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Blaming "Culture:" "Cultural" Evidence in Homicide Prosecutions and a New Perspective on Blameworthiness

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I. Introduction

On October 20, 2009, twenty-year-old Noor Almaleki was allegedly run over in a parking lot in Peoria, Arizona by her father, Faleh Almaleki.[2] She died soon after in a hospital.[3] According to reports, Noor's father had grown upset that his daughter was "too westernized" and that she "failed to live by traditional Muslim values and had disrespected the family."[4]

This story reflects the controversial issue facing American courts as to when a defendant's culture is relevant in defending his or her homicide charge. Some have argued that there should be a formal, independent cultural defense equivalent to that of an insanity excuse.[5] Many have claimed that in order to ensure all the circumstances affecting a particular defendant are considered, a court must consider a person's culture as an influencing factor in their commission of a homicide.[6] Here, the focus is primarily on the policy theories that support the admissibility of evidence of culture through the traditional defenses to homicides. The arguments discussed are those that support broad admissibility as well as the relevant critiques of the various theories. The questions at the heart of this paper are: 1) who is actually capable of introducing this cultural evidence under the current conceptual framework; 2) who might be affected negatively by a limited category of persons that are capable of introducing evidence of culture; 3) what do these issues tell us about how we have conceived of this defense?

At the outset of their assessments, scholars who support introducing culture evidence make a blameworthiness determination as to who can introduce this evidence and who is negatively affected by that exclusive category. For various and entirely defensible reasons, status as a recent immigrant, for example, only a limited group of persons is capable of introducing relevant evidence as to the influence of his/her culture on his/her commission of a homicide. We, as a society, have not determined who can introduce cultural evidence to negate a requisite mental state in homicide prosecutions based on values such as individualizing justice, equal protection, or multiculturalism. Instead, society accepts cultural evidence based on its perception of the blameworthiness of a newly immigrated defendant and his/her un-familiarity with American criminal law, as well as, American cultural values in general.

If we do not permit every defendant to introduce evidence of his/her possibly relevant culture in the context of their commission of a homicide, then we should admit that we, as a society, are making decisions based purely on relativistic blameworthiness. We are essentially deciding that there are *certain* cultures that in *certain* contexts can be admitted to "account" for the mental state of a defendant. If, in the context of homicide law, we, as a society are not fully recognizing individualized justice, equal protection, and multiculturalism as to every defendant and his/her culture, then society can go further in limiting when evidence of a defendant's culture can be introduced to account for his/her mental state. Such a limitation prevents defendants from introducing cultural evidence, which can demonstrate that defendants' allegedly culturally motivated actions did not have the principle purpose of "maliciously" intending to harm the victim.[7] This new standard is later detailed in this Article and applied to cases that have dealt with the admission of evidence of culture.

Part II advances the traditional methods used to introduce cultural evidence in defense to homicide prosecutions in most American jurisdictions. In Part III of this Article, there is a discussion of some cases that have involved the introduction of cultural evidence. Part IV, introduces and critiques the policy theories that support the admissibility of this evidence. Finally,

Part V argues the approach to blameworthiness and the admissibility of cultural evidence.

II. Defenses Used to Introduce "Cultural" Evidence

It should be emphasized at the outset that the issue of cultural evidence and its place in homicide prosecutions that it is one of an expansion of the current traditional homicide defenses. The defenses discussed below are all available in their traditional form to every homicide defendant. This section outlines some of the methods, both theoretical and practical, defendants employ in defense to a homicide charge—by raising issues of their culture. One method that has been suggested, though never actually implemented in any jurisdiction, is a full formal cultural defense.[8] Some scholars support recognizing an independent cultural defense that would function as a full excuse.[9] These scholars argue that a full defense would be beneficial by allowing the justice system to evaluate more homicides that are allegedly culturally motivated.[10] Effectively, this defense would function similarly to that of an insanity defense, as it would fully justify the homicide.[11] Although scholars frequently discuss a full defense in academia, scholars recognize that it has never been employed in an American jurisdiction.[12] As this concept of the full cultural defense has never been used with regard to cultural influences in homicide prosecutions, it is not addressed it in this Article. It seems to be the least likely of all possible solutions to the issue of culture in homicide prosecutions.

Defendants introduce elements of culture at trial through the existing defenses and excuses such as: insanity, diminished capacity, provocation, and mistake of law or fact.[13] Defendants in different jurisdictions have attempted to introduce evidence of their respective cultures to support these various defenses to homicide prosecutions.[14] Some jurisdictions have allowed defendants to use evidence of culture to support these defenses.[15] However, other jurisdictions have refused to expand the boundaries of what evidence is traditionally admissible with respect to these defenses.[16] The following section discusses cases involving the introduction of cultural evidence with the use of various defenses to homicide prosecutions.

III. Cases Involving Cultural Evidence

The issue of cultural evidence and its admissibility in homicide prosecutions has arisen in many different states across the country.[17] Many of these homicides involve the murder of women and children in response to alleged claims of spousal infidelity.[18] However, cultural evidence has been a factor in a variety of other homicides involving a myriad of alleged motivations.[19] In the following section, four homicides are discussed that involved cultural evidence – two of which involved spousal infidelity and two with different alleged motivations.

In *People v. Kimura*,[20] cultural evidence of was introduced to support a "temporary insanity" defense for a woman charged with the murder of her two children.[21] After discovering that her husband was unfaithful she proceeded to attempt *oyako-shinju*,[22] referred to as a traditional Japanese parent-child suicide ritual.[23] She claimed she chose to kill herself so as not to live in shame in this world and that to do so without also taking her children into the "afterlife" would have been a sign of poor motherhood.[24] Eventually, her murder charge was reduced to voluntary manslaughter through a plea bargain that was proposed following an outcry from the local Japanese community and expert testimony regarding her culture and the shame that may have induced mental instability.[25]

In *People v. Chen*,[26] the defendant killed his wife after learning of her infidelity.[27] Chen "offered cultural evidence to show that, as a person from 'mainland China,' his wife's adultery so completely obliterated his sense of control that he was provoked to kill his wife."[28] Chen was permitted to introduce evidence of culture to support this claim of the relationship between his lack of control and his status as a recent Chinese immigrant.[29] Chen received only a probationary sentence after convincing the judge that "traditional Chinese values drove him to kill his wife."[30]

In *State v. France*,[31] a Korean defendant accidentally killed her child by leaving him alone in a motel room dresser drawer.[32] She was subsequently convicted of second-degree murder.[33] The judge ruled that evidence of her culture was inadmissible.[34] However, if admitted it purported to demonstrate that in Korea, it is common to leave children alone in the home as neighbors and friends are considered unpaid "babysitters."[35] Eventually, "France was released on parole following a massive campaign organized by Korean women, who pointed out the lack of culturally specific information in her representation."[36]

In the case of the death of Binh Gia Pham, five friends of this Buddhist youth helped Pham douse himself in gasoline and light him on fire in political protest, not aware that such actions were crimes in America.[37] They also videotaped the self-immolation.[38] They were all charged with second-degree manslaughter,[39] carrying a possible sentence of up to ten years in prison.[40] The practice of Buddhist persons engaging in self-immolation in political protest is common in other parts of the world.[41] The judge sentenced the defendants with probation, reasoning that Pham would have committed suicide "with or without" assistance.[42]

The *Chen* and *Kimura* cases reflect the reality that many homicides involving evidence of culture are allegedly provoked by acts of spousal infidelity.[43] Conversely, *France* and Pham reflect alternate circumstances for the introduction of evidence

of culture.[44] They appear to be cases involving issues of mistake of fact or law regarding the defendants' actions and their consequences under American law. There are likely to be different perceptions of blameworthiness that society attaches to these different types of homicides.

The Pham and *France* cases raise significant questions as to how their respective cultures may have affected the principle purpose of their actions. In the Pham case, the victim's friends assisted the youth in committing suicide in accordance with his cultural traditions.[45] Pham thereby engaged in an act of self-immolation, which is a recognized form of protest in some parts of the world.[46]

In the *France* case, the defendant left her child in the drawer of a motel,[47] arguably without the principle purpose to harm the child but out of a culturally influenced conception of Korean childcare.[48] A jury may not believe that such evidence of culture in these two cases indicates that the principle purpose of the defendants' actions lacked intent to harm. Yet, it seems plausible that one could distinguish these cases with regard to the nature of the defendant's intent from a case such as *Chen*.

In *Chen*, the defendant's culture was described as tangentially related to his rage at discovering his wife's adultery.[49] Despite his conviction for second-degree murder, his actions were principally guided by his intent to murder his wife and his culture was merely claimed to have exacerbated his emotional state.[50] The *Kimura* case, presents a more difficult example. In one sense, she certainly intended to cause harm to her children as she did set out with the principle purpose to kill them.[51] Yet, that purpose to kill was infused with concepts of "taking her children into the afterlife" with her,[52] which some may see as not as blameworthy as the actions of the defendant in the *Chen* case. However, the reality that there *may* be an issue as to what a defendant's culturally influenced purpose was with regard to their intent to harm is what this Article seeks to address.

Although culture is attached to the concept of the push to admit this evidence, in reality, there are* certain *circumstances where* certain *cultures are considered less blameworthy than others.

IV. Rationale and Critique of the Admissibility of Cultural Evidence

As with all aspects of American homicide law, policy-based theories support and justify the admissibility of evidence of culture. The three prominent theories often recognized by scholars are individualized justice, equal protection, and multiculturalism. With regard to the theory of individualized justice supporting the introduction of evidence of culture, a seldom considered, yet important, critique of this policy theory limits what cultures can be said to "account" for the mental state of a homicide defendant. Although culture is attached to the concept of the push to admit this evidence, in reality, there are *certain* circumstances where *certain* cultures are considered less blameworthy than others.

A. Individualized Justice

The necessity of individualizing justice as it pertains to criminal defendants permeates American criminal jurisprudence. At the heart of this concept, is the idea that the circumstances, characteristics, history, culture, and a myriad of other subjective elements that affect the mind and behavior of a defendant must be considered in order to ensure a just determination of that defendant's culpability.[53] According to Professor Martin Gardner, "[i]n the context of the criminal law, the ultimate aim of this principle of individualized justice is to tailor punishment to fit the degree of the defendant's personal culpability."[54] This is a retributive theory; it argues that it would be unjust to prohibit the introduction of non-customary evidence in criminal prosecutions.[55] This theory of individualized justice often finds its strongest supporters in the realm of homicide prosecutions.[56]

The "Battered Spouse Defense" is one of the more recent manifestations of this push to "individualize justice" to a particular defendant's circumstances.[57] Professor Doriane Lambelet Coleman states, "[t]his movement [toward individualized justice] to inject subjectivity into the guilt phase of proceedings has been somewhat successful in cases where battered women are tried for killing their abusers."[58] Effectively, this defense has led some jurisdictions to relax the typical requirements with respect to provocation and self-defense.[59]

Although not as broadly successful, a similar push has occurred to permit the introduction of evidence of culture to support homicide defenses such as provocation, insanity, and mistake of law or fact.[60] Some scholars have suggested evidentiary approaches to cultural evidence that the "purpose of the cultural practice" and "moral culpability" along with several other factors in determining the admissibility of such evidence.[61] However, because these approaches are not grounded

in the premise that the underlying motivation for the admission of this evidence is "blameworthiness," they do not suggest that "intent to harm" or "malice" should be the only considerations evaluated in deciding whether to admit "cultural" evidence.[62] Professor Alison Dundes Renteln stated, "[i]f the legal system is to understand what motivates the actions of another, it must understand that person's culture."[63] Many scholars justify a request for leniency based upon the idea that the newly immigrated person is unfamiliar with American criminal law.[64] An article in the Harvard Law Review asserts,

> Although ignorance of the law is generally no excuse in a criminal prosecution fairness to the individual defendant suggests that ignorance of the law ought to be a defense for persons who were raised in a foreign culture. Treating persons raised in a foreign culture differently should not be viewed as an exercise in favoritism, but rather as a vindication of the principles of fairness and equality that underlie a system of individualized justice.[65]

In addition to issues of mistake of law as to newly immigrated persons, group based standards have also been considered as a method to address the issue of individualizing justice for a defendant seeking to introduce evidence of culture.[66] Concepts such as the "reasonable Italian man" or the "reasonable Mexican man" as standards have been largely unsuccessful when presented at trial.[67] However, the attempt to establish such group-based standards is an important permutation of attempts to individualize justice for defendants who wish to incorporate their respective cultures into their defenses to homicide prosecutions. Although this move to individualize justice has its advocates, it has also faced a significant amount of critique.[68]

There are many critiques that face the individualized justice theory for supporting the admissibility of evidence of culture. However, two seldom, and never thoroughly considered critiques are important: 1) What qualifies as a supposed "accountable culture" and 2) What elements of a supposed "accountable culture" would need to manifest in order to be considered under this theory? These considerations cut at the heart of this concern for individualizing justice to a particular defendant.

An "accountable culture" for the purposes of this Article is a culture that has a significant enough influence on the defendant's mental state, decisions, and actions that resulted in a crime (more specifically here, a homicide) that courts have found, or are likely to find, that the culture accounts in a significant way for the defendant's commission of a homicide. Some might shy away from labeling a defendant's culture as potentially accountable in some way for the commission of a crime for the unfortunate connotations of such a label. However, as this Article, merely attempts to accurately illustrate the reality of this complex issue. By allowing evidence of a person's culture to account for his/her mental state in the commission of a homicide, courts in this country *are* permitting some defendants' cultures to account in some significant way for his/her commission of a homicide, while other defendants' cultures cannot.

Some scholars have touched on the difficulty in defining what would constitute an accountable culture under the current conception of a cultural defense or admissible evidence of culture. Daina C. Chiu stated, "[t]he defense also essentializes culture by defining it as the exclusive province of particular groups. Under affirmative defense proponents' conception of culture, some groups have culture, others do not."[69] This inherent exclusiveness as to whom can possess an accountable culture in the context of homicide prosecutions creates a serious flaw in the move to individualize justice. Chiu goes on to indicate the difficulty in defining culture as part of the problem, "[d]efining the parameters of a group who could raise the defense would require crafting a rule that would take into account the innumerable permutations of race, ethnicity, language, education, religion, culture, gender, length of residence in the United States, and age."[70] However, although a legal definition of cultures that could be held accountable under the law would be difficult to determine, anthropologists have attempted to synthesize a definition of culture:

> Culture consists in patterned ways of thinking, feeling and reacting, acquired and transmitted mainly by symbols, constituting the distinctive achievements of human groups, including their embodiments in artifacts; the essential core of culture consists of traditional (i.e. historically derived and selected) ideas and especially their attached values.[71]

This definition indicates that "patterned ways of thinking, feeling and reacting" could apply to people raised in many different communities, both newly immigrated and otherwise.[72] However, although the common conception of culture is something that can affect the behavior of essentially anyone raised in a certain community, the concept of culture that most theorists consider when discussing cultural defenses and cultural evidence is limited to those cultures of newly immigrated persons. Professor Volpp stated, "the concept of a 'cultural defense' rests on the idea of a community not fully 'integrated' into the United States and assists . . . 'immigrants.'"[73] Another author noted that culture encompasses a "vast" array of factors,[74] but still proceeded to limit the concept of a cultural defense as one pertaining to "immigrants, refugees, and indigenous people based on their customs or customary law."[75] Although it is understandable to limit the concept of a cultural defense to those who are newly immigrated and thus unaccustomed to the criminal law of this country, limiting supposed accountable cultures to that of newly immigrated persons chips away at the argument that evi-

dence of culture must be introduced in homicide prosecutions in order to individualize justice. Individuals raised in American communities with strict cultures who were equally affected by culture would be prevented from introducing this evidence of culture if they were not newly immigrated to this country.

In addition to the issues that surround a limited category of supposed accountable cultures, even with such a category we would still be faced with determining what elements of that person's culture would have a significant enough affect on their behavior to warrant admissibility as evidence. As one author states,

> The cultural defense seeks to encompass a vast range of factors that include social mores, beliefs, practices, and values about gender, family, government, and religion, to name only a few. The challenge of creating and mounting a cultural defense is to select from many cultural factors those that are relevant and applicable.[76]

Although this author is referring to the concept of a full affirmative cultural defense,[77] this issue—what elements of a person's culture would be relevant and admissible for exculpatory purposes in a homicide proceeding—also applies to evidence of culture. Professor Kim describes the practical issue of expert testimony and how it has the potential to paint a skewed image of one's culture:

> Given the difficult in defining culture, the likelihood increases that expert testimony will, out of necessity, provide a broad, simplistic characterization of the defendant's culture rather than accurate, contemporary depiction of the norms and mores that reflect the social progress occurring in the defendant's home country.[78]

The issues of determining what cultures would be considered accountable and the related issue of what elements of such an accountable culture would be relevant, to demonstrate the inherent difficulties with individualizing justice as to culture. According to most theorists, certain persons, whose behavior would likely be affected or dictated by their respective cultures, would be incapable of using such evidence if they were not newly immigrated.[79] Furthermore, even if they were newly immigrated and could admit evidence under this theory, there would still be discretionary choices as to what elements of their culture were responsible for their actions.[80] If we are truly concerned about individualizing justice based on a person's culture, then we need to expand this concept to include all cultures that could influence a defendant's behavior. However, since we do not take such a broad approach to supposed accountable cultures, the current limitations on admissible evidence significantly undermines the argument that we are individualizing justice for each defendant.

B. Equal Protection

Another policy concern is whether immigrants are receiving equal protection of the law when they cannot introduce evidence of culture in homicide prosecutions.[81] The argument focuses on a newly immigrated person being deprived of the ability to fully litigate one of the established defenses such as: insanity, self-defense, or provocation. By being prevented from introducing all the evidence that would be relevant to their defenses, defendants are not able to fully litigate these defenses. This causes newly immigrated persons to receive unequal treatment in comparison with other homicide defendants.

Many scholars discuss the issue of not being able to equally litigate a defense to a homicide prosecution as it pertains to the example of provocation. Professor James J. Sing stated, "[i] f, however, the provocation defense is in essence a dominant-cultural defense, then denying foreign defendants the right to introduce cultural evidence effectively denies them use of the provocation doctrine."[82] Professor Sing employs an example to demonstrate this inequality: in cases where the prosecution must prove malice, and the defendant is prevented from introducing evidence of culture as provocation, the prosecution does not have the same burden of proof as it would face with a non-cultural defendant.[83] Although, this is a valid concern regarding which evidence can be introduced in support of one's defense to a homicide prosecution, some scholars have suggested it may not be accurate to call this restriction a deprivation of equal protection of the law.[84] Some scholars have argued that these homicide defendants are being restricted from admitting evidence of culture to support a homicide defense in the same manner as every other homicide defendant.[85] This critique is particularly convincing in light of the reality that very few defendants, those who could legitimately claim some kind of cultural influence with regard to their commission of a homicide, would be permitted to admit evidence of their culture.

Other scholars have argued that an alternate equal protection concern should take precedence: the equal protection of the victims of allegedly "culturally motivated homicides."[86] Professor Coleman stated, "permitting the use of culture-conscious, discriminatory evidence as part of the defendant's case-in-chief distorts the substantive criminal law and affords little or no protection to victims, whose assailants are left, as a result of this distortion, relatively free from broader societal strictures."[87] Many of these homicides are in response to alleged or actual issues of spousal infidelity. With the prevalence of homicide victims who are women and children, some are concerned that by allowing certain defendants to use supposed accountable cultures in their defense, the system will allow particular defendants to be exculpated where others would not, leaving these victims with no legal recourse.[88]

We, as a society, can take two approaches: 1) allow all persons, influenced by any definable, recognizable culture to admit relevant evidence in their homicide defense; or 2) limit the introduction of evidence of culture to defendants who are likely to be considered by society to be the least harmful or blameworthy.

Although the equal protection concern for defendants with regard to evidence of culture is legitimate, the arguments regarding the equal protection of the victims of these homicides would seem to be just as pressing.

C. Multiculturalism

Multiculturalism, or "cultural pluralism," is often used to support the admissibility of evidence of culture in homicide prosecutions. The theory of multiculturalism rests on the philosophical concept that objective truth in the law only exists as reflected in the voices of those who draft the law.[89] Furthermore, this theory advocates that in order to build a truly just society the law should reflect diverse voices, cultures and perceptions in order to avoid ethnocentrism and to promote a deep respect for all cultures.[90]

> Some, if not all, of these scholars also advocate the view that legal discourse and practice should be changed to more accurately reflect the diverse voices of all members of society. Indeed, it is argued that without such a transformation, the fairness and justice promised by a modern, liberal interpretation of our nation's founding documents cannot be achieved.[91]

In addition, many proponents of multiculturalism in the American legal system see the concept of assimilation as discriminatory.[92] For example, Professor Sing believes, "the multiculturalism movement, whose proponents argue that the old 'melting pot' social metaphor, which privileges the erosion of cultural distinctness in the dominant cultural stew, is obsolete and at times discriminatory."[93] Although the diverse voices of American society should be reflected in the drafting of our law, it might be unreasonable to expect that such a value should be capable of pushing the limits of homicide defenses. Some authors have gone as far as to say that evidence of culture should be admissible in all prosecutions *except* for homicides because of the severity of the crime.[94] Again, although there is certainly a value in reflecting multiculturalism in the law, it may not be prudent to allow such a value to push the traditional boundaries of defenses to homicides. The policies of individualized justice and equal protection are stronger than multiculturalism in supporting the broad introduction of evidence of culture in homicide prosecutions.

The aforementioned theories—individualized justice, equal protection, and multiculturalism—are formidable policy justifications for the expansion of the traditional defenses to homicides in favor of evidence of culture. However, this Article attempted to demonstrate that each of these policy justifications have certain limitations based on their assumption that society perceives the newly immigrated defendant, rather than the cultural defendant as less blameworthy when he/she commits a homicide related to the alleged influence of his/her culture. The justifications for expanding limits to traditional defenses to allow for cultural evidence are inherently based on that preliminary blameworthiness determination, limiting who can avail themselves of this evidence. We, as a society, can take two approaches: 1) allow all persons, influenced by any definable, recognizable culture to admit relevant evidence in their homicide defense; or 2) limit the introduction of evidence of culture to defendants who are likely to be considered by society to be the least harmful or blameworthy. As it is virtually impossible that any jurisdiction would recognize a broad concept of culture extending to anyone who could claim a definable culture, I will focus on the second option.

In the next section, it is argued that although blameworthiness is a valid concern, if it is to be the basis for justifying the admissibility of evidence of culture, then as a society we are free to limit admissibility to those homicide defendants that we perceive as the least blameworthy.

V. A New Approach to Cultural Evidence and Blameworthy Homicides

Some scholars that discuss the admission of evidence of culture believe that precisely because a homicide is a human rights violation, evidence of culture should be permitted in

nearly every other criminal prosecution *except* homicide.[95] The aforementioned policy theories: individualized justice, equal protection, and multiculturalism are valid theories concerned with retributive and culpability issues surrounding homicide defendants. Although these concerns, and in particular the concern for individualizing justice are valid, the previously discussed limitations indicate that these theories are making blameworthiness determinations pertaining to a limited category of defendants at the outset.

The limited nature of these theories, as pertaining exclusively to the cultures of newly immigrated peoples, indicates that these theories have made a blameworthiness determination based more on the recent immigration of the defendant, rather than the cultural influence in question. There is certainly validity in finding a newly immigrated defendant, unfamiliar with American criminal law, to be less blameworthy for what is allegedly culturally motivated action. However, we, as a society, could take a slightly different approach to this issue of culpability.

In their debate over expanding the traditional limitations of the insanity, provocation, and mistake of law or fact defenses with regard to evidence of culture, scholars fail to address the issue of whether the actor's principle purpose was to cause harm through his or her allegedly culturally motivated action. Legitimate concerns regarding individualized justice, equal protection, and multiculturalism should open the door to *some* evidence of culture in *some* homicide prosecutions. However, due to the previously discussed limitations, traditional defenses should be expanded to admit this evidence only as far as what society would consider the least blameworthy.

I would also limit my proposed approach regarding admissibility of cultural evidence to newly immigrated defendants or those who have lived in extremely insular immigrant communities. This is a necessity, considering the unlikelihood of broader acceptance for the admissibility of cultural evidence for other defendants. However, the focus of this approach will not determine exactly how long an immigrant defendant would have to be in this country or how insular his/her community must be. Instead, my new approach is focused on creating a functional framework for the actual admission of the evidence.

Society could agree that homicides which were caused by allegedly culturally motivated actions whose *principal purpose was not intended to cause harm* to the victims may constitute a less blameworthy category of homicides. In such contexts, judges should be permitted to admit cultural evidence. Furthermore, when this *primary or principle purpose of intending harm* functions as the central issue a judge would consider when determining whether to admit cultural evidence is based on a conception of intending harm closely paralleling "malice." Black's Law Dictionary defines malice as: "1. The intent, without justification or excuse, to commit a wrongful act. 2. Reckless disregard of the law or of a person's legal rights. 3. Ill will; wickedness of heart."[96] This concept of malice, when a person intends harm with "ill will" or a "wickedness of heart" certainly could lead to issues of imprecision.

However, this is a workable concept of "intent to harm" for my framework of introducing cultural evidence. If a person commits a culturally motivated homicide, with intent to cause harm that reflects malice, rather than some other culturally influenced purpose, then they *will not* be permitted to introduce evidence of culture. To illustrate how my new approach to the blameworthiness of allegedly culturally motivated homicides would operate in actual scenarios, a new approach will be applied to the four cases described earlier: *Chen, France*, Pham, and *Kimura*.

In *Chen*, the defendant "offered cultural evidence to show that, as a person from 'mainland China,' his wife's adultery so completely obliterated his sense of control that he was provoked to kill his wife."[97] Using expert testimony, Chen was permitted to introduce evidence as to the nature of his culture that provoked him to kill his wife.[98] Under my proposed approach Chen would be prohibited from introducing the aforementioned evidence as to his provocation. Even under the "influence of his culture," it is clear that Chen could not have perceived of his actions as not maliciously intending to cause harm to his wife. Therefore, under my approach to blameworthiness and the admissibility of evidence of culture, Chen would only be capable to admitting evidence traditionally permitted under the provocation defense to homicide. He would not be allowed to introduce cultural evidence.

Conversely, in the *France* case, where the defendant left her child in a dresser drawer of a hotel room,[99] the defendant would be permitted to introduce evidence of culture. The relevant evidence of Korean culture seemed to indicate that neighbors often served as unpaid "babysitters," and the defendant claimed that she did not intend to cause any harm to her child.[100] As there is an issue here of the defendant having a legitimate claim to not maliciously intending to cause any harm, she would be permitted to introduce evidence of culture to support her defense.

Similarly, in the case of the friends of Binh Gia Pham, this culture evidence would also be admissible. Pham's friends helped perform his political protest by assisting in his self-immolation, and were later charged with second-degree manslaughter, facing up to ten years in prison.[101] These youths had no intention to harm their friend; they merely assisted him in his decision to end his life in what is an accepted form of political protest in some parts of the world.[102] They would be permitted to admit evidence of culture under my approach to support their respective mistake of law of fact defense.

My proposed approach may function as an acceptable, workable solution to manage the competing interests of the aforementioned culpability theories that advocate for wide-

spread introduction of cultural evidence and for those who believe it should not be admitted to expand the homicide defenses at all. However, like many blameworthiness approaches in the criminal law, I recognize that it does have the potential for rather controversial results. Take for example, the potential results in the aforementioned *Kimura* case, which involved a woman who drowned her children and attempted to drown herself in response to her husband's infidelity.[103] The theory that the defense attempted to use was that she was driven insane due to her culture's emphasis on how she was "living in shame."[104] In addition, cultural evidence demonstrated that failing to "take" her children into the "afterlife" with Kimura would have been a sign of "bad motherhood."[105] It could be argued that Kimura should be entitled to introduce evidence of culture due to the fact that in a metaphysical sense she could argue that she was not maliciously attempting to "harm" her children by taking them into the "afterlife." Under my approach, there is potential for cases such as this where determining "malice" and "intent to harm" is difficult. However, a judge, functioning as the gatekeeper of this evidence, and the jury with the power to the credibility of such evidence, may be enough to manage the difficulties.

Although the *Kimura* case illustrates how my approach could create difficult determinations as to when to admit evidence of culture, there may be a workable solution. If we can admit that the concept of expanding the established homicide defenses to include evidence of culture is based on our society's perception of blameworthiness, then we are free to limit admissibility to defendants that society would likely consider the least blameworthy. Limiting admissibility based on whether, while influenced by his/her culture, the defendant's actions reflected a malicious purpose to harm the victim, may be a workable solution to the issue of the admissibility of cultural evidence.

VI. Conclusion

The presence of many diverse cultures enriches each member of this society by expanding their perception of the world. However, there are unfortunate moments when a person's culture can be associated either willingly or unwillingly with the commission of a homicide. The admissibility of evidence of culture to support defenses to homicides will not cease to be a difficult and controversial issue facing American courts throughout the United States. Culture itself is a term that is difficult to define, and in many cases, could apply to a wide spectrum of persons whether or not they are newly immigrated to this country. Proponents of the expansion of the traditional defenses to homicides to include evidence of culture do not generally suggest that this concept should apply to persons who are not newly immigrated to this country.[106] Although there is certainly a justification for limiting this concept of cultural evidence to those who are unfamiliar or unaccustomed to American criminal law due to their minimal exposure to it in this country, that limitation does reflect a blameworthiness determination at the outset.

We, as a society, are unlikely to expand the concept of culture as it is considered with regard to cultural evidence, to apply to all persons who may have a legitimate and influential culture as a presence in their lives. Thus, if we can admit that we are creating that limitation as a society at the outset of considering cultural evidence for certain defendants, and not for others, then we are free to place further limitations on when this evidence can be considered. If we, as a society, consider certain actors to be less blameworthy when they, while allegedly influenced by their cultures, commit what the law may deem to be a homicide without the primary purpose to maliciously cause harm to the victim, then we should adopt an approach to match that reality. There are drawbacks to my approach; one would be the occasional case where malice and intent to harm will be difficult to determine. Nevertheless, if society can admit, for example, that it is likely to perceive homicides that are motivated solely by spousal infidelity as more blameworthy than other homicides, such as the Buddhist self-immolation protest case, then we should be able to craft a rule to reflect that reality.

If we do not wish to expand the traditional homicide defenses through a blameworthiness determination of the influence of a person's culture, then we should cease the practice all together. If we are to make certain blameworthiness determinations, then we should admit that we are pursuing that course and employ a method that individualizes justice to a particular defendant while not undermining whatever concept of blameworthiness this society perceives with regard to certain homicides.

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1 It is important at the outset of this paper to mention that there is no recognized formal cultural defense in the criminal law. I have used the terms "culture," "cultural evidence" and the like throughout this Article. There are certainly many issues, including mere imprecision regarding the use of these terms. Yet, there does not appear to be a more functional way to address the issue.

2 *See* Associated Press, *'Westernized' Daughter Case: Dad Sent to Ariz.: Accused of Running her Over Because She Failed to Live by Muslim Values*, MSNBC.COM (Oct. 31, 2009, 10:12:40 PM), http://www.msnbc.msn.com/id/33550176/ns/us_news-crime_and_courts/. Faleh Almaleki is an Iraqi immigrant. *Id.*

3 *See* Sarah Netter, *'Westernized' Daughter Dies After Being Run Over by Father*, ABCNEWS.COM (Nov. 3, 2009), http://abcnews.go.com/WN/US/westernized-muslim-daughter-dies-run-father/story?id=8983198 (stating, "Noor Faleh Almeki, 20, clung to life for nearly two weeks after being run down by her father's car.").

4 *See* Associated Press, *supra* note 2 (explaining that Almaleki disapproved of his daughter living with her boyfriend).

5 *See generally* Note, *The Cultural Defense in the Criminal Law*, 99 HARV. L. REV. 1293, 1296 -98 (1986) (hereinafter The Harvard Note) (discussing that the current law permits courts to consider cultural factors in

criminal cases; however, does not provide a formal cultural defense, like the insanity defense); *see also* Aahren R. DePalma, *I Couldn't Help Myself – My Culture Made Me Do It: The Use of Cultural Evidence in the Heat of Passion Defense*, 28 Chicano-Latino L. Rev. 1, 13 (2009) (stating that defendants who raise an absolute cultural defense will be able to receive a more favorable sentence since their culture "is used in the same fashion as an insanity defense.").

[6] *See, e.g.,* DePalma, *supra* note 5, at 3 (declaring that culture should be considered since it is such an important role in an individual's life; for example, courts should consider culture in the heat of passion defense); *see also* Alison Dundes Renteln, *A Justification of the Cultural Defense as Partial Excuse*, 2 S. Cal. Rev. L. & Women's Stud. 437, 445 (1993) (stating that "[i]f the legal system is to understand what motivates the actions of another, it must understand that person's culture[,]" and that the "law ought to be flexible enough to incorporate explanations of behavior based on cultural considerations."); *see also* Andrew E. Taslitz, *Myself Alone: Individualizing Justice Through Psychological Character Evidence*, 52 Md. L. Rev. 1, 120 (1993) (arguing that "[i]ndividualized justice requires consideration of a defendant's unique traits and circumstances to determine what that individual did or thought . . .").

[7] Here, "malice" is defined as it applies uniquely to this admissibility standard of "intent to harm." A more thoroughly proposed standard is discussed later in this Article.

[8] *See, e.g.*, The Harvard Note, *supra* note 5, at 1296 (arguing for recognition of a formal cultural defense, although our legal system currently does not provide for one); *see also* Sharon M. Tomao, *The Cultural Defense: Traditional or Formal?*, 10 Geo. Immigr. L.J. 241, 247-50 (1996) (stating that proponents of a formal cultural defense support the independent cultural defense because traditional defenses do not provide the necessary and adequate protection for new immigrants).

[9] *See, e.g.*, The Harvard Note, *supra* note 5, at 1297 (explaining that a formal cultural defense would provide defendant's with a chance to be tried for the acts they actually intended to commit; for example, an American Indian tribe killing an intruder who had desecrated their sacred burial grounds could use a formal cultural defense to mitigate their guilt, instead of trying to negate their intent to kill).

[10] *Id.*

[11] *See* 18 U.S.C.A. § 17 (West 2011) (declaring that the insanity defense "is an affirmative defense [when] the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts."); *see also* The Harvard Note, *supra* note 5, at 1294 (discussing how defendants could introduce cultural factors under the "rubric" of the insanity defense).

[12] *See* The Harvard Note, *supra* note 5, at 1296 (explaining that our current legal system allows for cultural factors to be considered; however, has failed to adopt a formal cultural defense).

[13] *See id.* at 1294-95 (stating that defendants may introduce cultural factors into court under the insanity defense, mistake of fact, or diminished capacity).

[14] *See infra* Part III.

[15] *See, e.g.*, State v. Haque, 726 A.2d 205, 206 (Me. 1999) (holding that the trial court erred by excluding all testimony by a cultural anthropologist); *see also* People v. Aphaylath, 502 N.E.2d 998, 999 (N.Y. 1986) (allowing the Defense to introduce evidence of Laotian culture to show that the conduct of the victim (his wife) in displaying affection for another man, triggered defendant's loss of control); Utz v. Commonwealth, 505 S.E.2d 380, 383, 386 (Va. Ct. App. 1998) (stating that "the gang-related evidence was relevant to establish a motive for the murder and was probative of appellant's intent.").

[16] *See* State v. Correia, 600 A.2d 279, 288 (R.I. 1991) (excluding a doctor's testimony concerning defendant's mental condition and possible cultural differences stating that as a matter of law cultural differences are not a basis for reducing culpability); *see also* People v. Romero, 81 Cal. Rptr. 2d 823, 824 (Cal. Ct. App. 1999) (holding that the defense counsel's attempt to introduce expert testimony on the sociology of poverty, and the role of honor, paternalism, and street fighters in the Hispanic culture, was irrelevant).

[17] *See generally Correia*, 600 A.2d. at 288 (Rhode Island); Aphaylath, 502 N.E.2d. at 999 (New York); Bui v. State, 717 So.2d 6, 14 (Ala. Crim. App. 1997) (Alabama); People v. Truong, 553 N.W.2d 692, 699 (Mich. Ct. App. 1996) (Michigan).

[18] *See, e.g.*, *infra* notes 20 & 26.

[19] *See generally* United States v. Birdinground, 114 F. Appx' 841, 841 (9th Cir. 2004) (holding that the lower court did not err in refusing to allow an expert on Crow Indian culture in defense for murder); *Romero*, 81 Cal. Rptr. 2d. at 824 (involving a murder that occurred after the victim nearly ran into a group of men with his motor vehicle); *Bui*, 717 So.2d at 14-15 (reviewing murder charges where a defendant tried to use a cultural defense based on his Vietnamese upbringing); *Truong*, 553 N.W.2d. at 695, 699 (denying the defendant's argument of self-defense based on cultural evidence in lieu of focusing on Anglo-American law); *In re* Wendemagengehu, No. H027715, 2005 WL 2769014, at *1, *2 (Cal. Ct. App. Oct. 25, 2005) (defending an Ethiopian defendant who murdered his Ethiopian wife after she told him to move out and spat on him, by discussing Ethiopian culture).

[20] People v. Kimura, No. A-091133 (L.A. Super. Ct. Nov. 21, 1985).

[21] *See id.*; Nancy S. Kim, *The Cultural Defense and the Problem of Cultural Preemption: A Framework for Analysis*, 27 N. M. L. Rev. 101, 117-18 (1997).

[22] *See Kimura*, No. A-091133; *see also* Kim, *supra* note 21, at 117.

[23] Kim, *supra* note 21, at 117.

[24] *See* People v. Kimura, No. A-091133 (L.A. Super. Ct. Nov. 21, 1985); *see also* Kim, *supra* note 21, at 117-118 (explaining that in Japanese culture, a mother who commits suicide and leaves her child is regarded as a cruel, and that by killing her children, she saves them from facing a lifetime of humiliation and disgrace).

[25] *See Kimura*, No. A-091133; *see also* Kim, *supra* note 21, at 117-19.

[26] People v. Chen, No. 87-7774 (N.Y. Sup. Ct. Mar. 21, 1989).

[27] *See Chen*, No. 87-7774; Sharan K. Suri, *A Matter of Principle and Consistency: Understanding the Battered Woman and Cultural Defenses*, 7 Mich. J. Gender & L. 107, 120 (2000).

[28] *See Chen*, No. 87-7774; Suri, *supra* note 27, at 120.

[29] *See Chen*, No. 87-7774; *see also* Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense,"* 17 Harv. Women's L.J. 57, 64-77 (1994) (discussing in detail the cultural evidence introduced to defend Chen's actions at trial).

[30] *See Chen*, No. 87-7774; *see also* Volpp, *supra* note 29, at 64 (describing the case of Dong Lu Chen and the traditional Chinese values that allegedly drove him to kill his wife).

[31] State v. France, 379 S.E.2d 701 (N.C. Ct. App. 1989).

[32] *Id.* at 702.

[33] *Id.* at 704.

[34] *See* Volpp, *supra* note 29, at 96 (discussing the court's decision to disregard cultural evidence and instead rely upon the prosecutor's theory that France deliberately placed her son in the bureau, crushing him inside).

[35] *See id.* at 96 n. 167 (providing support for the proposition that Koreans often leave the children alone because in Korea, neighbors and friends look after each others' children).

[36] *Id.* at 96.

[37] *See* Kim, *supra* note 21, at 102.

[38] *See id.*

[39] *See id.* at 102 n. 6 (holding that Pham would have sacrificed himself regardless of his friends' aid, and therefore held that the friends would only serve probation).

[40] *Id.*

[41] *See* Jan Yun-Hua, *Buddhist Self-Immolation in Medieval China*, 4 History of Religions 243, 243-57 (1965) (discussing various motivations behind suicide by Buddhist monks).

[42] Kim, *supra* note 21, at 102 n. 6.

[43] *See* People v. Chen, No. 87-7774 (N.Y. Sup. Ct. Mar. 21, 1989); *see also* Suri, *supra* note 27 (introducing cases where homicide was precipitated by spousal infidelity).

[44] *See France*, 379 S.E.2d at 701; *see also* Kim, *supra* note 21, at 111 (allowing a defendant to introduce cultural evidence to defend and excuse the defendant's killing of his adulterous wife); *see also* Richard Lacayo et. al., *The Cultural Defense*, Time (Dec. 2, 1993), http://www.time.com/time/magazine/article/0,9171,979741,00.html (discussing the use of self-immolation as a form of Vietnamese protest as the foundation of a cultural defense).

[45] *See generally* Kim, *supra* note 21; *see also* Lacayo et. al., *supra* note 44 (explaining that five friends from a Buddhist youth group assisted Pham in dousing himself with gasoline).

[46] *See generally* Yun-Hua, *supra* note 41 (discussing suicide committed by Buddhist monks in China and India); *see also Self-Immolation: A Brief History*, The Week (Jan. 25, 2011, 4:00 PM), http://theweek.com/article/index/211349/self-immolation-a-brief-history (deconstructing the history of self-immolation and the use of self-immolation as a form of protest).

[47] *See France*, 379 S.E.2d at 702; *see also* Volpp, *supra* note 29, at 96-97 (noting there was more than one child and another child lived).

[48] *See id.* at 96 n. 167 (explaining that in the Korean culture, children are often left unattended by their parents because neighbors are expected to look after each other's children).

[49] *See* People v. Chen, No. 87-7774 (N.Y. Sup. Ct. Mar. 21, 1989); *see also* Suri, *supra* note 27, at 122 (referring to the expert witness' testimony that claimed that it was completely reasonable and acceptable in Chinese society for a man to kill his adulterous wife in a fit of rage).

[50] *See* Kim, *supra* note 21, at 120 (discussing that the facts of the case would demonstrate that Chen intended to kill his wife, but due to the admission of cultural evidence the judge convicted Chen of the lesser charge, second degree manslaughter).

[51] *See* People v. Kimura, No. A-091133 (L.A. Super. Ct. Nov. 21, 1985); *see also* Kim, *supra* note 21, at 118 (describing the defendant's conduct before the murders and suicide as the defendant "clearly intend[ing] to kill her children, as well as herself.").

[52] *See* Damian W. Sikora, *Differing Cultures, Differing Culpabilities?: A Sensible Alternative: Using Cultural Circumstances as a Mitigating Factor in Sentencing*, 62 Ohio St. L.J. 1695, 1702 n. 36 & 37 (2001) (stating that "Kimura believed that it was worse for a mother to leave her children alone and unattended in the world than it was to take her children with her to the afterlife.") (citing Renteln, *supra* note 6, at 463).

[53] *See generally* Taslitz, *supra* note 6, at 7 (stating that "[t]he defendant's unique thoughts thus govern the degree of culpability" and that "psychological character evidence is one means by which we can, in appropriate cases, effectively move the [legal] system toward greater individualization.").

[54] The Harvard Note, *supra* note 5, at 1298 (citing Martin R. Gardner, *The Renaissance of Retribution–An Examination of Doing Justice*, 1976 Wis. L. Rev. 781, 808) (suggesting that an inquiry into a defendant's culpability should be framed in terms of "whether, based on the whole background and character of the individual, it is just to punish him for his actions.").

[55] The Harvard Note, *supra* note 5, at 1298-99 (stating, "[t]he American legal system recognizes that, because of mitigating circumstances, it may be unjust to punish a particular defendant to the limits of the law.").

[56] *C.f.* Taslitz, *supra* note 6, at 12-13 (arguing that psychological character evidence can be important in establishing self-defense claims in homicide cases); Renteln, *supra* note 6, at 446 (explaining that the requisite mental state for homicide is often implicated by different theories of individualized justice, including cultural evidence).

[57] *See* The Harvard Note, *supra* note 5, at 1299 (describing how courts have recently recognized new criminal defenses where traditional defenses would be inappropriate, consistent with the principle of individualized justice, such as the battered spouse defense).

[58] Doriane Lambelet Coleman, *Individualizing Justice Through Multiculturalism: The Liberal's Dilemma*, 96 Colum. L. Rev. 1093, 1116 (1996).

[59] *See id.*

[60] *See id.* at 1103 (explaining that cultural evidence can be introduced in the context of traditional criminal law defenses such as "consent, insanity, diminished capacity, and provocation."); Michael Fischer, Note, *The Human Rights Implications of a "Cultural Defense,"* 6 S. Cal. Interdisc. L.J. 663, 674, 676-77 (1998) (discussing the ways in which a cultural defense can be used as a derivative defense and a mitigating defense).

[61] See Kim, *supra* note 21, at 133-35.

[62] *See, e.g.*, Coleman, *supra* note 58, at 1104 (commenting that the use of traditional defenses to homicide, supported by cultural evidence, has been recognized by scholars and that the American legal system responds to the cultural defense in an indirect way); *see also* Renteln, *supra* note 6, at 503 (asserting that a cultural defense would be acceptable in cases where a man killed his wife).

[63] Renteln, *supra* note 6, at 445.

[64] *See, e.g.*, The Harvard Note, *supra* note 5, at 1299 (stating that new immigrants have not had time to fully absorb the norms underlying America's criminal law system and therefore, individualized justice demands that the law take this into account); *see also* Susan Girardo Roy, Note, *Restoring Hope or Tolerating Abuse? Responses to Domestic Violence Against Immigrant Women*, 9 Geo. Immigr. L.J. 263, 276-77 (1995) (discussing that the cultural defense is usually utilized by recent immigrants who argue that because of their lack of understanding of American norms, coupled with the fact that their actions are justifiable in their own cultures, the courts should use this a partially justified defense or some leniency in sentencing).

[65] The Harvard Note, *supra* note 5, at 1299.

[66] *See, e.g.*, Coleman, *supra* note 58, at 1116-17 (describing the attempt of feminist groups advocating for a group focused standard where a defendant's conduct is judged more subjectively).

[67] *See* People v. Natale, 18 Cal. Rptr. 491, 494 (Cal. Ct. App. 1962) (rejecting the reasonable "Italian man standard"); *see also* Coleman, *supra* note 58, at 1117 (discussing Trujillo-Garcia v. Rowland, 9 F.3d 1553 (9th Cir. 1993), where the court rejected the use of the "reasonable Mexican male" standard to explain the defendant's conduct).

[68] *See infra* notes 69, 76, & 78.

[69] Daina C. Chiu, Note, *The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism,* 82 Calif. L. Rev. 1053, 1101 (1994).

[70] *Id.* at 1101-02.

[71] Nicole A. King, Note, *The Role of Culture in Psychology: A Look at Mental Illness and the "Cultural Defense,"* 7 Tulsa. J. Comp. & Int'l L. 199, 203-04 (1999) (citing *Geert Hofstede*, Culture's Consequences: International Differences in Work-Related Values 8, 21 (Sage Publ'ns 1st ed. 1984)).

[72] *Id.*

[73] Volpp, *supra* note 29, at 60.

[74] Fischer, *supra* note 60, at 669 (arguing that the extent of evidence that can be admitted under "cultural defense" is vast).

[75] *Id.* (citing Renteln, *supra* note 6, at 439).

[76] Chiu, *supra* note 69, at 1099 n. 293.

[77] *Id.* at 1097 (describing a full affirmative cultural defense as a defense that operates as a formal excuse and that although the act itself would still be judged wrongful, the defendant would be excused from his or her criminal behavior).

[78] Kim, *supra* note 21, at 132.

[79] *Id.* at 114-15.

[80] *Id.* at 115 (describing culture as amorphous, subject to changes over time, and may be interpreted differently by each member of the same social group, making the use of culture prone to varying interpretations).

[81] *See, e.g.*, Coleman, *supra* note 58 at 1098 (stating that "the use of cultural evidence risks a dangerous balkanization of the criminal law, where non-immigrant Americans are subject to one set of laws and immigrant Americans to another[,]" which is inconsistent with the Equal Protection Clause); Cynthia Lee, *Cultural Convergence: Interest Convergence Theory Meets the Cultural Defense*, 49 Ariz. L. Rev. 911, 913 (2007) (stating that others take the position that the use of cultural evidence violates equal protection because it favors immigrant and minority defendants); James J. Sing, *Culture as Sameness: Toward a Synthetic View of Provocation and Culture in the Criminal Law*, 108 Yale L.J. 1845, 1847 (1999) (discussing Coleman's attack on the cultural defense and how it has marshaled equal protection law to argue against recognition of the cultural defense).

[82] Sing, *supra* note 81, at 1878.

[83] *See id.* at 1879 (stating that "[i]f a defendant's provocation is categorically noncognizable by the court, the prosecution's burden of establishing the absence of provocation is no burden at all.").

[84] *See, e.g.*, Veronica Ma, Note, *Cultural Defense: Limited Admissibility for New Immigrants,* 3 San Diego Just. J. 461, 476 (1995) (stating that scholars who support the cultural defense argue that"[t]reating persons raised in a foreign culture differently should not be viewed as favoritism, but rather as a vindication of the principle of fairness and equality that underline our system of individualized justice."). *But see* Neal A. Gordon, *The Implications of Memetics for the Cultural Defense*, 50 Duke L.J. 1809, 1830 (2001) (describing a case where the use of cultural evidence can violate the equal protection clause and that non-enforcement of the law based on a certain cultural heritage could deny those equal protection of the law).

[85] *See* Ma, *supra* note 84, at 477 (presenting the opposition's argument that the admissibility of cultural background into evidence goes against the argument that the courts should have only one standard of justice applied evenly to all defendants regardless of ethnicity); *see also* Michele Wen Chen Wu, *Culture is No Defense for Infanticide*, 11 Am. U. J. Gender Soc. Pol'y & L. 975, 987-88 (2003) (arguing that "allowing different rules for different people would lead to uncertainties as to which criminal standards courts should apply, resulting in a confusing legal standard and anarchy.").

[86] *See, e.g.*, Coleman, *supra* note 58, at 1095 (stating that the use of the cultural defense undercuts the expansion of legal protections for some of the least powerful members of American society including women and children).

[87] *Id.* at 1098.

[88] *See id.* at 1137-39 (arguing that "treating such [cultural] evidence as exculpatory sends bad messages to everyone, but especially to those in the affected communities," describing the message that is sent to an immigrant, that "[they] are not guaranteed the right to choose to escape the aspects of [their] culture that collide with criminal law.").

[89] *See id.* at 1118 (discussing the argument put forth by advocates of multiculturalism that the law emerges from the particular cultural milieu and orientation of its authors; therefore, American jurisprudence is principally Anglo-American, rather than objective).

[90] *See id.* at 1118-20 (stating that "[i]n its purest incarnation, multiculturalism is premised upon the belief that all cultures are of equal value, that no one culture is better than another.").

[91] Coleman, *supra* note 58, at 118.

[92] *See*, Kim, *supra* note 21, at n. 72 (quoting Renteln, *supra* note 6) ("[Requiring or expecting assimilation of minorities . . . is 'potentially coercive' . . . . [and that a]ccommodation of other worldviews would be better.").

[93] Sing, *supra* note 81, at 1845; *see also* Kevin R. Johnson, *Fear of an "Alien Nation": Race, Immigration, and Immigrants*, 7 Stan. L. & Pol'y Rev. 111, 112 (1996) (suggesting that the United States approaches the immigration debate from a different perspective hoping to "learn from history and attempt to avoid errors of the past.").

[94] *See, e.g.*, Fischer, *supra* note 60, at 679-85 (deciding that one's right to life and bodily sanctity is more important than the right to maintain one's cultural integrity; therefore, holding the crime of homicide to a higher standard than other crimes).

[95] *See id.*

[96] Black's Law Dictionary 1042 (9th ed. 2009).

[97] Suri, *supra* note 27, at 120.

[98] *See id.*

[99] State v. France, 379 S.E.2d 701, 702 (N.C. Ct. App. 1989).

[100] *See France*, 379 N.E.2d at 702 (describing "[d]efendant's theory. . . that [the child] climbed into the second dresser drawer and caused the television set and dresser to fall over and pin him underneath."); *see also* Volpp, *supra* note 29, at 96 n. 167.

[101] *See* Kim, *supra* note 21, at 102 n. 6 (citing Lacayo, *supra* note 44).

[102] *See* Yun-Hua, *supra* note 41; Lacayo, *supra* note 44 (stating that a police sergeant stated that Pham's friends "did not think they had done anything wrong.").

[103] People v. Kimura, No. A-091133 (L.A. Super. Ct. Nov. 21, 1985); Kim, *supra* note 21, at 101.

[104] *See Kimura*, No. A-091133; *see also* Kim, *supra* note 21, at 117-18 (stating "the defense presented evidence . . . . [that] Kimura, after learning of her husband's adulterous affair, chose to die rather than live in shame and humiliation. . . . cultural evidence was used to establish that Kimura. . . . was "'temporarily insane'").

[105] *See Kimura*, No. A-091133; Kim, *supra* note 21, at 117-19 (asserting that "[a] mother who commits suicide and leaves her child is regarded in Japan as a cruel and terrible person."); *see also* Wu, *supra* note 85, at 998 (stating that four thousand members of the Japanese community signed a petition pleading for the court to afford Kimura leniency since the Japanese legal system would have treated her case this way).

[106] Ma, *supra* note 84, at 481 (suggesting that the cultural evidence should only be admissible within certain limits and only in certain circumstances dealing with a certain time interval after a person's arrival in the United States).

About the Author

Christian G. Ohanian graduated from the University of Chicago with a Bachelor of Arts in History on 2008. He earned his Juris Doctor degree in 2011 from the University of North Carolina at Chapel Hill, School of Law. During law school, he volunteered at the North Carolina Center on Actual Innocence. He is currently an associate at Dickinson Wright, PLLC in Detroit, Michigan.