

ON CULTURE, DIFFERENCE, AND DOMESTIC VIOLENCE

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How should we consider cultural difference when we think about domestic violence? Elizabeth Schneider's path-breaking representation of Yvonne Wanrow, described in her book, *Battered Women and Feminist Lawmaking*,¹ gives us an important example of how one can contemplate this question in the context of legal representation. In arguing that Yvonne Wanrow's perspective as a Native American woman had been excluded from her claim of self defense, Elizabeth Schneider and other attorneys at the Center for Constitutional Rights successfully asserted that the way one's specific identity shapes experiences must be factored into the consideration of a defendant's state of mind. What was missing, they argued, was evidence that would have explained why Yvonne Wanrow would react as she did when an uninvited white man, who she believed had tried to molest one of her children, entered her babysitter's home. This evidence included information as to the general lack of police protection in such situations, the pervasiveness of violence against women and children, Wanrow's belief that the man was a child molester, Wanrow's lack of trust in the police, and her belief that she could successfully defend herself only with a weapon.²

But I fear that this representation was exceptional in its careful attention to particularized detail. I am concerned that when attempts to represent a woman's difference are less careful, what can

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1. ELIZABETH M. SCHNEIDER, *BATTERED WOMEN & FEMINIST LAWMAKING* (2000).

2. *See id.* at 30-31.

accompany or underlie culturally based advocacy can be quite problematic. Very often, discussions of cultural alterity rely upon invocations of culture that are little more than crass, group based stereotypes that may, in fact, be quite remote from the individual experiences at issue.³ Moreover, unlike in Wanrow's case where the failures of the police were pivotal to the argument, invocations of culture often suggest that culture somehow exists apart from the state.

This reflects outmoded, although popular, perceptions of culture. Culture is still fused with ethnicity, and not understood as a descriptor explaining all kinds of social interactions. Moreover, culture is generally thought of as a noun, a fixed and static thing, rather than conceived as an adjective modifying particular practices. Discussions of the way culture can shape domestic violence occur in a broader context of already existing stereotypes about culture, that reflect problematic notions as to how culture is believed to link to race.

Despite the valiant attempts of organizations such as the Family Violence Prevention Fund to inform the American public that domestic violence in the United States is a universal phenomenon occurring at epidemic rates,⁴ behavior that we condemn, such as domestic violence, is more often conceptualized as cultural for nonwhite communities. In fact, some have argued that it appears that many feminists and battered women's advocates suspect that "other" cultures actually support domestic violence—without turning to ask whether this may also be the case in their own communities.⁵ This tendency to describe domestic violence as "cultural" when occurring in communities of color, and not through the language of power and control used to describe domestic violence in "mainstream" communities, is linked to the uninterrogated assumption that devalued and less powerful groups are somehow more culturally determined. This description suggests that members of communities of color behave in certain ways,

3. On this point, see generally Leti Volpp, *(Mis)Identifying Culture: Asian Women and the "Cultural Defense,"* 17 HARV. WOMEN'S L.J. 57 (1994) (discussing the use of over-generalized cultural stereotypes in legal defenses).

4. See generally FAMILY VIOLENCE PREVENTION FUND (last visited Feb. 11, 2003) (discussing current domestic violence statistics and providing further information regarding domestic violence), available at <http://www.fvpf.org>.

5. See Shamita Das Dasgupta, *Women's Realities: Defining Violence Against Women By Immigration, Race, and Class*, in ISSUES IN INTIMATE VIOLENCE 209, 217 (Raquel Kennedy Bergen ed., 1998). Dasgupta states: "In fact, I believe that many feminists and battered women's advocates secretly suffer from gnawing suspicions that "other" cultures do actually support woman abuse." *Id.*

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because they follow cultural dictates, as if they are encoded with culture.⁶

We can see this in the reaction to the case of Andrea Yates. Her killing of her five children was primarily explained as a result of mental illness, with a diagnosis of postpartum psychosis.⁷ While there was some discussion suggesting Andrea Yates inhabited a particular cultural location due to her family's Christian beliefs, that engendered their living in a school bus left by a traveling preacher, or that led her to keep having children without using birth control because the children came from God,⁸ the primary lens through which her behavior was understood was psychological. We thus heard about her experience with the mental health system, medications she had stopped taking, and suicide attempts.

Psychology is used to explain why people positioned as Western subjects act irrationally. In contrast, culture is used to explain why those considered non-Western subjects act irrationally. We could thus compare the coverage of Andrea Yates with other cases involving mothers who killed their children. One such case involved Khoua Her, a Hmong immigrant, who in Minnesota in 1998 strangled her six children and then hanged herself in a failed suicide attempt.⁹ Police had been called to the family's home at least sixteen times in the previous two years, and there was a long history of domestic violence.¹⁰ In searching for explanations, the media invoked a "cultural clash," and "the American pull to be an individual versus the Hmong orientation of putting the group first."¹¹ Described as the worst mass murder in Minnesota memory, the Her case was invoked—along with tales of animal cruelty, religious sacrifice of small dogs, the statistic that nearly half of the Hmong community was on state welfare, a string of gang rapes, and a thirteen year old who smothered her newborn—by a popular radio talk show host who

6. See generally Leti Volpp, *Blaming Culture for Bad Behavior*, 12 YALE J.L. & HUMAN. 89 (2000) (discussing the societal assumption that communities of color are controlled by culture while white Americans are typically viewed as having "no culture").

7. See, e.g., Andrew Cohen, *Texas Justice Isn't Same as American Justice*, BALTIMORE SUN, Mar. 22, 2002, at 15A (describing Andrea Yates' mental health history).

8. See, e.g., Anne Eggebroten, *A Biblical Feminist Looks at the Andrea Yates Tragedy*, EVANGELICAL & ECUMENICAL WOMEN'S CAUCUS, 25 EEWC UPDATE (Winter 2001-2002) (describing "conservative Christian culture" mandating no birth control, female submission, and emotional abuse), available at <http://www.eewc.com/Update/Winter2001Yates.htm>.

9. See Stacy Lavilla, *Why Her?*, ASIANWEEK, Sept. 23, 1998, at 11 (explaining the facts of the case and describing the effect of the event on the Hmong community).

10. See *id.*

11. See *id.*

said, "Those people should either assimilate or hit the road."¹²

We see here the process of selective blaming of culture. The same act is understood as the product of Hmong culture in one case, but not white American culture in the other. Rather, Andrea Yates, whether she is condemned or pitied, is primarily depicted as a mother under enormous pressure, her life uninflected by a racialized culture. Khoua Her, in contrast, is described as if her life is completely circumscribed by a racialized culture.

A particular academic description of culture that reflects some of these problems is an article which appeared in a symposium issue of the *Stanford Law Review*, authored by Nilda Rimonte, who was once the director of a battered women's shelter in Los Angeles that serves Asian women and children.¹³ In the article, Rimonte points to a number of reasons for domestic violence in Asian immigrant communities: the Pacific-Asian¹⁴ family's traditionally patriarchal system and the attendant belief in the supremacy of the male;¹⁵ the socialization goals and processes which favor the family and community over the individual;¹⁶ the cultural emphasis on silent suffering versus open communication of needs and feelings;¹⁷ and the enormous adjustment pressures which test the limits of immigrants' and refugees' survival skills.¹⁸

Rimonte also suggests that few Asian countries have woman's rights movements whose energy and goals might significantly influence the women in their society, asserts that Asians have a different sense of

12. Kirsten Scharnberg, *Surviving Culture Shock*, BALTIMORE SUN, Mar. 8, 1999, at 1A. According to the reporter, this talk show host articulated what some Minnesotans had been thinking for years but never dared to utter publicly. *Id.*

13. Nilda Rimonte, *A Question of Culture: Cultural Approval of Violence Against Women in the Pacific-Asian Community and the Cultural Defense*, 43 STAN. L. REV. 1311 (1991).

14. *Id.* at 1312-13 (explaining that "Pacific-Asian" is the term that displaced "Oriental" in the 1970s to refer to immigrants from countries in Asia and the Pacific Rim). Rimonte does not seem to include Pacific Islanders within this rubric. I use instead the term "Asian" which is most frequently used today to describe these communities.

15. *Id.* at 1318.

16. *Id.* at 1323, 1325-26 (attributing the rigid definition of gender roles and strong emphasis on family and "harmony" with leading to abuse and oppressiveness).

17. *Id.* at 1318 (explaining how the very structure of the decision model of a traditional Pacific-Asian family precludes open communication, how the "vertical, flowing downward" pattern of decision-making emphasizes male superiority and control).

18. *Id.* at 1314 (listing "unemployment or underemployment, substandard housing conditions, 'status incongruity,' inadequate language skills, and general feelings of incompetence and unease in a society that is new to them," as well as a woman "nagging" or talking too much as the reasons for abuse).

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time, claims that the idea of choices and rights may not be appropriate for Asians, and states that, unlike the Western ideal of the healthy family, the Asian family is structured around male privilege, authority, and superiority.¹⁹ The article presents a frozen, monolithic description of culture for an enormous region of the world that elides any difference or heterogeneity.²⁰ Rimonte's sweeping and inaccurate generalizations have allowed other writers to make blanket statements about gender subordination in "Asian cultures"²¹ and to assert that there is something more misogynistic about Asian immigrant communities than "our own."²²

In the face of this selective stereotyping, the appeal of universalist descriptions of domestic violence, to suggest that specific cultural formations have no impact, is understandable. Two examples that surfaced in discussions I recently had with Asian American and Pacific Islander domestic violence advocates come to mind. The first was the response of one advocate to the query of a "mainstream" women's shelter (meaning one not serving diverse populations), that inquired for advice about the "cultural shame" of an Indian immigrant who had been sexually assaulted; this cultural shame, said the shelter staff, prohibited the woman from using the shelter's public shower. The response of the advocate was to tell the shelter that *any* woman who had been sexually assaulted would have issues around privacy and bodily integrity. The second was the response of another advocate to the question as to what, specifically, were the issues for battered lesbians. The advocate's response was that a

19. See *id.* at 1318.

20. See Dasgupta, *supra* note 5, at 218 n.16. Dasgupta states:

Unfortunately, most academic and popular inquiries tend to focus on those traditions in a culture that affirm women's low status and assume these to be fixed phenomena. Rather than challenge the validity of these customs as true cultural symbols, most investigators unquestioningly accept their authenticity. I dispute this basic assumption and believe that researchers need to ask the deeper question: Who are the beneficiaries of popularizing a particular culture from this angle?

Id.

21. See, e.g., Nimish R. Ganatra, *The Cultural Dynamic in Domestic Violence: Understanding the Additional Burdens Battered Immigrant Women of Color Face in the United States*, 2 J.L. SOC'Y 109, 118-19 (2001) (stating that modern American society and laws value individualism and allow women significant rights while many Asian cultures emphasize the family and restrict women to subordinate roles); Susan Girardo Roy, *Restoring Hope or Tolerating Abuse? Responses to Domestic Violence Against Immigrant Women*, 9 GEO. IMMIGR. L.J. 263, 274 (1995) (noting the role of Asian beliefs in condoning domestic violence).

22. See generally Doriane Lambelet Coleman, *Individualizing Justice Through Multiculturalism: The Liberals' Dilemma*, 96 COLUM. L. REV. 1093 (1996); Leti Volpp, *Talking "Culture": Gender, Race, Nation and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996) (responding to Coleman).

battered lesbian's experience of domestic violence will reflect her class position, whether she is disabled, whether she is an immigrant, or whether she lives in a rural area, like any other woman in those situations. She then reflected that perhaps the fear of being outed by the abusive partner, if the battered woman was not already out, was specific to lesbians—but then reflected that *any* battered woman fears being outed, as battered. This kind of approach, to shift attention away from a focus on particular assumptions about how cultural identities shape domestic violence, to examining how experiences are similar, seems necessary.

Yet I would agree with Sherene Razack, who, in examining narratives of sexual violence against South Asian women, cautions against a simple turn to universalist narratives. She argues that there are three problems with reacting against culturalist stereotypes through using universal arguments. Razack asserts that deculturalized narratives rarely have enough traction to displace orientalist fantasies that are believed in mainstream communities, are too abstract to use in conversations within communities that are the subject of description, and lastly, fail to grapple with the fact that violent acts are committed in culturally specific ways.²³

But then how do we describe the specifics of culture? One important shift would be to understand that cultural practices are imbricated with material and political forces. Usually when cultural explanations are given, a static and insular culture is blamed, detracting attention away from one's limited access to services, or from the policies of the state. Thus, part of what I am arguing for here is an understanding of culture that does not strip away the economic and the political from its content. Take, for example, the idea that Asian immigrants have difficulty gaining access to the Violence Against Women Act ("VAWA")²⁴ self-petitioning process. When this is blamed on "cultural limitations" of Asian communities—such as passivity, or shame—it removes the onus from agencies or the government to try to make services more accessible. Thus, invocations of culture can erase the racism of agencies and entities that fail to provide appropriate services to battered women by hiring diverse staff who speak relevant languages or translate materials. Further, invocations of culture can detract attention away

23. See Sherene Razack, *A Violent Culture or Culturalised Violence? Feminist Narratives of Sexual Violence Against South Asian Women*, 3 *STUDIES IN PRACTICAL PHILOSOPHY* (2001).

24. Violence Against Women Act of 1994, Pub. L. No. 103-322, §§ 40701-40703, 108 Stat. 1902, 1953 (1994).

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from the policies of the state: VAWA self-petitioning was only required as a remedy to fix U.S. immigration laws that gave batterers tools with which they could abuse partners, after Congress enacted the Marriage Fraud Act.²⁵ For an example that foregrounds the importance of economic concerns, we could return to the case of Khoua Her. Recently, an article in the *Hmong Times* suggested that Her strangled her six children because she saw death as the only means of saving them from poverty, after she lost the low-paying job that had provided food and benefits for her family. Understanding Her's acts as solely the product of "Hmong culture" completely subsumes the role material forces may have played in shaping her perceptions.²⁶

Another important shift was evident in the second advocate's response, described above, when she insisted on invoking class, disability, immigrant status, and geographical location as relevant to any particular battered lesbian's experience. Identities and experiences do shape perspectives, but we must be attentive to the way in which this transpires through a complex process that reflects an individual's specific position. Essentializing narratives about particular cultures can often serve to mask reality. For example, a battered woman who is an immigrant may have failed to call the police, not because her culture condones passivity on the part of women, but because her partner was a police officer in her country of origin, because she has witnessed a failure of police protection and practices of police brutality, and because the police in her present location do not speak her language. Granting explanatory power to essentialized depictions of "culture," as purportedly made up of unchanging rituals that cement the subordinate location of women in a fixed system of social practices, will inevitably fail to accurately describe the relationship of culture, difference, and domestic violence.

25. See Linda Kelly, *Stories from the Front: Seeking Refuge for Battered Immigrants in the Violence Against Women Act*, 92 NW. U. L. REV. 665, 669-72 (1998) (explaining the relationship of VAWA self-petitioning to the Immigration Marriage Fraud Amendments).

26. See Kou Som, *Hmong Women Struggle to Escape a Paternalistic Culture and Adapt to Life in America*, HMONG TIMES, May 16, 2002, available at <http://www.hmongtimes.com/displaynews.asp?ID=447>.