

The Place of Culture in Forensic Psychiatry

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Members of a multicultural society must all be subject to the same equitable system of justice. However, culture exerts profound influences on human behavior, and cultural considerations have a place in determinations of capacity and in appropriate sentencing. Cultural psychiatry can contribute to forensic psychiatry by helping to contextualize individuals' actions and experiences. This contextualizing can be done through cultural consultations that employ interpreters and culture brokers to identify the role of culture in individuals' psychopathology. Clarifying how cultural background has affected individuals' capacity to form a criminal intent or control their behavior may allow a better determination of level of culpability and guide appropriate sentencing. However, framing behavior as culturally influenced may also stereotype and stigmatize specific groups. To avoid this, culture must be understood in terms of power relationships between minority groups and the dominant society. Cultural factors are not only relevant to the experience of specific groups but pervade the entire judicial system shaping the process of moral and legal reasoning.

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Recent years have witnessed a growing debate on the place of culture in the legal system. Legal practitioners and theorists have argued the pros and cons of using culture as a defense in criminal cases.^{1,2} The value of attending to culture includes having a better understanding of the origins of behavior and the level of volition and intent in the accused individual's behavior. At a wider societal level, acknowledging cultural differences in law can contribute to building a pluralistic society that can accommodate some differences in values that are important to cultural communities.³ This is evident, for example, in efforts to develop customary law and sentencing circles among indigenous peoples that respect traditional values of harmony and connectedness.^{4,5}

Those supporting the use of culture as a defense argue that it is intrinsically unfair to judge someone exclusively by the rules and values of a society that he or she does not know. Moreover, since culture shapes personal identity, emotional responses, and patterns of reasoning, it can be expected to influence motiva-

tion and intent in situations involving criminal actions. Following this line of argument, in regard to considerations of individual volition and intent being important for determining legal culpability, cultural considerations become pertinent in an equitable justice system.

Against this pluralistic view, critics argue that allowing culture as a defense is dangerous. It will undermine the fairness of the justice system by allowing inconsistent or arbitrary standards to be applied; crimes that are consistent with local cultural conventions will go unpunished; and, ultimately, whole groups will be stigmatized because they are not being held to the same moral and juridical standards as the rest of society. Advocates of universal human rights note the importance of clearly articulated standards to which every individual must adhere and by which everyone is judged.^{6,7}

This ongoing legal debate in multicultural societies is reflected in the field of forensic psychiatry, where consultants may be asked to supplement their usual psychiatric assessment with attention to social and cultural factors that can explain or contextualize the behavior of individuals accused of crimes. Boehnlein and colleagues⁸ noted the complexities of this area and suggested that applying cultural considerations to the process of sentencing may be less contentious than introducing culture as a defense against

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a crime. The determination of whether someone committed the crime is then separated from questions of their level of intent and the appropriate punishment. Recognition of the contribution of culture also may help in the determination of what interventions should be employed to bring about rehabilitation.

The assessment of cultural factors affecting behavior can be conducted by a psychiatrist or psychologist who is familiar with the language and cultural background of the patient or who has access to interpreters and culture brokers.^{9,10} The cultural formulation in Appendix I of DSM-IV¹¹ provides a framework for organizing cultural information relevant to psychiatric assessment and, although it was not designed for this setting, can be applied in forensic contexts.^{12,13} In support of this use of the cultural formulation, Boehnlein and colleagues presented the case of a refugee from Cambodia who was facing the death penalty and for whom many developmental insults and traumatic experiences evidently contributed to criminal actions. The crucial factors in that case relevant to sentencing were linked to the impact of perinatal trauma (brain anoxia and subsequent damage resulting in poor school performance and impulsivity) and organized violence (which acts in many ways: directly, as a cause of physical and psychological trauma; developmentally, through impaired parenting; and socially, through subsequent experiences of dislocation).

There is a long history of jurisprudence that recognizes decreased culpability in people with evident cognitive impairments and that modifies sentencing on this basis.¹⁴ Recent decisions in the United States that prohibit the death penalty for individuals with intellectual disabilities reflect this basic principle of justice.¹⁵ As Boehnlein and colleagues⁸ pointed out in discussing their case, cultural issues arise mainly regarding the appropriate use of culturally fair and meaningful methods of neuropsychological testing or clinical assessment and the use of interpreters. These are important matters given that, for people from many backgrounds, culturally adapted and validated testing instruments do not exist, and most clinicians have little training or experience in working with interpreters and culture brokers. However, these technical problems have obvious solutions, including changes to training programs and professional accreditation.

Bringing awareness of cultural concerns to the attention of judges and jurors can play an important

role in improving the functioning of the justice system. It is worth asking, however, whether some social and cultural circumstances are so familiar or taken for granted that they are not recognized or given weight as explanations for criminal actions. Would a young African American growing up in an urban ghetto exposed to repeated traumas and violence receive a milder sentence if a cultural psychiatrist or psychologist provides an empirically based account of the ways in which his actions were influenced by his upbringing and current surroundings?

A cultural psychiatrist could certainly argue the case that persons exposed to such systematic inequalities, who suffer cognitive impairment as a result, should receive some mitigation of their sentence. In these circumstances, however, the consultant might encounter considerable resistance from those who take for granted the culturally constructed inequalities of U.S. society (which emerged from the history of racism and slavery) or, indeed, blame these enduring inequalities on the victims of the legacy of historical injustices.¹⁶ This discrepancy between the response to the compelling story of someone from far away exposed to genocidal violence and the familiar story of yet another victim of the unjust social system close to home, points to the danger of focusing on "culture" as a construct that elides the social, political, and economic factors that create structural violence.

Cultural psychiatry must attend to the culture of the familiar and especially to the interactions between the values of the dominant society and those of local communities and individuals who are systematically disadvantaged by the dominant ideologies and institutions. The focus of the cultural formulation on the culture of the "other" should be supplemented with frameworks for assessment that cover matters related to the social predicament of specific groups, their histories of migration, and in particular their position vis-à-vis the dominant cultural ideologies and practices of U.S. society. In the case of the United States, this must include the widespread impact of racism and its legacy on the well-being of individuals and on the functioning of the criminal justice system itself.

Although most discussion of cultural factors in forensic psychiatry focuses on the dilemmas of ethnoracial groups, the criminal justice system itself is a cultural institution based on specific concepts, perspectives, and values that may not be in complete

accord with other cultural traditions. This disparity is transparently the case with regard to the use of capital punishment—a practice in which the U.S. is unique among the countries of the West. Specific U.S. cultural values and attitudes must be invoked to account for the persistence and acceptance of the death penalty, where so many other countries have come to find it morally beyond the pale.

Culture and Context

Consideration of the relevance of cultural background and experience to the process of sentencing raises several complex theoretical and practical questions. In what sense can a cultural explanation justify a claim of (1) diminished capacity to make a moral distinction between legally right and wrong behavior, (2) lack of criminal intent or volition, or (3) other mitigating circumstances that should influence sentencing? The answer to each of these questions is somewhat different.

The capacity to make moral judgments depends not only on intact cognitive-emotional functioning but also on having acquired the implicit rules and hierarchy of values that govern local morality. In noncapital cases, it is easy to recognize cultural divergences in these values. For example, exposure to violence may change the capacity for thinking through the consequences of one's actions by causing a narrowing of attention or intense emotion that interferes with thinking about the consequences of one's actions.

Volitional behavior emerges from a complex matrix of social, psychological, and biological processes, each of which can link past experience to current behavior. Cultural variations in childrearing and cultural concepts of the person may lead to differences in emotional experience, self-control, and explanations of action.¹⁷ Hence, any comprehensive account of the origins of behavior must include cultural dimensions. This necessity is especially true of motivation, volition, intent, and control that are crucial in determining the degree of culpability for harmful actions and the appropriate social response. Both social and psychological considerations suggest that there are many gradations of volition and control in behavior and that these may be crucial to deciding the level of intent.¹⁸ We need a detailed understanding of the role of culture in ordinary cognitive functioning and in psychopathology to understand when and where individuals may be partially exculpated

because their cultural background has affected their capacity to form a criminal intent or to control their behavior.

In many cases, it is not whether the act was committed that is in question, or the level of intent or control, but what its meaning and significance is to the defendant. Culture frames problems and presents us with the categories and concepts through which we organize and understand our own actions. For example, the Japanese mother who tries to kill her child and herself may be following the cultural template of *otaku*—joint suicide—in which, because of cultural values, the lives of mother and child are linked.¹⁹ The intent then is not murder as a separate act but the completion of a suicide in which the child is included as an extension of the self. Understanding this has implications for judgments of culpability and the extent to which a person may commit other acts of violence in the future.

Supplying the cultural context of behavior changes its meaning and renders the individual's reasoning more transparent. In effect, it allows the judge to reconstruct imaginatively the affective logic of the defendant's cultural world.^{20,21} The increased empathy that results may allow a better sense of the rationale for the person's behavior; such understanding could increase or decrease the assessment of his or her culpability. What weight should be given to personal and social suffering in assessing the level of responsibility of a given person? Here, there is a wide range of positions. Some argue that people who have been victimized themselves cannot be held entirely responsible for their subsequent actions. To the extent that we recognize victimization as modifying the person's capacity for insight, intent, and voluntary control of behavior, we might want to mitigate the sentence. However, exposure to a traumatizing or disadvantaged social environment or developmental history *per se* cannot be sufficient reason for altering a sentence. There must be evidence that these hardships have directly affected the individual's ability to form and express criminal intent and control and to act.

Cultural Understanding or Racial Stereotyping?

Since we are fundamentally cultural beings, cultural concerns are ubiquitous and are not the sole province of people identified as ethnically different. A social and cultural account can be given for the

origins of any behavior, action, or episode. Why then should cultural explanations be offered just in some cases? Surely this has to do with the assumption that the law is already based on a fund of tacit cultural knowledge shared by all participants from a similar background. This cultural background knowledge is part of everyday moral thinking as well as the formal deliberations of the law—both of which use reasoning based on narrative models or templates.²² These narratives tend to present the values and perspectives of the dominant culture as simply common sense and so obscure the cultural context of moral and legal reasoning.²³ The recognition of culture also reflects the politics of identity and exclusion. Certain individuals or groups are recognized as different according to the history, norms, and values of the dominant society and its institutions. Their behavior therefore requires explication in terms of culture.

Framing behavior as culturally influenced or determined thus serves not only to explain some of their historical and contextual origins, but also to separate and divide groups. By its very nature, cultural explanations invoke collective values and experiences to explain individual actions. Although aiming to recognize the collective roots of an individual's identity, experience, and behavior, the use of a cultural defense may contribute to stereotyping and stigmatizing whole groups or communities.¹⁶

For example, in 1988 a judge in Quebec, Monique Dubreuil, sentenced two men convicted of the gang rape of a young woman to 100 hours of community work and 18 months of house arrest.²⁴ The prosecutor had asked for four to five years of incarceration. The judge's rationale for this lenient sentence was "cultural sensitivity." The young woman and the perpetrators were all Haitian immigrants to Canada, and the judge opined, "The absence of regret of the two accused seems to me to be related more to a cultural context, particularly with regard to relations to women, than to a truly sexual problem" (Ref. 24, author's translation). Women's rights groups as well as many within the Haitian community in Montreal were outraged. In effect, in the name of cultural sensitivity, a whole group was stereotyped and stigmatized.

The problem centers on how culture and community can be thought about in ways that acknowledge distinctiveness without stereotyping or essentializing—that is, reducing the complexity of a group or individual to a single essential characteristic.²⁵ Such a

simplification can only be achieved through a detailed account that shows the links between past and present social contexts and behavior. In her discussion of the culture defense, Anne Renteln² employs the UNESCO view of culture as "traditional culture" shared by a group, but in the contemporary world, most people are between cultures, forming their own distinctive hybrid identities in which their relationship to community and tradition is shifting, ambiguous, and often contentious.²⁶ Moreover, culture itself cannot be understood without looking at the power relationships between minority groups and the dominant society. Approaching culture from the point of view of the dynamics of power and hybridity works against the tendencies to essentialize and stereotype the "other" and underscores the ways in which culture exerts its effects, not only through remodeling the individual's brain,²⁷ but even more forcefully through constructing and justifying social institutions and practices.²⁸

Conclusions

As our countries become more diverse, we must make certain that efforts to respect cultural difference and diversity do not lead us to essentialize and exoticize the "other." Misguided beneficence may inadvertently make people second-class citizens and impede their integration into the community. Being part of a multicultural society means being subject to the same judicial rules as the rest of the community. However, as with the provision of mental health services, true equity does not mean that everyone receives precisely the same treatment regardless of their ability to understand and respond. Taking culture into account means that the purposes of the criminal justice system—which include prevention and rehabilitation—can be achieved more effectively. Cultural awareness must be coupled with an equally astute political awareness that traces the consequences of clinical or forensic consultations out into the larger society. Ultimately, culture is not something that belongs just to the person in an identified minority group; it pervades the whole judicial system.

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