



### Culture and the Law

SPECIAL ISSUE EDITOR: GAURAV DESAI

Introduction: Culture before the Law 855  
GAURAV DESAI

*Rosenberger v. University of Virginia: From  
Discourse and Dollars to Domination* 869  
ELLEN MESSER-DAVIDOW

The Tie That Binds: Constitutional Law  
and Culture, Obscenity and Child  
Pornography 897  
KEITH WERHAN

Culture Wars on the Net: Intellectual Property  
and Corporate Propriety in Digital  
Environments 919  
ROSEMARY J. COOMBE AND ANDREW HERMAN

Deportable Subjects: U.S. Immigration Laws  
and the Criminalizing of Communism 949  
CAROLE BOYCE DAVIES

Are Cultural Rights Bad for Multicultural  
Societies? 967  
FEROZA JUSSAWALLA

Culture, Cloaked in *Mens Rea* 981  
DORIANE LAMBELET COLEMAN

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- ditions and rights of Caribbean immigrants to England. "The Caribbean Community in Britain," *Freedomways*, 3d quarter, 1964, 340-57.
- 16 FBI Files, Section B, Naturalization, 3-4.
- 17 Public Law 439, 76th Cong, 3d sess. (June 28, 1940).
- 18 Walter McCarran Act. Immigration and Nationality Act of 1952.
- 19 See "Statement on Un-American Activities Committee," news release, Council on African Affairs, New York City, July 20, 1949, in *Paul Robeson Speaks*, ed. Philip S. Foner (New York: Citadel Press, 1978), 218.
- 20 Internal Security Act of 1950, Public Law 1024, 81st Cong., 2d sess. (June 1950), 987.
- 21 From "Speech to the Court, February, 1953," in Johnson, *I Think of My Mother*, 121-26. Also available in "13 Communists Speak," Communist Party pamphlet, 1955.
- 22 Identified in the trial and subsequent appeals are *United States of America v. Elizabeth Gurley Flynn, Pettis Perry, Claudia Jones, Alexander Bittelman, Alexander Trachtenberg, Victor Jeremy Jerome, Albert Francis Lannon, Louis Weinstock, Arnold Samuel Johnson, Betty Gannett, Jacob Mindel, William Wolf Weinstone, George Blake Carney* and argued through 1954 and 1955 (216 F2d 354, 389 [33]). Page numbers for subsequent quotations from the trial appear in the text in parentheses.
- 23 Those who organize around the fate of political prisoners such as Mumia Abu Jamal and others make similar arguments.
- 24 Comments made by Jones at her farewell party in Claudia Jones's Papers, Claudia Jones Memorial Collection, Schomburg Center, New York.
- 25 William L. Patterson, "Remarks on the Eve of the Deportation of Claudia Jones," typescript, circa December 8, 1955.
- 26 Claudia Jones's Papers, Claudia Jones Memorial Collection, Schomburg Center, New York.
- 27 Unpublished poem in Claudia Jones Memorial Collection, Schomburg Center, New York.
- 28 Billy Strachan, interview by author, London, March 1997. Strachan was one of the members of the London Communist Party who had been assigned to meet, welcome, and assist in settling in Jones and organizing her first months in London.
- 29 Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge: Harvard University Press, 1993), 16.
- 30 *American Heritage Dictionary*, 4th ed., s.v. "exile," "deportation."
- 31 FBI files, 3.
- 32 Jones, autobiographical notes, December 6, 1955.
- 33 Patterson, 1.
- 34 Claudia Jones is the founder of the carnival that became the Notting Hill Carnival. See also "Symposium on Claudia Jones 28 September 1996. Session 4: Carnival" and Colin Prescod, "Carnival," in Marika Sherwood, Donald Hinds, and Colin Prescod, *Claudia Jones: A Life in Exile* (London, Lawrence and Wishart, 1999).

## Feroza Jussawalla

### Are Cultural Rights Bad for Multicultural Societies?

Culture is increasingly becoming an important word in the courthouse as the rights of people belonging to different cultures are being affirmed and contested. In a country like the United States, where citizens from all different races, classes, and ethnic groups are subject to the one "law of the land," dealing with cultural claims becomes difficult. In the part of the world where I live, along the Texas and New Mexico border between the United States and Mexico, articles about cultural claims appear almost every day in the newspaper: Tigua Indians taking "the law" in their hands to reclaim an ancestral drum or reclaim their rights to the city's water supply, or groups invoking the "right" to drive while intoxicated and protesting the open container law. When I read stories like these I often think of how in India we have separate laws for separate ethnic groups—Parsis and Muslims—and various laws under Hindu law for Brahmo samaj, Arya samaj, and other groups. A variety of cases, with perhaps the single exception of criminal cases, are adjudicated and tried under these separate laws. Will Kyrnlicka calls this the "millet system," citing the Ottoman Empire,

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for example, where Muslims, Christians, and Jews were all recognized as self-governing units.<sup>1</sup> Neither Britain nor the United States has previously faced the need to create laws based on ethnic identity, and to some extent such a system may not even be feasible. It might even cause a backlash against the increasing ethnic diversity by granting "cultural rights," say, to a Timothy McVeigh or to the Ku Klux Klan. The possibility of such backlash, suggests Will Kymlicka, makes an absolutist defense of cultural rights unworkable. Instead, he argues, cultural rights ought to be defended only insofar as the protected groups are not themselves intolerant. In other words, we should be tolerant of everything but intolerance itself. Yet intolerance can take many forms. Book burning, I suggest, cannot be equated with the taking of lives. Thus, when intolerance results in murderous criminality, it cannot be adjudicated by "cultural rights"; when it asserts itself in less clearly harmful ways, it may make sense to tolerate it.

In this essay, I join critics such as Daniel O'Neill in challenging the limits of tolerance in the liberal framework. Liberal theory defends "other" cultures only insofar as they conform to liberal principles. Liberal principles respect individual autonomy, such as freedom of speech for members of groups. But when Muslims were seen as being intolerant of Salman Rushdie's "freedom of speech" in 1989 during what has been dubbed the "Rushdie Affair," should we have denied them their "cultural rights" to express a relevant concept from their religion? To what extent do existing laws serve the needs of an increasingly diverse migrant society? What forms of cultural resistance are available to those whose values seem to be at odds with the dominant ideology? "Cultural rights" necessitate the creation of a shared set of assumptions about acceptable behavior in a multicultural society where people can live peaceably according to their cultures without infringing on the rights of others. For Kymlicka, the creation of "minority rights" is contingent upon liberalism, the basic principle of which is individual freedom. Liberals can endorse minority rights, he says, only "insofar as they are consistent with respect for the freedom or autonomy of individuals."<sup>2</sup>

Cultural rights theory came to the fore in Britain with the so-called Rushdie Affair, the Muslim protests over the publication of Rushdie's *Satanic Verses*.<sup>3</sup> This event, perhaps more than any other single event, Will Kymlicka says, "has led people in the West to think carefully about the nature of 'multiculturalism' and the extent to which the claims of minority cultures can or should be accommodated within a liberal democratic regime."<sup>4</sup> Lib-

eral intellectuals, and the general citizenry alike, who would ordinarily have supported "multicultural rights," felt that in this instance the "rights" that Muslims were invoking, their right to interpret Rushdie's book as blasphemous and subsequently to have it banned, transgressed the rights to freedom of expression and freedom of belief. The Muslim demand to have the book banned under Britain's archaic Blasphemy Act of 1697-98, which reaffirmed Lord Chief Justice Mathew Hale's dictum that Christianity is part of the laws of England,<sup>5</sup> some felt, clashed with the views of those very liberals who had spoken not only for Rushdie but for Muslims' rights, in general, to live peaceably in the country of their immigration. These same liberals, however, also did not believe in censorship and so were caught between two competing sets of claims. "Even Roy Jenkins, the father of the Race Relations Act 1976 and a politician of immaculate liberal credentials," Bhikhu Parekh writes, "lamented that 'we might have been more cautious about allowing the creation in the 1950s of a substantial Muslim community here.' He went further and reached the most bizarre conclusion that the Muslim behaviour had strengthened his reluctance to admit Turkey into the European community."<sup>6</sup> Because such logical jumps are made when an issue like the Rushdie Affair comes up, because it triggers old prejudices and strengthens them with new prejudices formed on stereotypes emerging from the moment, I argue that we need to recognize individual and particular "cultural" rights and that we need to be able to do so counting on a "tolerance" whereby a subsequent stereotype that emerges from the exercising of those rights is not used to exclude, discriminate against, and marginalize the group asking for that right.

*Tolerance* actually seems like a fairly lame word. We need more than tolerance. We need the fabric of our cultures to be reknit through laws, education, and acceptance of the fact that peoples from different parts of the world moving and migrating will not easily conform to those forms and notions of liberal democracy that the West has upheld as its way of life. The particularities of individuality and individual communities that constitute "culture" must be legalized and respected so that these communities can express their culture without being persecuted or judged as barbaric. Parekh reminds us that John Rawls's first assumption regarding political liberalism is that "the question of justice neither arises nor can be settled in a political vacuum."<sup>7</sup> Therefore it is important to look at particularities of cultures. But this of course raises the issues of what *culture* is.

We have all grown used to James Clifford's suggestion that there is no

"monolithic" culture. Clifford argues that cultures "travel," literally and metaphorically, spatially and temporally, and any site of interrogation is an intersection of various fluid and dynamic cultures.<sup>8</sup> But even as Clifford argues for the mixing of cultures, I can hear the Indian writer Raja Rao say, "My India I carry with me." In this sense Indian subcontinentals have been faulted with carrying the excess baggage of Indianness with them, particularly in Britain and most particularly during the Rushdie Affair. When one thinks of the subcontinental Muslim community in Britain, one does not think of any interstices that are under negotiation or interrogation or any that are fluid. One thinks of a transposed culture, retained almost as it was in Pakistan, that in the words of Kymlicka is "an intergenerational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language or history."<sup>9</sup>

Indians have been insistent about retaining the features of their culture over several histories of diasporic migrations. To ask them or any other "cultural" group to give up their particularities is to ask for an assimilation that is unfair. After all, the indigenous peoples of the Americas, for example, did not ask the "white" settlers to give up their particularities when they immigrated to the Americas. As we formulate "cultural rights" particularly for court cases, we need to be able to maintain a case for "culture." The assertion that you cannot have cultural rights without stereotyping or that to ask for cultural rights is to create stereotypes, or to see the two as dichotomous, is to raise the old argument of assimilation (and its current avatar in discourses of hybridity) that asks one to let go of the particularities of race and community and to be one with the "melting pot." This is the rhetoric of anti-multiculturalism. To paraphrase Bernard Shaw's Professor Higgins, Why can't *they* be more like *me*?

Speaking to the Muslim community of Bradford, perhaps the largest and most Islamic in the United Kingdom, Sir Michael Shaw, an MP for Scarborough, said, "You have come into our community, . . . and you must become part of that community. All branches must lead to one trunk, which is the British way of life. We mustn't retire to our own communities and shut ourselves out. Yet you have felt you have needed schools of your own."<sup>10</sup> This is the separateness and distinctness for which the Indian, Pakistani, and Bangladeshi Muslim residents of Britain, not just those recent migrants from the fifties but even those brought over by the British during many years of colonial encounters, felt they were most mocked by the British.

When Rushdie published his *Satanic Verses*, reinforcing this representation of them and of their religion, they balked. The Rushdie Affair and its aftermath are now well known and the book has generated several rounds of debate. But the lingering issue is that of the rights of the Muslims to have objected in the way they did. In Britain it became a cultural rights issue that began to have repercussions for minorities and minority groups exercising their rights elsewhere—where, for example, someone would argue that a particular practice may be against the laws of a locality but since it is endemic to a specific culture it should be "tolerated."

Many Third World critics, writing in support of Rushdie, whom they saw as having been wronged by having his "freedom of speech" curtailed, bolstered the image already created by Rushdie in this book of the Muslim immigrants as uncouth, uncivilized, undemocratic, not open-minded, and basically unfit to immigrate to the metropole. Rushdie, for example, portrayed the immigrants Gibreel Farishta and Saladin Chamcha as unable to dress like the British but wanting to be like the British. In a desperate attempt to register their arrival, the characters violate their own religious strictures by stuffing their mouths with bacon. Further, these men behave crudely toward British women. Rushdie also painted a dismal picture of Muslim communities in Britain, causing general consternation in East London, Southall, Brick Lane, and Bradford. The Muslims in London were already under scrutiny and were the focus of condescension. The book aggravated the injury by insulting the Prophet Mohammed and contemporary Muslim leaders such as the Ayatollah Khomeini by calling him a *haramzada*, or bastard.

The image of Muslims in Britain in *The Satanic Verses* was no different from that portrayed by the British school principal Ray Honeyford in Bradford in 1986. In an article entitled "Education and Race: An Alternative View," Honeyford argued that multiculturalism, what he called "multi-racial policies," constituted an assault on "British traditions of understatement, civilized discourse and respect for reason."<sup>11</sup> Rushdie's book coming hard on the heels of the Bradford incident, when there was physical unrest and Honeyford was made to resign, was seen as validating for the British their image of "Asians," particularly the "Indian subcontinentals," as Honeyford called them. In fact, the whole stance in the book is that of the Rugby-educated Rushdie looking down on the crude Bangladeshis of East London. Ironically, Rushdie and his postcolonial supporters had previously criti-

cized metropolitan communities and governments as racist and exclusionist for not embracing individuals like them. Then, when the Muslims denounced him and protested against him, Rushdie held up the metropole as the bastion of civilization, a binary opposite to the Manichean Iran of the Ayatollah Khomeini. The position of the protesting Muslims was depicted as being counter to the principles of freedom from censorship and freedom of speech, even while the protesters themselves were invoking their right to freedom of expression. Rushdie complained of censorship. The Muslims complained of censorship and of not being allowed to exercise their freedom of religion and freedom of speech about their religion. They invoked their rights as British citizens to exercise the freedoms guaranteed them under the constitution as immigrants to Britain, and they invoked Britain's blasphemy laws, to which they felt entitled.

Cultures were clashing and cultural claims became legal issues—for instance, the legal right to send girls to Muslim schools and require that they wear chaddors. In the United States even in small midwestern and western towns the question often asked is whether schools should allow Muslim children to keep *Ramzan* (fast) during the school day. (It will be interesting to see how the role of Muslim schools and organizations will play out in President George W. Bush's faith-based funding and education plans.) *Culture* here became a "bad" word. Hanif Kureishi writes about this in his essay, "Bradford": "There is a word you hear in Bradford all the time, in pubs, shops, discos, schools and on the streets. The word is 'culture.' It is a word often used by the New Right, who frequently cite T. S. Eliot: that culture is a whole way of life, manifesting itself in the individual, in the group and in the society. It is everything we do and the particular way in which we do it."<sup>12</sup> British culture. Henley Day, Derby Regattas, and liberal thinking were coming in conflict with Cat Stevens, established Muslim schools, Bengali-speaking taxi drivers, and the call to prayers five times a day from the mosque in Regent's Park. As far back as 1986, Kureishi saw that the talk of unity, of merging with the dominant culture, embodied a form of racism that excluded all black British, West Indians, South Asians, from such rights as seeking a job just because of their ways of being.

Today these ways of being, resultant upon the exercising of cultural rights, have led to the kinds of stereotypes, particularly of Muslims, that we see in Susan Moller Okin's essay "Is Multiculturalism Bad for Women?"<sup>13</sup> The essay immediately became fodder for those who would block immigration

and curtail the rights of people of color, perpetrating the stereotype of Third World women, particularly Muslim women, as being trapped in cultures that promote clitoridectomies, arranged marriages, veiling of women, and other barbarous "black" (as in black British) Muslim rituals. The essay reinforced all the U.S. and British media's stereotypes about Third World women.

In Britain, for example, authorities plan to charge parents with abduction who force arranged marriages on their children. The maximum sentence for abduction is fourteen years, though offenses involving arranged marriages would carry a higher penalty. Britain's junior home minister, Mike O'Brien, says, "Multicultural sensitivity is not an excuse for moral blindness." Thus, forced marriages, he adds, "could not be justified on religious or cultural grounds."<sup>14</sup> British papers quite frequently report of young Muslim women complaining about this practice. In one case a prodigy at Oxford ran away from the university and her parents, fearing their imposing on her a practice, that, at least in India, over hundreds of years, over many million marriages, seems to have yielded a larger percentage of happy and long-lived marriages than has any liberal democracy in the West. In their introduction to the collection *Is Multicultural Bad for Women?* Joshua Cohen, Matthew Howard, and Martha Nussbaum note that "certain cultures accept and practice" the "theory that people are not owed equal respect and concern."<sup>15</sup>

Among other responses to Okin's essay is a piece by the postcolonial critic Homi Bhabha. Bhabha ends his essay in the collection with what seems to be a plea for hybridity: "An agonistic liberalism questions the 'foundationalist' claims of the metropolitan, 'Western' liberal tradition [of tolerance for intolerance, presumably] with as much persistence as it interrogates and resists the fundamentalisms and ascriptions of indigenous orthodoxy. An awareness of the ambivalent and 'unsatisfied' histories of the liberal persuasion allow 'us'—postcolonial critics, multiculturalists, or feminists—to join in the unfinished work of creating a more viable, intra-cultural community of rights."<sup>16</sup> What such an intracultural community of rights would entail we are not told. I presume that "intracultural" presupposes a hybridity whereby one culture has to compromise on its practices, which may seem illegal or undemocratic in a "Western liberal" tradition. While seeming to counter Okin, Parekh in the same collection, rings an even more dangerous note that could easily be misread in the United States with its growing Muslim presence, new mosques in many communities, and pleas to allow

Muslim children to keep Ramzan in a horrified school system. "If minority cultures are to be required to conform to fundamental liberal values there is no reason to stop with the equality of the sexes. One could equally consistently require them to respect such other fundamental liberal values as autonomy, individualism, choice and open internal debate."<sup>17</sup> An ordinary reader, picking up or reading a newspaper review of the edited collection, could easily read these words as an injunction, rather than the indictment I think Parekh intends, to make culturally and religiously different people conform to Western liberalism, if not to all Western values.

Liberalism seeks to guarantee that "members of ethnic and national groups are protected against discrimination and prejudice, and they are free to maintain whatever part of their ethnic heritage or identity they wish, consistent with the rights of others."<sup>18</sup> This understanding of liberalism is consistent with the right of Muslims to protest Rushdie's book as being blasphemous without being stereotyped as barbaric or as intolerant illiberals. Kymlicka writes, "Indeed is it not fundamentally intolerant to force a peaceful national minority or religious sect—which poses no threat to any one outside the group—to re-organize its community according to 'our' liberal principles of individual liberty?"<sup>19</sup> This challenge put many "liberals" in a quandary that was only heightened by the controversy over *The Satanic Verses*. Of course liberals want to seem accommodating of minority groups just as they want to seem accommodating of freedom of speech. So the focus shifted, as it were, from the "liberal democracy" where this was all playing out to the Ayatollah Khomeini's Third World dictatorial stance of issuing the *fatwa*. Stereotyping, usually used for exclusion, the sort Ray Honeyford seemed to practice in Bradford, merged with a defense of culture(s). What is worse, we may ask, the inability to invoke aspects of culture in one's defense when those aspects may not accord favorably with the values of the dominant culture, or the stereotyping, the general exclusion, ghettoizing, and persecution that would follow inevitably from such a defense and affect not just an individual case but also subsequent cases from that culture?

I think that as new immigrants bringing new cultures and new beliefs from our parts of the world, where in fact they may be very old beliefs, bringing new and different practices, of religion, yea of *being* itself, it is important that we uphold minority cultural rights, the rights to be ourselves in the communities to which we have immigrated without the subsequent persecution of stereotyping. As Kymlicka puts it, even "liberal thinking on

minority rights has too often been guilty of ethnocentric assumptions or of overgeneralizing particular cases, or of conflating contingent political strategy with enduring moral principle."<sup>20</sup>

The possibility not only of upholding Muslims' rights to see *The Satanic Verses* as blasphemous but also of upholding their right to see it as such without further marginalization as a barbaric peoples goes against every idea that Britain's liberal democracy holds about censorship, which it sees as taboo in any form—a shocking, horrific phenomenon in a supposedly enlightened world. Under the same laws guaranteeing freedom of expression that Rushdie used to defend himself, Muslims also invoked their rights to burn the book, to protest against it, and in general to make a public display of their disapproval without molestation. It seems to have been less shocking that the Ayatollah Khomeini had offered a reward for killing Rushdie than that British citizens were being asked out of respect for newly immigrant Muslims and their culture and religious beliefs to tolerate their right to curtail Rushdie's freedom of speech.

In this instance cultural rights theory seems to be misnamed, for with the exception of a few theorists such as Will Kymlicka and Charles Taylor, who feel that the Muslims' rights had to be upheld, most recent cultural rights theory is actually disinclined to grant such rights to minority communities. Accustomed to thinking in certain ways and used to taking for granted certain individual liberties and constitutionally protected rights, most theorists question the granting of cultural rights to communities in which certain individual liberties are restricted. Again here the favored example is of Muslim communities that arrange marriages for their daughters, allegedly denying these young women their individual rights.

Increasingly, cultural rights seem to be associated with "Muslims," as they demand their rights to practice a religion that might require their children to fast during school days in Britain or the United States or their women to keep "purdah"—to be veiled—and as they demand religious schools that are as fundamentalist as Baptist schools. The theorists who write most about "cultural rights theory" are often secular liberals and therefore skeptical of such religious practices, even though they may be tolerant of people of color. They seem to be against the cultural rights of specific groups, such as the Muslims, to invoke their rights to fundamentalist practices. This is an interesting dichotomy that seems to question everything that liberals stand for.

As societies become more and more multicultural and as "cultural rights"

are invoked in the courthouse, it is becoming important to understand what they entail, and what effect they might have on our multicultural belonging. As Kureishi points out in his essay on Bradford, the word *culture* was being bandied about in places like Southall and Bradford by the "New Right" in order to marginalize those seen to be outside the culture. We need to rectify this and make *cultural rights* a term for the cultural rights of minorities, for the right of minorities to be different and indeed to have freedom of religion and practice and yet not be marginalized and stereotyped.

In recent theories, three types of multiculturalism have been delineated: "boutique multiculturalism," a superficial multiculturalism that is like a sampling at a smorgasbord; "strong multiculturalism," tolerant of the intolerances of multicultural groups; and "weak multiculturalism," mostly associated with academic curricula.

Boutique multiculturalists, Stanley Fish tells us, cannot hold up their multiculturalism when their "core values" are threatened. Fish describes the "boutique multiculturalist" as resisting "the force of the culture he appreciates at precisely the point at which it matters most to its strongly committed members, the point at which the African American tries to make the content of his culture the content of his children's education, the point at which a Native American wants to practice his religion as its ancient rituals direct him to, the point at which anti-abortionists directly confront the evil that they believe is destroying the moral fiber of the country, the point at which Mormons seek to be faithful to the word and the practices of their prophets and elders."<sup>21</sup> Daniel O'Neill associates "strong" multiculturalism with the work of Will Kymlicka, Charles Taylor, and Michael Walzer. "Strong multiculturalists," he writes, "are committed, in certain circumstances, to the defense of differential (or special) citizenship rights for multicultural groups based on their culture. The second level of multicultural argument I refer to (for lack of a better term) as 'weak' multiculturalism. Weak multiculturalists do not argue for differential citizenship rights, but seek a range of different goals. In the United States, these have included, for example, expanding the academic curriculum to reflect more fully the contributions of minorities."<sup>22</sup>

"Weak" in this sense definitely describes the postcolonial theorists who are now writing about cultural rights. Whereas they fought to expand the curriculum multiculturally, in their shape and form of radicalism, they were so taken up by an absolutist defense of free speech that they could not sup-

port the censoring of Salman Rushdie. Ironically then, theorists supporting Rushdie became "boutique multiculturalists." They could not take seriously the "core values of the cultures" they had been speaking for because those cultures drew the line at blaspheming and criticizing their religious leaders. In *The Satanic Verses* Rushdie calls the Ayatollah and the Prophet bastards, perhaps presuming that the principle of freedom of speech would allow it to pass as a joke. What he did not realize was that when the core values of those immigrant cultures clashed with the core values of his British public school education, which had taught him freedom of speech, he would come out the loser and the whole issue of who should tolerate whom, or as Bhabha would put it, "who is one of us," was threatened.

Fish distinguishes between "boutique multiculturalism" and "strong multiculturalism" by saying that strong multiculturalists can hold up and will hold up their support for multiculturalism even when something threatens that which "constitutes the core of our identities."<sup>23</sup> In the Rushdie Affair, postcolonial critics would not, or could not, support the Muslim fundamentalists, the binaristic opposite of themselves. They viewed these Muslims as models of "those who follow the practices of their local cultures to the point of failing to respect the practices of other cultures—by calling for the death of an author" whose work was seen as blasphemous.<sup>24</sup> Yet those who were upholding Rushdie's freedom of speech, Charles Taylor points out, were doing no less than "endorsing the superiority of some cultures over others."<sup>25</sup> It should come as no surprise that Western culture was upheld at the expense of the deep-rooted religious feeling of Muslims. Such endorsement of the superiority of Western culture is really a very unpostcolonial sentiment, especially for those who have written against colonial oppression. Taylor writes, "The acute problem arises from the fact that international migration is making all societies less culturally uniform. There are large Muslim minorities in 'Christendom.' We are going to need some *inspired adhocery* in years to come."<sup>26</sup> Taylor is actually suggesting a compromise; but it is from here on—from the Rushdie Affair and its cultural critique on—that we see the suspicions of immigrants who keep their cultures begin to multiply. This suspicion particularly of Muslims and their practices has now grown in the United States not simply because of September 11, 2001, but because of President Bush's repeated injunction, even in his State of the Union address on January 28, 2002, to "report suspicious activity." Tariq Madood, a senior fellow at the Policy Studies Institute in Brit-

ain coined the phrase *cultural racism* precisely for this: "Cultural Racism is the willingness of white working-class youths to incorporate young black men and women into their culture, and even emulate them, while hardening their attitudes against groups not seen to be assertively different and not trying to fit in, such as Asians and Muslims. Religion and individual ethnic identities should be the new touchstones. We need a more pluralized conception of racial equality in Britain and one from which Americans may learn something."<sup>27</sup>

Taylor, whom Kymlicka and O'Neill categorize as a strong multiculturalist, argues "for a type of liberalism grounded very much on the judgment of what makes a 'good life.'"<sup>28</sup> This idea is important because it opens the way to our creating a "good life" for all cultures and polyethnic groups. Once we recognize that a "good life" includes the freedom to belong to a polyethnic community and to practice one's religion and culture without negative repercussions, then we can say that we have achieved multicultural citizenship and multicultural recognition. Only then will we have a global civilization that will provide "its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational and economic life, encompassing both public and private spheres."<sup>29</sup>

#### Postscript: On September 11, 2001

This essay does not endorse acts of terrorism by fringe groups such as those of Osama bin-Laden or the Taliban, as they do a great disservice to persons originating from their cultures. Additionally, no anti-imperialist or anticolonialist rationalizations can be justified as the attacks were funded by billionaire Saudis. Osama bin-Laden in his billionaire benefitor-from-capitalism status is simply an individual renegade, vigilante. He seems to have taken it on himself to carry out some private vengeance of his own which cannot be justified in the name of postcoloniality or anti-imperialism or anticapitalism. Just because bin-Laden issues from a non-Western nation does not mean that he or the persons from whom he inherited his billions were not exploitative capitalists.

The World Trade Center attacks bring shame on all Muslims and those who would speak for them or for their cultural rights. Culturally speaking, in the name of *jihad*, the suicide bombers have committed the greatest Koranic sin of all: *Namakh Harami*. A *Namakh Haram* is someone who benefits from

an individual or a state and then turns on them. In the days of traveling tribal sheikhdoms, a *Namakh Haram* was someone who benefited from the munificence of a generous benefactor and then turned against them—literally ate their salt and spat on their hospitality. Koranic Law has never endorsed this. If true Koranic Law is to be upheld, the suicide bombers should go to hell instead of the heaven promised them in the name of *jihad*. Salman Rushdie in *The Satanic Verses* called the Ayatollah Khomeini a *haramzada*—someone who does something that is *haram* or forbidden. In this context, all those affiliated with bin-Laden are *haramzadas*.

Albuquerque attorney Tim Hale is probably among the first to point out that "there are potential civil rights claims that could develop" as a result of the backlash in the aftermath of the World Trade Center attacks. "For example, racial profiling could become an issue if Muslim citizens are unfairly targeted," he said.<sup>30</sup> William Buckley argued that "profiling [is] informed by reality."<sup>31</sup> Profiling cannot be justified when a Hindu professor's throat is slashed at New Mexico State University or a Sikh gas-station owner is shot in Mesa, Arizona, when Hindus and Sikhs themselves have long been in a struggle with the Muslims.

It is unfortunate that the individualistic and oftentimes irresponsible actions of a few isolated individuals can hurt the common good of a community so easily. It is the specific, irresponsible individuals who should be held accountable rather than eroding the civil rights of the whole or scapegoating innocent people around the world.

#### Notes

- 1 Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (New York: Oxford University Press, 1995), 156.
- 2 *Ibid.*, 75.
- 3 Charles Taylor, Will Kymlicka, Michael Walzer, Stanley Fish, and Bhikhu Parekh all ascribe the beginning of "cultural rights theory" to the Rushdie Affair. For an overview of the Rushdie Affair and of cultural rights theory subsequent upon the Rushdie Affair, see Daniel O'Neill, "Multicultural Liberals and the Rushdie Affair: A Critique of Kymlicka, Taylor, and Walzer," *Review of Politics* 2 (spring 1999): 219–50.
- 4 Quoted in *ibid.*, 219.
- 5 F. S. Nariman, "Freedom of Speech and Blasphemy: The Laws in India and the U.K.," *International Commission of Jurists Review* 53 (1989): 42; David Lawton, *Blasphemy* (Philadelphia: University of Pennsylvania Press, 1993).
- 6 Bhikhu Parekh, *Rethinking Multiculturalism: Cultural Diversity and Political Theory* (Cambridge: Harvard University Press, 2000), 301.

## Doriane Lambelet Coleman

### Culture, Cloaked in *Mens Rea*

- 7 Ibid., 85.
- 8 James Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art* (Cambridge: Harvard University Press, 1988), 110.
- 9 Kymlicka, *Multicultural Citizenship*, 18.
- 10 Quoted in Hanif Kureishi, "Bradford," *Granta* 20 (winter 1986): 149-70; quote from 156.
- 11 Quoted in *ibid.*, 166.
- 12 Kureishi, "Bradford," 68.
- 13 See Susan Moller Okin, "Is Multiculturalism Bad for Women?" in *Is Multiculturalism Bad for Women?* ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (Princeton: Princeton University Press, 2000).
- 14 Quoted in Richard Ford, "Abduction Charges to Halt Forced Marriages," *Times* (London), June 30, 2000, 12.
- 15 Joshua Cohen, Matthew Howard, and Martha Nussbaum, "Introduction: Feminism, Multiculturalism, and Human Equality," in Okin, *Is Multiculturalism Bad for Women?* 4.
- 16 Homi K. Bhabha, "Liberalism's Sacred Cow," in *ibid.*, 79-84.
- 17 Bhikhu Parekh, "A Varied Moral World," in *ibid.*, 69-75.
- 18 Kymlicka, *Multicultural Citizenship*, 4.
- 19 *Ibid.*, 154.
- 20 *Ibid.*, 195.
- 21 Stanley Fish, "Boutique Multiculturalism; or, Why Liberals Are Incapable of Thinking about Hate Speech," *Critical Inquiry* 23 (winter 1997): 378-83.
- 22 O'Neill, "Multicultural Liberals," 220.
- 23 Fish, "Boutique Multiculturalism," 379.
- 24 *Ibid.*
- 25 Charles Taylor, "The Rushdie Controversy," *Public Culture* 2 (fall 1989): 119.
- 26 *Ibid.*, 121.
- 27 Stuart Wavell, "Wrestling for an Equal Share," *Sunday Times*, March 26, 1995, Report 8-10.
- 28 Charles Taylor, "The Politics of Recognition," in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton: Princeton University Press, 1994), 25-73.
- 29 Kymlicka, *Multicultural Citizenship*, 77.
- 30 Anika Gusterman Amon, "Attorney: Rights Talk Relevant After Attack," *Albuquerque Journal*, September 25, 2001, D1.
- 31 William F. Buckley Jr., "Profiling Informed by Reality," *Albuquerque Journal*, September 24, 2001, A9.

**P**roof beyond reasonable doubt of the *mens rea* or state of mind associated with a particular crime is a requirement for the successful prosecution of all criminal defendants under our system of justice. In the legal jargon, it is part of the prosecution's *prima facie* case. Concomitantly, criminal defendants may successfully challenge the case against them on the ground (among others) that the prosecution has failed to meet this requirement. In this context one of the essential remaining disputes is waged among legal scholars and practitioners about the propriety of the "cultural defense" in cases involving immigrant crime.<sup>1</sup> Specifically, there is disagreement about the admissibility of evidence about immigrant culture and cultural practices in support of the argument that the defendant suffered from a form of cultural "diminished capacity" or "insanity" at the time of the crime. There also is ongoing debate about the admissibility of such evidence in support of the affirmative defense of provocation. While the latter is technically not directed at *mens rea*, like diminished capacity and insanity, it is introduced to explain the defendant's loss of control in the face of an extreme emotional disturbance.

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