, confusion, and resistance to enlightened truths.

C. The Return of the Parochial: Some Judgments from Richard Posner

Nevertheless, despite the power and visibility of that Hellenic voice, an alternative voice, the voice of the parochial, the voice of the local, has been very difficult to silence. Across the ages there has always been a considerable intellectual resistance to the claims of universalizing moral missionaries such as Antiochus, Macaulay, Friedman, Sultan, and Bush. That voice of resistance assumes many forms; it is not always based on revealed truth. At times, it is based on a sense of inherited or adaptive tradition. Consider, for example, the contemporary voice of Richard Posner, who is a Judge on the Seventh Circuit Court of Appeals, Senior Lecturer at the University of Chicago, and perhaps the most widely cited contemporary American legal scholar. In his book, *The Problematics of Moral and Legal Theory*, which is a publication of his 1997 Oliver Wendell Holmes Lectures at Harvard University, Posner makes the following counter-Hellenic points:

I shall be arguing first of all that morality is local, and that there are no interesting moral universals. There are tautological ones, such as 'murder is wrong' where 'murder' means 'wrongful killing,' or 'bribery is wrong', where bribery means 'wrongful paying'. But what counts as murder, or as bribery, varies enormously from society to society. There are a handful of rudimentary principles of social cooperation - such as don't lie all the time or don't break promises without any reason or kill your relatives or neighbors indiscriminately - that may be common to all human societies, and if one wants to call these rudimentary principles the universal moral law, that is fine with me. But they are too abstract to be criterial. Meaningful moral realism is therefore out, and a form (not every form) of moral relativism is in. Relativism in turn invites an adaptationist conception of morality, in which morality is judged - nonmorally, in the way that a *17 hammer might be judged well or poorly adapted to its goal of hammering nails into wood or plaster - by its contribution to the survival, or other ultimate goals, of a society or some group within it. Moral relativism implies that the expression 'moral progress' must be used with great caution, because it is perspectival rather than objective; moral progress is in the eye of the beholder.²⁵

In his 1997 Oliver Wendell Holmes Lectures Posner offers a sustained attack on the intellectual foundations of righteous moral missionary efforts.²⁶ In those lectures Posner suggests that "many moral claims are just the gift wrapping of theoretically ungrounded (and ungroundable) preferences and aversions".²⁷ He also argues that if any nonlocal moral facts exist at all they are completely useless for resolving any actual real world moral dispute between insiders and outsiders or between majority and minority factions within a single society - such high minded moral disputes, are reminiscent of conversations in the Tower of Babel.²⁸

Posner writes:

Every society, every subculture within a society, past or present, has had a moral code but a code shaped by the exigencies of life in that society or that subculture rather than by a glimpse of some overarching source of moral obligations. To the extent it is adaptive to those exigencies, the code cannot be criticized convincingly by outsiders. Infanticide is abhorred in our culture, but routine in societies that lack the resources to feed all children that are born. Slavery was routine when the victors in war could not afford to feed or free their captives, so that the alternative to enslaving them was killing them. Are infanticide and slavery 'wrong' in these circumstances? It is provincial to say that 'we are *18 right about slavery, for example, and the Greeks wrong,' so different was slavery in the ancient world from racial enslavement, as practiced, for example, in the United States until the end of the Civil War, and so different were the material conditions that nurtured these different forms of slavery. To call infanticide or slavery presumptively bad would be almost as provincial as unqualified condemnation. The inhabitants of an infanticidal or slave society would say with equal plausibility that infanticide or slavery is presumptively good, though they might allow that the presumption could be rebutted in peaceable, wealthy, technologically complex societies.²⁹

Posner goes on to say that if some particular family life custom is in fact essential for maintaining the integrity of the institution of the family in some society, then critiques of the practice that appeal to such alternative values as individual choice or the enhancement of sexual pleasure are vacuous and "the moral critic is disarmed, for there is no lever for exalting individual choice or sexual pleasure over family values."³⁰ Posner argues that it is beside the point to show that there are people within that society who are opposed to the practice in question because "there is no basis for choosing on moral grounds between a dominant and dissenting morality" (consider, for example, the split between the Jewish

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

Maccabees and the Hellenized Jewish elite over the question of whether one should be allowed to work on the Sabbath day) and “[t]hat [such a demonstration] just means there are competing moralities within these societies, as there are within our society.”³¹

I have commented on and cross-examined Posner's critique of moral universalism on other occasions.³² Here, let me simply reiterate three features of his very anti-Hellenic stance and repeat some points I have made before: First, Posner describes himself as a moral relativist; he believes “that the criteria for pronouncing a moral claim valid are local, that is, are relative to the moral code of the particular culture in which *19 the claim is advanced, so that we cannot call another ‘immoral’ unless we add ‘by our lights.’”³³

Secondly, Posner allows that he is a moral subjectivist in the sense that he believes that there are no “reasonably concrete transcultural moral truths.”³⁴ In effect Posner argues that there is no independent or transcendent or objective domain of the right and the true (no “objective order of goodness”) to which one might appeal, as the legitimate source for one's particular judgments about what is right or wrong, good or bad. (The discourse of “inalienable” or “natural” rights is by Posner's account, thereby rendered either illusory or empty).

Thirdly, Posner claims that he is not a strong moral skeptic. There are moral truths worth knowing and judgments worth making, Posner argues, but they are merely facts or true descriptive claims about what is judged right and wrong in one's own society (for example, the existing social norms, customs and laws set forth in the Torah, if you are living in a society of Jewish Maccabees).³⁵ These local norms and laws are knowable, Posner argues, and he is quite prepared to make parochial judgments about what is right and wrong for members of his own community and to enforce them, but Posner suggests that judgments of right and wrong have no legitimating authority beyond one's own group.³⁶

What Posner is not prepared to do is pretend that anyone's judgments (positive or negative) about the practices of other societies are anything more than reactions based on feelings (for example of liking or disgust).³⁷ Perhaps, as a result of personal temperament or socially acquired taste, someone (an outsider or dissident insider) might feel revolted by some normative practice of some group (for example the practice of sacrificing the foreskin of an infant male to God) and even inclined to intervene to stop the practice with the power at her command. Nevertheless, Posner argues, moral emotions (pride, shame, guilt, disgust, indignation) have no universal concrete moral content or objective foundation or source in some transcendental domain of the *20 good.³⁸ One is reminded of Clifford Geertz's quote from Montaigne: “Each man calls barbarism whatever is not his own practice. . .for we have no other criterion of reason than the example and idea of the opinions and customs of the country we live in.”³⁹

Fully consistent with his moral subjectivism, Posner also rejects the idea that there is a universal moral obligation to tolerate cultures that have social norms or customs different from one's own; Posner comes close to saying that the experience of a negative feeling state may result in the exercise of power to eradicate the practices of others, and that it is misguided to even ask normative questions about whether such an intervention is justifiable or not.⁴⁰ The moral domain by Posner's account is simply a natural scene in which different groups, each with their own distinctive social norms and equipped (in varying degrees) with powers and resources to dominate the local or global scene, compete with each other to perpetuate their own way of life.⁴¹ Some will succeed better than others do. Some will adapt or surrender their customs under pressure to do so. But none of this social norm competition or social norm replacement represents true moral progress, and there are no rational discussions or arguments to be had about what the outcome of the competition or conflict ought to be. Why? Because, according to Posner, there is no objective moral standard against which specific

divergent claims about what is right and good can be assessed. All that matters is power and the struggle to perpetuate one's own way of life in a Darwinian competition with other groups.⁴²

IV. Human Rights v. Culture: A Critique of the Opposition

To this point in this essay I have been drawing a contrast between two types of conceptions of the moral status of one's own customary practices when compared to the customs of communities different from one's own. I also have suggested that if one wants to think seriously about the problem of customs control in a liberal democracy such as our own, (where diverse peoples from around the world, including Africa, Asia, and Latin America, have migrated or have been re-settled) then inevitably one must come to terms with the apparent tension between the *21 world's liberal ecumenical universalizing moral missionaries and the world's defenders of distinctly parochial or local forms of life. Before saying more about how I have tried to come to terms with the relevant contrast, I want to describe some of my own direct and vicarious experiences with cultural collisions. First, however, I want to suggest that this contrast we have been examining is far more cogent, challenging and generative of productive debate than the fashionable (but I think deeply flawed) opposition between human rights and culture.

The idea that there is some kind of inherent opposition between rights and culture, rights and custom, or rights and tradition has in recent years gained some currency in academic and public policy writing, especially in imperial liberal circles and the mainstream press (as, for example, in that New York Times article Women's Rights Laws and African Customs Clash).⁴³

Nevertheless, despite its popularity I don't find the idea that rights are in opposition to culture, custom, or tradition either appealing or coherent for a number of reasons⁴⁴ -- First, if there actually are real, objective, natural or inalienable human rights then the very process of group and family formation and the entire associational (and exclusionary), symbolic, and expressive side of culture might rest on them, in which case particular customary practices might well be defended by reference to some set of natural human rights - for example, the right to freedom of association or freedom of religion, the right to expressive liberty and family privacy, or the right of parents to educate their children into the beliefs and values of a particular way of life inherited from one's ancestors.

Second, if real, objective, natural or inalienable human rights don't exist, as some have implied (for example, Posner), then these rights can hardly be said to be in tension or conflict with culture. Alternatively if these rights exist only as "positive rights" (rights granted by consensus, declaration, or promulgation by some groups at some points in history but not by other groups at other points in history - in other words they are understood to be convention-based, vote based, and hence "alienable *22 rights") then it is one's particular location in culture and history that is the only source of authority for any claim to rights.

In either case, when members of one group are offended, disgusted, outraged, or dismayed by the socially endorsed and customary social and family life practices of members of some other group, the true character of that conflict is not usually illuminated by the invocation of an inherent collision between universal human rights and local culture. More typically the very invocation of a clash between rights and culture hides from view a much more challenging fact about social reality - namely that there is no single objective or uniformly universal way to choose between the moral ideals, sources of moral authority, and the substantive normative commitments of different groups.⁴⁵

Ontologically speaking, what is a real, natural, objective or "inalienable" human right? Presumably it is something to which everyone is entitled simply by virtue of being a human. If that is the case, then such a right is an entitlement that

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

derives not from who you are in particular or as some kind of reward for your merit. Further, it is not an entitlement that derives from the will of some person or group that decides or elects to honor the things called “rights.” A “natural” or “inalienable” right, in the strong sense, must be something transcendental or overarching; something that we may discover, but not something we simply declare, make up, or invent either individually or collectively. For if that were the case, then the right would be subjective, not objective, and would not be universally binding.

Not everyone believes that a strong case can be made for the existence of universal natural rights.⁴⁶ Additionally, if such rights do exist, there are many legal and moral theorists who think they are devoid of real content and that there is no trans-historical or extra-cultural ***23** authoritative source for customary practices and the specific moral obligations of members of a particular community.⁴⁷ Nevertheless, whether rights in the strong sense (as natural or objective or inalienable things) do exist or do not exist, it seems to me those who are most eager to invoke opposition between rights and culture, have not systematically addressed some rather fundamental questions: whether “rights” are objective or subjective; discovered or made up; products of reason or expressions of personal or collective preference and taste; whether there is a rational basis for extending the authority of rights claims beyond the scope of those who have agreed to honor them; whether the rights that have been invoked in global and domestic efforts at customs control are both concrete enough to be decisive and objective enough to make authoritative claims.

For example, consider the global and domestic campaigns to eradicate genital surgeries for children and youth. First let's consider the female case, which has received so much lurid, sensational, and horrifying publicity, leaving the general public with the impression that it is a knock-down, slam dunk, one-sided issue.⁴⁸ I have engaged this issue in several essays from which the subsequent discussion is directly drawn.⁴⁹ Shell-Duncan and Hernlund have forthrightly exposed some of the surprising conceptual difficulties that arise when using human rights arguments to justify the current “anti-FGM” eradication campaign.⁵⁰ In the course of their discussion, Shell-Duncan and Hernlund mention several “rights,” which have been invoked in various U.N. Declarations (The 1959 Declaration of the Rights of the Child⁵¹ and the 1984 ***24** Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵²). One such right is the right of the child “to develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner and in conditions of freedom and dignity.”⁵³

There are numerous problems with the above formulation, which seem obvious to Shell-Duncan and Hernlund. For one thing, as Shell-Duncan and Hernlund note, “normal” development in many African ethnic groups involves the cultural remaking of the human body (of both boys and girls) for the sake of their physical, mental, moral, spiritual, and social development.⁵⁴ Thus, the statement of the right in and of itself is too abstract to be criterial or decisive in drawing a moral conclusion. Any informed application of the right to the cultural case at hand just might well lead to the conclusion that the practice is entirely consistent with the rights of the child.

Secondly, various components of the statement of the right seem to deny the reality of many normal and healthy developmental processes and growth promoting social relationships. Normal and healthy developmental processes are often commanding, hierarchical, and they are almost always constraining and limiting of options, often to a rather high degree. Many of the things a child comes to believe, value, and do in life by virtue of being a member of some historically durable group or community (and by virtue of having some particular cultural identity) are neither truly voluntary nor truly coerced, but are acquired in the context of some mixture of choice, commitment, and constraint. This is true of all customary behavior. For example, children cannot decide to not go to school or to not have an inoculation. A very particular and culture-specific kind of liberationist or radical autonomy perspective seems to have been written into this

rather ideologically loaded (and hence subjective) formulation of a supposed “natural right” to “develop. . . in conditions of freedom.” How would one rationally ground that supposed “natural right?”

Even the idea of a right to bodily integrity seems problematic as a possible foundation for criticizing this particular practice of African body modification. For starters, if there is a natural human right to bodily integrity of the type supposed it would extend to the practice of *25 male genital surgeries as well and would run counter to the family privacy rights of most Americans, South Koreans, and East and West Africans, as well as the religious freedom rights of Jews and Muslims around the world who have their sons circumcised.

Thirdly, it is not at all clear what “the integrity of the human body” actually amounts to once the overheated and sensationalized morbidity, mortality, and sexual dysfunction claims one finds in the advocacy literature and in the popular press are viewed with a cautious or skeptical eye.⁵⁵ From the cultural perspective of Jews, Muslims and those Africans who engage in cosmetic surgeries to improve the bodies and life prospects of their children, the human body lacks integrity (contains unbidden, immature, problematic, or even ugly and disgusting components) until it has been developed and made “normal” by means of genital modification.⁵⁶

Yet, perhaps the most problematic aspect of a human rights argument for those engaged in the global eradication campaign is that the global eradication campaign itself appears to violate several readily recognizable supposed human rights. A short list of such rights includes the right (1) of peoples and nations to autonomy and self-determination; (2) of parents to raise their children as they see fit; (3) of members of a family to be free of government intrusion into decisions that are private; (4) of members of a group to favor their own cultural traditions in the education and socialization of their children; (5) to freedom of religion, or (6) of both women and men to be equal.⁵⁷ For most ethnic groups, where and when female genital modification is a socially valued practice, male genital modification is also socially valued, and both are associated with access to social goods. Despite the popular press' coverage of the topic this is hardly a clear cut case of society picking on women. Quite the contrary, where there are customary female bodily modifications, there are customary male bodily modifications; in many of these ethnic groups, both sexes are treated with equal regard for their courage and for their social, moral, and physical development.

*26 Thus, when viewed in cross-cultural perspective, there are two sides to this story. And, although the story can be understood as a challenging example of a genuine clash between the cultural practices and the moral and aesthetic sensibilities of members of different groups, it is not obviously a case of a conflict between universal natural rights and local customs. There are rights arguments that can be made on all sides of the issue and none of them seem to be decisive.

V. Cultural Collisions: On Having Second Thoughts

If the experience of taking a cross-cultural perspective has any predictable impact at all, I would suggest it is the following: it forces you to have second thoughts about your automatic ethical intuitions; to seek more knowledge before making moral judgments about others; to be intellectually cautious about promoting one's own local cultural sensibilities under the banner of natural human rights, and to develop an appreciation of the moral complexity of life.⁵⁸ I realized this anew when I recently participated in a panel discussion of a local amateur theater play entitled *God's Work*, during which some tough questions were raised about the difference, if any, between “strict Christian discipline” (“spare the rod, and spoil the child”) and “child abuse.” The event was organized by the Albany Park Theatre Project, a Northwest Chicago neighborhood organization, and was attended by a largely teenage multicultural audience, including many children of immigrants. Members of the panel (a legal scholar, a social worker, and an anthropologist) were asked to address the following two questions: (1) since universal standards for child rearing do not exist, and given that what is considered

abuse or neglect by one culture is often acceptable to another, how should the United States as a multicultural society determine a definition of child maltreatment? and (2) how can/should we train professionals who work with children to recognize, prevent, or intervene in cases of child abuse or neglect, while respecting and supporting the value of culturally specific childrearing practices? During the panel discussion I tried to address these challenging questions by telling several stories, *infra*, based on my direct and vicarious *27 experiences as a cultural anthropologist who studies the moral foundations of family life across diverse cultures.⁵⁹

A. On Physical Reprimands in India

The first story was quite personal, because it concerned my son, Jeremy, who at age ten was taken out of the University of Chicago Laboratory School and flown, along with his younger sister, to a foreign land where he (and she) lived in a Hindu temple town and attended a convent school in a rural section of India while his father and mother conducted anthropological field research. My son was the only foreigner in the school (aside from his sister) and his Indian classmates were mainly Hindus, but also Christians and Sikhs. One day in class, Jeremy had the following experience. A teacher called on one of Jeremy's classmates and asked him to solve a math problem, which the child got wrong. Jeremy was then asked to solve the problem and got it right. The teacher then instructed Jeremy to stand up and walk over to the seat where the boy who had failed the problem was sitting. Jeremy did so. The teacher told Jeremy to slap the boy for getting the problem wrong. My son said he could not. The teacher insisted and repeated her command several times, to no avail because Jeremy refused to obey. Eventually my son, who had a sense of solidarity with his classmate, and who was feeling pretty proud of his act of resistance was allowed to return to his seat. As he turned away the boy asked in dismay why Jeremy didn't hit him. For the remainder of the day, Jeremy was queried by his puzzled peers; they found his disobedience inexplicable and abnormal.

"Shut up!, he explained" is a line from a Ring Lardner story, *The Young Immigrants*. That type of socialization policy is pretty much the opposite of the culture of family life in my own family; so Jeremy's mother and I went immediately to his Indian school mistress and made it clear that no child of ours was ever to be hit or asked to discipline others under any circumstance. The school was quite accommodating to our cultural tastes. Meanwhile, I was conducting moral reasoning interviews about family life in the temple town with female and male adults and children. Hindu parents argued to me that a mere slap on the face was not a big deal and was sometimes desirable; that they themselves cared deeply about their children's long term interests. *28 Further they argued that that type of discipline (which many of them endorsed) was momentary, localized, and simply signaled that the action resulting in the slap was a matter of some importance. Additionally I was told that physical contact in the context of discipline was far less damaging than going after a child's soul (which they perceived was the way American's did things, by withdrawing love or affection from their children or banishing them to their rooms).

Years later I read a smart and hard nosed review of empirical research on the consequences of physical punishment written by the psychologist Diana Baumrind.⁶⁰ She argued persuasively that unless a parent is out of control and engages in arbitrary acts of violence against a child, spanking *per se* does not produce negative, long-term consequences; especially not when parents are bonded to their children in ways that make it clear to the child that they care about the child's well-being and long-term interests.⁶¹ Moreover, in its own way that rural Indian school was pretty impressive. For example, when my then six year old daughter, who had spent three years in the University of Chicago pre-school, entered first grade in rural India, she found herself with peers who were already writing in long-hand and multiplying decimals! We had to put her back into kindergarten for a month while we brought her up to speed with some home schooling in arithmetic and penmanship. Although I have not done the relevant research, I would not be surprised if many of the Indian children in that school are now living quite successfully all over the world and remain deeply embedded in

affectionate relationships with parents who may have slapped them on the face, rapped their knuckles, or boxed their ears when they were young. Years later my son ended up writing a college application essay about the above incident. The essay was about being first sure and then not so sure you had done the right thing and the second thoughts that arise about what's right and what's wrong when you enter a somewhat different tradition of value and end up responding to events in ways that seem natural to you, but are locally deemed abnormal.

***29 B. On Psychological Ordeals in Brooklyn**

My second story concerned the experience of a very different ten year old boy - Danny Saunders, one of the main characters in Chaim Potok's novel *The Chosen*. The novel is about two Jewish boys, one far more orthodox (or Maccabean) than the other, growing up in Brooklyn. Danny's father, Reb Saunders, is a famous Hassidic Rabbi and the leader of a Jewish community that subscribes to an ancient Gnostic doctrine that “[a] man is born into this world with only a tiny spark of goodness in him. The spark is God, it is the soul; the rest is ugliness and evil, a shell.” In order to drive home this point to his son and to prepare him to eventually become the next great Rabbi and leader of this Hassidic community, Reb Saunders engages in a rather distinctive educational and family life practice. Although he and his son are living in the same household, the father absolutely refuses to have any conversations or verbal interactions with his son for eleven years except in the context of Torah study. The father believes that this is a powerful and effective way to transmit to his son a fundamental message about what is truly important in life - the relevant revelatory text, the Torah, and its careful study.⁶² As I read about Danny's family life and that particular form of training, education, and discipline aimed at conveying a distinctive picture of the world and a very special notion about the divine source of all values, I had this second thought. I wondered whether these days Reb Saunders would be accused of “child abuse” and would find some social service or children's protective agency worker knocking on his door. I wondered if Danny would end up in a foster home, perhaps severed from any Jewish tradition or growth promoting ordeals. I found myself having doubts about any conception of “child abuse” or “parental neglect” that might run the risk of producing that result. I found myself wondering what the notions of family autonomy, parental rights, and the free exercise of religion were meant to mean in an ethical and legal tradition such as our own.

C. A Sibling Caretaker in Texas

My third story concerned a cable television program called *COPS*. At the time, I was in a hotel room flipping channels when all of a sudden I found myself watching some very large Texas police officers entering a motel room where they discovered three Mexican children. The children (as I remember them) were roughly eight, four and one year of age, and the eight year old (a girl) was in charge of the other two. The *30 one year old (a boy?) was naked. I watched as these large armed men stood there in front of these three children trying to figure out why the kids had been left alone, who they were, and what to do. The mother, as the viewer later learns, was temporarily off trying to help her boyfriend out of some difficulty and she had apparently left her eight year-old daughter in charge of the younger family members, which is a well-documented, normative child care practice in many parts of the world, including Mexico. Eight to ten year-old girls can do a pretty good job of this kind of short term sibling care.⁶³ I watched as the mother returned to the motel and was handcuffed and arrested for child neglect. I was left wondering whether she was now going to be separated from her children and I worried about their fate. As the show ends, the viewer is allowed to listen in as one of the police officers narrates his views of the situation, including his feeling that the mother was a bad mother and that it was disgusting to see the youngest child running around naked in the motel room. I wondered what happened to Anthropology 101 and how in the world my home discipline had failed so miserably in its mission, As a result of this episode I joined up with others to help form the Social Science Research Council/Russell Sage Foundation Working Group on “Law and

Culture” (previously called “Ethnic Customs, Assimilation and American Law), which I co-chair with Martha Minow of the Harvard Law School and Hazel Markus of the Department of Psychology at Stanford University.

D. How About Circumcision at Puberty?

My final story was about male circumcision, which is a pretty alien practice to a majority of the world's population. On a global population scale, Antiochus IV and the Greeks are mainstream, not the Jews who rose up in rebellion against them. It has been estimated that about 20% of the world's male population have had their genitals surgically modified, and not necessarily at infancy.⁶⁴ The prevalence rates for the practice are region specific and culture specific. Male circumcision is virtually non-existent among non-Muslim and non-Jewish majority populations in China, Japan, Mongolia, India, Latin America, and it is *31 quite infrequent in most of Europe.⁶⁵ Indeed, it was criminalized in the former Soviet Union, where many Jews were so terrorized by Antiochus IV-like decrees that they remained uncircumcised until they emigrated to Israel or the United States.⁶⁶ In the United States however (with the exception of the Hispanic population), male circumcision has been commonplace since the early 20th century, where it is primarily a neonatal procedure and is routinely done without seeking the consent of the individual child.⁶⁷ Overall male circumcision rates in the U.S. in recent decades have ranged roughly between 60-85% and there are popular cultural beliefs (what cognitive anthropologists call “cultural models”) suggesting that it makes you healthier, cleaner, happier, and better looking.⁶⁸ Notably, male circumcision is not normative in any other English speaking country.⁶⁹ The practice is customary in many East and West African ethnic groups although it is much less common among ethnic groups in the Southern areas of Africa. It is customary as well for Muslims and Jews almost everywhere except in the former Soviet Union, where it was against the law, and also perhaps not on Continental Europe where many Jews seem to have abandoned the practice after the Nazi experience (although more data is needed on this last and somewhat speculative observation).⁷⁰

Quite remarkably, along with Israel, one of the highest national male circumcision rates in the world today may be in South Korea (the current rate for children and youth is over 90%).⁷¹ The South Korean case is particularly fascinating, because it was the American military occupation that brought male circumcision to South Korea and South Korean *32 circumcision rates very quickly matched or exceeded those of the United States. During the first decades of this process of rapid cultural diffusion, the modal age of circumcision in South Korea was a male in his mid-twenties. Adult men came forward to have the operation, largely because it was associated with being modern (like the Americans) and was associated with various claims about its positive effects on health and sexuality, for example, reducing the risk of premature ejaculation.⁷² Over time, the surgery appears to have become a kind of customary rite of passage into adulthood, so much so that South Koreans do not like to circumcise infants. Today only 10% of male circumcisions in South Korea are neonatal.⁷³ Overwhelmingly, the surgery takes place between age six and the late teenage years, and many South Korea doctors recommend that the surgery take place at the onset of puberty.⁷⁴

One South Korean perspective on male circumcision is that it is precisely because circumcision is painful and unbidden in infancy and lacks any meaning at all to an infant that the operation should take place much later in childhood.⁷⁵ The procedure should take place when a boy is conscious and willing to accept the pain for the sake of the perceived benefits of the surgery - an elevation of status (mature, no longer a child) and the approbation of peers, kith and kin.⁷⁶ South Korean parents who are accustomed to the practice of male circumcision in South Korea and then migrate to the United States might well ask why Americans circumcise infants who have no choice in the matter and are made to experience unbidden pain. South Korean parents think their own children routinely accept the operation (over 90% are circumcised), but of course their children do what they do “willingly” under some rather compelling informational and

social constraints. When it comes to assessing the moral foundations of customary family life practices, one wonders whether the opposition between autonomy and compulsion really get us very far in understanding the motivational basis for carrying forward a particular way of life.

***33 VI. EXPRESSIVE LIBERTY, FAMILY AUTONOMY AND THE UN-AMERICAN ACTIVITIES LIST**

So what is the take-home message of these stories for social policies towards immigrant families in the United States, beyond the obvious point that ideas of what is good, true, beautiful, and effective are not uniform across groups? Does the United States, as a pluralistic and multicultural society, have the ethical and legal potential to become a microcosm of global cultural diversity? When “multicultural” means more than just including people of different colors and ancestries into the society of the cosmopolitan elite how tolerant or intolerant of genuine cultural diversity are we? How much shape and definition should we try to give to America's un-American activities list for un-modern immigrants - no physical punishment or social ordeals for children; no surrogate mothering by eight year olds; no polygamous marriages; no gay marriages; no gay sex; no arranged marriages; no sacrificing of animals to feed hungry gods during religious worship; no body markings of social status or group identity; no use of languages other than English at home or school or the workplace; no display of religious symbols in public places; no genital operations for girls, no genital operations for boys or girls? Although I am just raising these questions, not answering them, let's bite the bullet for a moment and consider two hypothetical cases, which I imagine will provoke somewhat different responses about what is un-American from readers who are on opposite sides of the imperial liberal (Hellenic) v. parochial Maccabean (anti-Hellenic) divide. This essay began with the example of a conflict over the practice of male circumcision. It ends with two hypothetical cases from that domain.

A. Hypothetical 1: The Case of the Unwilling Korean-American Child

Imagine a South Korean couple who migrates to the United States at about the time their son would customarily be circumcised in Seoul. Let's say the child is eight years old and was looking forward to the surgery before the parents migrated to San Francisco, but once the family arrived in the United States, the child sees a sensational and scary anti-male circumcision advertisement on cable television and decides he does not want his foreskin to be removed. His parents, however, believe it is in the best interests of the child and the family to do what almost all South Koreans and most American do, and that it is abnormal and even ugly to remain uncircumcised. Yet, the child complains to one ***34** of his teachers at school who contacts an anti-male circumcision human rights activist organization in San Francisco. The organization appeals to a local judge to intervene in the affairs of the family and bar the parents and all medical professionals from performing the operation. Should the court grant the human rights organization legal standing to represent the interests of the child? Which side are you on in this case, and why? Is it un-American for the court and our society more generally to view this as a private family matter? Given the hypothetical circumstance of a non-consenting child, should the parents be allowed to go forward with the operation, despite the wishes of their eight year old? Why, or why not?

B. Hypothetical 2: Circumcision Versus Justice and Equality in Marriage Choices

Imagine that the contemporary anti-male circumcision movement in the United States is successful enough that only Jews and Muslims continue to circumcise their sons and so the practice begins to seem alien, offensive, ugly, mutilating and barbaric to the vast majority of the American Christian population. Imagine too that as a matter of cultural aesthetics and individual taste women who grow up in American Christian households feel personally disinclined to marry a circumcised male and, conversely, women who grow up in American Jewish and American Muslim households feel

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

personally disinclined to marry an uncircumcised male. Under these circumstances, in its effect, this minor medical procedure would amount to a major parental and cultural influence on the personal marriage choices of children and would very effectively help perpetuate a sense of in-group identity and social distinction.

Sander Gilman, in a critique of some 19th century intellectual attitudes that are reminiscent of Hellenic attitudes towards the Maccabees quotes an “enlightened” Italian physician, who wrote, “I shout and shall continue to shout at the Hebrews, until my last breath: Cease mutilating yourselves: cease imprinting upon your flesh an odious brand to distinguish you from other men; until you do this you cannot pretend to be our equal. As it is, you, of your own accord, with the branding iron from the first days of your lives, proceed to proclaim *35 yourselves a race apart, one that cannot, and does not care to, mix with ours.”⁷⁷

Under such circumstances, in which the distinctive family life practices of different religious or cultural groups result in the development of divergent tastes which then function as personal inhibitions to marrying outside the group, what would we want our courts or our government to do, if anything? Should a law be enacted to promote equal opportunity in mate selection and to level the dating or match making playing field? This could be done in either of two ways: (1) by mandating circumcision for all males in society or (2) by banning it for all. Under the imperial liberal banner of “justice and equality in marriage choices” the law might require all American citizens to circumcise their sons, or alternatively, the government could just criminalize the ancient Jewish and Muslim custom and take the lead from either the decrees of Antiochus IV or the laws of the African country of Guinea and start throwing Jewish and Muslim parents in prison. The latter alternative is the more likely scenario given that Jews and Muslims are small minority groups - one assumes that sooner or later majorities have their way in a liberal democracy such as our own. In either case the government, in its wisdom, would be trying to ensure that men and women from different ethnic and religious backgrounds find each other physically attractive in equal measure. The government's imperial liberal aim would be to ensure that patterns of preferential, in-group marriage (like marrying like) would disappear from society. In either case, the State would in effect be promoting the cultural assimilation of Jews, Muslims, and of any other minority group bound together by selective marriage preferences related to its distinctive way of life. Would you balk at that prospect? Why?

A Preliminary Conclusion

These stories and hypothetical examples draw our attention to some of the contradictions and tensions that arise between the several values that inform our liberal democracy and are currently at play in the public policy arena. I don't have the space or the competence to comment on all of them, but let me conclude this essay by taking note of one or two aspects of the Maccabean sensibility as it functions today.

*36 It is a sensibility that becomes troubled when individuals or groups are stigmatized or penalized for living the kind of life they want to live or are forced to hide or abandon their distinctive personal or cultural identities so as to avoid fines, ridicule, banishment, arrest, or any other type of socially inflicted pain aimed at restricting or eradicating their valued way of life. It is a sensibility that embraces the ideals of tolerance and expressive liberty and views them as sacred commitments, even if they are parochial commitments definitive of a particular or even peculiar type of community, our own. William Galston, the political philosopher, defines expressive liberty as the presumption “against external interference with individual and group endeavors” and the freedom for individuals and groups to live their lives as they see fit.⁷⁸ These commitments are powerfully articulated by E.G. West when he comments:

Where beliefs and convictions are extremely diversified in real life the only ‘value’ which can ultimately be regarded as ‘common’ to all is tolerance; and the best way to nurture it is to give

people the fullest opportunity of exercising it; for no purpose will be served by trying to disguise the fact that differences do exist.⁷⁹

There are many variations on that theme. Former Supreme Court Justice William Brennan put it this way: “We are not an assimilative, homogeneous society, but a facilitative, pluralistic one, in which we must be willing to abide someone else's unfamiliar or even repellent practice because the same tolerant impulse protects our own idiosyncrasies.”⁸⁰ Even the Immigration and Naturalization Service (INS) of the Justice Department of United States has published a document entitled *The Benefits and Responsibilities of Citizenship?*, in which it is stated: “America becomes stronger when all its citizens respect the different opinions, cultures, ethnic groups, and religions *37 found in this country. Tolerance for differences is also a responsibility of citizenship.”⁸¹

In light of several U.S. Supreme Court decisions in the 20th century, those commitments favoring tolerance and expressive liberty have become morally and legally connected to the ideals of parental rights and the autonomy of the family which basically state that decisions by parents about how to raise, educate and promote the development of their children should not be coercively interfered with by the state. Thus, in the United States at least the child belongs to the parents not to the State.⁸² Obviously the prerogatives of parents and families are not absolute. Joshua Fishkin offers a definition of the principle of family autonomy which puts the qualification and sets the limit this way: “Consensual relations within a given family governing the development of its children should not be coercively interfered with, except to ensure for the children the essential prerequisites for adult participation in society.”⁸³ He goes on to define “essential prerequisites” as “the physical and psychological health of the child and his or her knowledge of those social conventions necessary for participation in adult society. Literacy, the routines of citizenship, and other familiar elements of secondary education would count among the essential prerequisites” (absence of which could justify coercive interference by the state).⁸⁴

One of the lessons to be learned from cultural anthropology is that if you truly believe in “multiculturalism,” if you truly believe in respect for diverse traditions of belief and value, then you should lean heavily in the direction of a strong presumption in favor of family autonomy. You should cultivate a sense of skepticism in the face of well-intended Hellenic attempts to either broaden the list of exceptions to the presumption of family autonomy or to justify interventions into other peoples' local cultural worlds by reference to expansive and culture-specific interpretations of the meaning of such notions as “harm,” “harassment,” and “abuse” . It should therefore be hard, not easy, to *38 overturn the expressive liberty rights of parents. This should especially be so in a multi-cultural society where powerful, resourceful, and well-connected members of majority factions may be highly motivated to do good deeds, yet have not fully or honestly come to terms with their own provincialism.

During my childhood in the New York Metropolitan area in the early days of television in the 1950s, there was a remarkable TV advertisement; a jingle that played on the airways and promoted the spirit of public service by linking patriotism to tolerance. The lyrics, as I recall them, went like this: “George Washington loved good roast beef, Chaim Solomon⁸⁵ loved fish; when Uncle Sam served liberty, they both enjoyed the dish.” That is still an inspiring way to think about ourselves, and it is a good message to convey when we welcome immigrants to America.

Footnotes

a1 Richard A. Shweder, a cultural anthropologist, is the William Claude Reavis Distinguished Service Professor in the Department of Comparative Human Development at the University of Chicago. This essay was prepared for the

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

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1 Sharon LaFraniere, *Women's Rights Laws and African Custom Clash*, N.Y. Times, Dec. 30, 2005.

2 I first learned about the existence and meaning of culturally valued genital modification practices when I was an anthropology graduate student at Harvard University in the late 1960s. I am of Jewish descent, which means that my ancestors have been modifying male genitals for thousands of years; and I have lived and taught in Kenya where, in the early 1970s, many of my own students, male and female, were quite proud to be "circumcised." I am also one of several scholars who have critiqued the "genital mutilation" horror stories popularized by "anti-FGM" advocacy organizations and raised doubts about the claims by those organizations that African parents are maiming and murdering their own daughters and depriving them of their sexuality. With regard to this critical literature See Rogaiia Mustafa Abusharaf, *Virtuous Cuts: Female Genital Circumcision in an African Ontology*, 12 *Differences: A Journal of Feminist Cultural Studies* 112 (2001); Fuambai Ahmadu, *Rites and Wrongs: An Insider/Outsider Reflects on Power and Excision*, in *Female "Circumcision" in Africa: Culture, Controversy and Change* (Bettina Shell-Duncan and Ylva Hernlund eds., 2000); Fuambai Ahmadu, 'A'nt I a Woman Too?' Challenging Myths of Sexual Dysfunction in Circumcised Women, in *Transcultural Bodies: Female Genital Cutting in Global Context* (Ylva Hernlund and Bettina Shell-Duncan eds., 2007); Kirsten Bell, *Genital Cutting and Western Discourses on Sexuality*, 19 *Medical Anthropology Quarterly* 125 (2005); Janice Boddy, *Wombs and Alien Spirits: Women, Men and the Zar Cult in Northern Sudan* (University of Wisconsin Press 1989); Lucrezia Catania, et al., *Preliminary Results of Research About 137 Women's Sexuality With Female Genital Mutilation/Cutting*, Presented at the International Research Seminar Advancing Knowledge on Psycho-Sexual Effects of FGM/C (October 10-12, 2004); Mansura Dopico, *Infibulation and the Orgasm Puzzle: Sexual Experiences of Eritrean Women in Rural Eritrea and Melbourne Australia in Transcultural Bodies: Female Genital Cutting in Global Context* (Ylva Hernlund and Bettina Shell-Duncan eds., 2007); Elisabetta Grande, *Hegemonic Human Rights and African Resistance: Female Circumcision in a Broader Comparative Perspective*, 4 *Global Jurist Frontiers* 3 (2004), <http://www.bepress.com/gj/frontiers/vol4/iss2/art3/>; Michelle C. Johnson, *Becoming a Muslim, Becoming a Person: Female 'Circumcision', Religious Identity and Personhood in Guinea-Bissau*, in *Female "Circumcision" in Africa: Culture, Controversy and Change* (Bettina Shell-Duncan and Ylva Hernlund eds., 2000); Corinne Kratz, *Affecting Performance: Meaning, Movement and Experience in Okiek Women's Initiation* (Smithsonian Institution Press 1994); Corinne Kratz, *Contexts, Controversies, Dilemmas: Teaching Circumcision*, in *Teaching Africa: African Studies in the New Millennium* (Misty Bastian and Jane Parpart eds., 1999); Corinne Kratz, *Circumcision Debates and Asylum Cases: Intersecting Arenas, Contested Values, and Tangled Webs*, in *Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies*. (Richard A. Shweder, et al. eds., 2002); Linda Morison et al., *The Long-Term Reproductive Health Consequences of Female Genital Cutting in Rural Gambia: A Community-Based Survey*, 6 *Tropical Med. & Int'l Health* 643 (2001); Obermeyer, Carla M. (1999). "Female Genital Surgeries: The Known, the Unknown, and the Unknowable" . *Medical Anthropology Quarterly* 13:79-106; Carla M. Obermeyer, *The Health Consequences of Female Circumcision: Science, Advocacy, and Standards of Evidence*, 17 *Med. Anthropology Quarterly* 394 (2003); Melissa Parker, *Rethinking Female Circumcision*, 65 *Africa* 506 (1995); Richard A. Shweder, *What About 'Female Genital Mutilation'? And Why Understanding Culture Matters in the First Place in In Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies* 235-36 (Richard Shweder et al. eds., 2002); Richard A. Shweder, *When Cultures Collide: Which Rights, Whose Tradition of Values?: A Critique of the Global Anti-FGM Campaign*, in *Global Justice and the Bulwarks of Localism: Human Rights in Context* (Christopher Eisgruber and Andras Sajó eds., 2005); Christine J. Walley, *Searching for 'Voices': Feminism, Anthropology, and the Global Debate over Female Genital Operations*, 12 *Cultural Anthropology* 405 (1997). To date the skeptical medical and anthropological literature, which suggests that claims about mortality, sexuality and physical harms have been wildly exaggerated in the advocacy literature and that the horror story representation of the practice is nearly as fanciful as it is nightmarish and does not stand up well to critical analysis, has had little impact on journalists and is either unknown or has largely been ignored by the press.

3 Elizabeth H. Boyle, *Female Genital Cutting: Cultural Conflict in the Global Community* (Johns Hopkins University Press 2002); Fran P. Hosken, *The Hosken Report: Genital and Sexual Mutilation of Females* (International Network News 1993); A. M. Rosenthal, *The Possible Dream*, N.Y. Times, June 13, 1995, at p. A25.

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

- 4 I Maccabees 1:60.
- 5 Reynolds v. United States, 98 U.S. 145 (1878).
- 6 See Elias Bickerman, *Jews in the Greek Age* (Harvard University Press 1990); Edwyn Bevan, *Jerusalem Under the High Priests* (Edward Arnold Publishers 1930); 3-4 Maccabees (C.W. Emmet ed., 2004) (1918); Victor Tcherikover, *Hellenic Civilization and the Jews* (Hendrikson Publishers 1999); Robert Seltzer, *Jewish People, Jewish Thought: The Jewish Experience in History* (Prentice Hall 2006).
- 7 See generally Mireya Navarro, *The Most Private of Makeovers*, N.Y. Times, Nov. 28, 2004, § 9, at 1; ETR Assoc., *Getting What You Want From Body Art* (1997).
- 8 Concerning the various faces of relativism and pluralism and various stances on the topics see generally Clifford Geertz, *Available Light: Anthropological Reflections on Philosophical Topics* (Princeton University Press 2000); E. Hatch, *Culture and Morality: The Relativity of Values in Anthropology* (Columbia University Press 1983); M. Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism* (Vintage Books 1973); *Relativism: Interpretation and Confrontation* (Michael Krausz ed., University of Notre Dame Press 1989); Thomas Nagel, *The Last Word* (Oxford University Press 1997); Richard A. Shweder, *Thinking Through Cultures: Expeditions in Cultural Psychology* (Harvard University Press 1991); Richard A. Shweder, *When Cultures Collide: Which Rights, Whose Tradition of Values?: A Critique of the Global Anti-FGM Campaign*, in *Global Justice and the Bulwarks of Localism: Human Rights in Context* (Christopher Eisgruber and Andras Sajo eds., 2005); B.R. Wilson, *Rationality* (Basis Blackwell 1970).
- 9 Geertz, *supra* note 8, at 42.
- 10 *Id.* at 45.
- 11 *Id.*
- 12 Concerning Hellenic attitudes and the ancient Jews see generally Bickerman, *supra* note 6; Tcherikover, *supra* note 6.
- 13 See Lloyd Rudolph, and Susanne Rudolph, *Living With Multiculturalism: Universalism and Particularism in an Indian Historical Context*, in *In Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies* 43 (Richard Shweder et al. eds., 2002); Stanley Wolpert, *A New History of India* (Oxford University Press 1982).
- 14 Rudolph, *supra* note 13, at 47.
- 15 *Id.*
- 16 *Id.*
- 17 Richard A. Shweder, *What About 'Female Genital Mutilation'?: And Why Understanding Culture Matters in the First Place* in *In Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies* 235-36 (Richard Shweder et al. eds., 2002).
- 18 John Rawls, *Political Liberalism* 61 (Columbia University Press 1996).
- 19 2-3 Maccabees, *supra* note 6.
- 20 Thomas Friedman, *Dubai and Dunces*, N.Y. Times, Mar. 15, 2006, § 1 (OpEd).
- 21 George W. Bush, President of the United States, *State of the Union Address to Congress and the Nation* (Jan. 29, 2002).
- 22 *Id.*

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

- 23 Richard A. Shweder, George W. Bush and the Missionary Position, 133 *Daedalus* 209 (2004); Richard A. Shweder, Moral Realism Without the Ethnocentrism: Is It Just a List of Empty Truisms?, in *Human Rights With Modesty: The Problem of Universalism* 65 (Andras Sajo ed., 2004).
- 24 Wasn't it Sir William Blackstone, the 18th century English jurist, who so brilliantly depicted the transcendental aspect of this type of moral stance, arguing that the only difference between the laws of gravity and the Ten Commandments is the relatively minor one that god-like human beings, alone of created things, were endowed with reason and free will; and so unlike "things", could discover and disobey the divine prescriptions?
- 25 Richard A. Posner, *The Problematics of Moral and Legal Theory* 6 (Harvard University Press. 1999).
- 26 Richard A. Posner, Lecture: The Oliver Wendell Holmes Lectures: The Problematics of Moral and Legal Theory, 111 *Harv. L. Rev.* 1637 (1998).
- 27 *Id.* at 1644.
- 28 *Id.* at 1643.
- 29 Posner, *supra* note 25, at 19.
- 30 Posner, *supra* note 26, at 1650.
- 31 *Id.*
- 32 See *supra* notes 23, 47.
- 33 Posner, *supra* note 26, at 1641.
- 34 *Id.* at 1642.
- 35 *Id.*
- 36 Posner, *supra* note 26.
- 37 *Id.* at 1643.
- 38 Posner, *supra* note 26.
- 39 See *supra* pp. 6 and accompanying notes.
- 40 Posner, *supra* note 26, at 1643.
- 41 Posner, *supra* note 26.
- 42 *Id.*
- 43 *Supra* note 1. See e.g., Susan M. Okin, Is Multiculturalism Bad For Women?, in *Is Multiculturalism Bad For Women?* (Susan M. Okin ed., 1999); Leti Volpp, Feminism Versus Multiculturalism, 101 *Colum. L. Rev.* 1181 (2001).
- 44 Shweder, *When Cultures Collide: Which Rights, Whose Tradition of Values?*, *supra* note 2, at 190.
- 45 *Id.* Let me emphasize here that when I speak of a "cultural practice" I am talking about practices that have histories of social endorsement by the members of an identifiable and durable community, and are habitual and seem morally justified in the eyes of the members of that community. This definition of a cultural practice rules out many of the sensational but ill-conceived examples that one finds in the popular press, for example, "bride burning in India", which is not a socially endorsed event

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

in India (although it does occasionally happen there, just as “spouse murder” - which no one ever describes as an American cultural practice - does occasionally happen in the USA). “Bride burning” has never been a South Asian “cultural practice.”

46 Posner, *supra* note 25.

47 *Id.* See also, A. MacIntyre, *After Virtue: A Study in Moral Theory* (University of Notre Dame Press 1981); Richard A. Shweder, *Moral Realism Without the Ethnocentrism: Is It Just a List of Empty Truisms?*, in *Human Rights With Modesty: The Problem of Universalism* 65 (Andras Sajó ed., 2004); Richard A. Shweder et al., *Culture and Moral Development, in The Emergence of Morality in Young Children 1* (J. Kagan and S. Lamb eds., 1987).

48 See generally Fran P. Hosken, *The Hosken Report: Genital and Sexual Mutilation of Females* (International Network News 1993).

49 See e.g., Shweder, *When Cultures Collide: Which Rights, Whose Tradition of Values?*, *supra* note 2.

50 Bettina Shell-Duncan and Ylva Hernlund, *Female ‘Circumcision’ in Africa: Dimensions of the Problem and the Debates*, in *Female “Circumcision” in Africa: Culture, Change and Controversy* 27 (Bettina Shell-Duncan and Ylva Hernlund eds., 2000).

51 Available at <http://www.unhcr.ch/html/menu3/b/25.htm>.

52 Available at <http://www.un.org/documents/ga/res/39/a39r046.htm>.

53 *Supra*, note 52.

54 Shell-Duncan, *supra* note 50.

55 See generally Ahmadu, *supra* note 2; 2000, Morison, *supra* note 2.

56 See generally Ahmadu, *supra* note 2; Sandra D. Lane and Robert A. Rubinstein, *Judging the Other: Responding to Traditional Female Genital Surgeries*, 26 *Hastings Center Report* 31 (1996); Richard A. Shweder, *Why Do Men Barbecue? Recipes for Cultural Psychology*. (Harvard University Press 2003).

57 Johnson, *supra* note 2.

58 See generally John Gray, *Isaiah Berlin* (Princeton University Press 1996); William A. Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge University Press 2002).

59 Richard A. Shweder et al., *Culture and Moral Development, in The Emergence of Morality in Young Children 1* (J. Kagan and S. Lamb eds., 1987).

60 Diana Baumrind, *Does Causally Relevant Research Support A Blanket Injunction Against Disciplinary Spanking by Parents?*, Invited Address at the 109th Annual Convention of the American Psychological Association (August 24, 2001), available at <http://ihd.berkeley.edu/baumrindpaper.pdf>.

61 *Id.*

62 For the full story of Danny, see Chaim Potok, *The Chosen* (Fawcett 1987).

63 T. S. Weisner and R. Gallimore, *My brother's keeper: Child and sibling caretaking*, 18 *Current Anthropology* 169 (1977).

64 D.S. Kim et al., *Male Circumcision: a South Korean Perspective*, 83 *BJU Int'l* 28 (1999); M.G. Pang and D.S. Kim, *Extraordinarily High Rates of Male Circumcision in South Korea: History and Underlying Reasons*, 89 *BJU Int'l* 48 (2002).

65 See *Circumcision Worldwide*, Wikipedia, available at http://en.wikipedia.org/wiki/Circumcision_worldwide.

66 See Ari L. Goldman, *Religious Notes*, *N.Y. Times* Feb. 27, 1993. One wonders whether the Soviet policy would have been viewed, in and of itself, as a basis for a political asylum claim by Russian citizens, especially Jewish and Muslim ones, who

CUSTOMS CONTROL: SOME ANTHROPOLOGICAL..., 14 Va. J. Soc. Pol'y &...

were either denied a circumcision in their homeland or persecuted for having one. The same question will arise if Finland or Denmark or Sweden, in recoil against Muslim immigrants, ever criminalizes male circumcision, which is not entirely out of the question.

- 67 David L. Gollaher, *Circumcision: A History of the World's Most Controversial Surgery* (Basic Books 2000).
- 68 United States Circumcision Incidence, available at [http:// www.cirp.org/library/statistics/USA/](http://www.cirp.org/library/statistics/USA/).
- 69 Supra note 68.
- 70 Goldman, supra note 69.
- 71 See Kim, supra note 64; Pang, supra note 64.
- 72 See Kim, supra note 64; Pang, supra note 64.
- 73 See Kim, supra note 64; Pang, supra note 64.
- 74 See Kim, supra note 64.
- 75 See Kim, supra note 64; Pang, supra note 64.
- 76 See Kim, supra note 64; Pang, supra note 64.
- 77 S.L. Gilman, "Barbaric" Rituals, in *Is Multiculturalism Bad For Women?* 53 (S.M. Okin ed., 1999).
- 78 Galston, supra note 58, at 3.
- 79 E.G. West, *Education and the State: A Study in Political Economy* 86 (Liberty Press. 1965).
- 80 *Michael H. v. Gerald D.*, 491 U.S. 110, 141 (1989).
- 81 Immigration and Naturalization Service, *The Benefits and Responsibilities of Citizenship* (2006), available at <http://www.immigration.com/citizenship/chapter2.html>.
- 82 *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).
- 83 Joshua Fishkin, *Liberty Versus Equal Opportunity*, in *Equality: Selected Readings* 148, 152 (Louis P. Pojman and Robert Westermoreland eds., 1997).
- 84 *Id.* at 154.
- 85 Chaim Solomon was a Jewish friend of George Washington's who helped finance the American Revolution.