

Judges in the Classroom Lesson Plan

A Cultural Defense to Crime?

Introduction:

For a conviction to occur in a criminal case, the prosecutor must establish beyond a reasonable doubt that the defendant committed the act in question with the required intent. The defendant is not required to present a defense but can instead simply force the government to prove its case. However, a number of possible defenses are available to defendants in criminal cases.

Objectives:

1. To define a "defense to crime."
 2. To identify various defenses to crimes in Utah.
 3. To examine "cultural defense" and apply it to case studies.
 4. To identify arguments for and against a cultural defense.
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Grade Level:

Grades 7-12

Time:

One class period (approximately 50 minutes)

Materials:

One copy of Handout 1 (Cultural Difference: A Defense?) for each student

Procedures:

1. **Begin the class by introducing yourself** and setting the students at ease. Tell students that the purpose of today's class is to examine defenses to crime and to give them a chance to decide whether or not to accept a "cultural defense."
2. **Brainstorm with students** and write on the board a definition of a defense to crime.

A defense to crime is a legal or factual reason to eliminate or reduce a person's responsibility for a crime.

3. **Ask students** to identify as many defenses as they can. Define the defenses as they are presented. Spend about 10 minutes on this activity. Make sure that the list includes the following defenses:

Defenses:

- a. **Compulsion or Duress** occurs when a defendant engages in a crime because he is coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person; and, the force or threatened force is such that a person of reasonable firmness in his situation would not have resisted. The defense of compulsion is unavailable where a defendant intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

For example, Mrs. Turner was visiting her husband in prison. She was found with drugs and charged with possession of contraband. She successfully used the defense of duress when she showed that a person approached her about carrying marijuana into prison and told her that if she refused her husband would be hurt. He additionally told her that her husband had been deliberately hurt in a basketball game in prison and that he had friends in the wing in which her husband was held. He said that these friends had intimidated Mrs. Turner before and, two days after Mrs. Turner was arrested, a fire was discovered on her porch along with a threatening note.

- b. **Mental Illness**, including the insanity defense and diminished mental capacity defense, is available if the defendant, at the time of the crime, as a result of a mental illness, lacked the mental state required as an element of the offense charged. Utah does not employ an "insanity" defense, which permits an individual to avoid criminal culpability entirely as a result of mental disease or defect; rather, the existence of mental illness can only serve to negate the mental state for a specific crime.
- c. **Self-defense and defense of others** permit a person to use or threaten to use reasonable force in defense of him or herself, or in defense of others. A person may not use deadly force in defense unless he or she believes that deadly force is necessary to prevent death or serious bodily injury to himself or a third person.
- d. **Entrapment** is a defense that is available where the defendant proves the criminal design originated in the mind of the police and that the police lured the defendant into committing a crime he or she had otherwise not intended to commit. It is not entrapment if the police merely gave a defendant an opportunity to commit a crime.

- e. **Voluntary intoxication** due to alcohol or drugs is **not** a defense to crime. However, some crimes require proof of a specific mental state, and voluntary intoxication may negate the specific mental state required for that crime.

For example, when Toni is charged with burglary, she claims she was high on crack cocaine. Burglary occurs when a person, with intent to commit a crime against a person or property inside, enters or remains unlawfully in a dwelling. If she can prove that she was high, intoxication is a valid defense because it negates the specific mental state (the intent to commit a crime against a person or property inside) required to prove the crime of burglary. She can still be charged with other crimes that do not have a specific intent for one of its elements, like criminal trespass. If she decided to burglarize a home and then got high, or if she got high to get up enough nerve to commit the crime, then intoxication is not a defense to burglary.

- f. **Alibi** is the defense that someone other than the defendant committed the crime.
 - g. **No crime committed** means the prosecutor fails to prove each of the elements of the crime beyond a reasonable doubt.
4. Instruct students they will now examine a series of cases in which defendants have asked courts to excuse them from criminal liability, or to reduce their liability, based on their culture. A cultural defense -- or the assertion that a person's different cultural background influenced his or her actions -- can be used as a mitigating factor to help a defendant get a plea deal or a break on his sentence. Pass out Handout 1 and have students work in small groups of no more than five to determine how they would decide the cases. Each group should designate a reporter to write down its answers and a spokesperson to report back to the class. Tell students they have 10 minutes to work in small groups. Ask them if they understand the assignment.
 5. Debrief groups by letting the spokesperson from each group give one argument or point for each of the questions before opening up the discussion to the entire class. Spend about 25 minutes on this debriefing.

Answers to the Case Studies

Students' opinions will vary. Defense lawyers claim that the idea of using a cultural defense is to help explain a defendant's personal circumstances and why they would do what they did. This coincides with American notions of "individualized justice" and "cultural pluralism." Supporters of this defense state they are not concerned with social consequences, i.e. if other immigrants think their behavior will be tolerated, because the concern of the court is whether or not the defendant is guilty based on all the evidence.

On the other hand, there is concern that increased use of the cultural defense will expose U.S. courts to patriarchal values from abroad -- to the detriment of immigrant women, many of whom were treated as second-class citizens in the lands they left behind.

Some Americans do not want to import these cultural values into the judicial system and don't want women victimized by customs that may no longer be permitted in the homelands. Americans don't want so-called cultural experts perpetuating certain stereotypes that may not be accurate.

Others point to the fact that the victims of these "cultural crimes" are always society's powerless -- women and children.

Others claim that foreign customs should not override American law, since "[e]very foreigner residing in a country . . . is as much bound to obey its laws as native citizens."

Some worry about backlash, arguing that because of this defense where people get lesser penalties or convictions for lesser crimes, that people will believe that immigrants are getting away with something.

Note that the last two cases raise the issue of separate cultures within the United States. The United States in fact is not one homogeneous culture. How much should group culture be taken into account?

6. Conclude by making the point that a cultural defense is one area of society where the many cultures of America present troubling issues. Add your personal experience and views of cultural defense.

Handout 1

Cultural Difference: A Defense?

Directions: Read each of the following cases that used culture as a defense. Then, identify three arguments for, and three arguments against, allowing culture to be taken into account for acts committed in the United States.

Case 1:

In New York, Chinese immigrant Dong Lu Chen was convicted of manslaughter and given five years on probation for killing his wife. He had picked up a hammer and hit his wife eight times, leaving her to die in her bed. Chen, 51, who left China two years before, claimed a "cultural defense." He said that a person raised outside the United States should not be held fully responsible for conduct which, while illegal in the U.S., might be acceptable in the home country.

Chen had killed his wife in their apartment because she had been unfaithful. At his trial in New York, his lawyer argued that traditional Chinese notions about the shame of adultery had propelled him to violence. At sentencing, the judge agreed.

Case 2:

In California, Fumiko Kimura, who had come from Japan 14 years earlier as a young adult, tried to drown herself and her two children after learning of her husband's affair. She survived, but the children did not. She was charged with murder, but 4,000 local Asians signed a petition pointing out that in Japan, the ancient rite of "oyako-shinju" (parent-child suicide) is not considered murder. In the end, she pled guilty to manslaughter and got probation.

Case 3:

In Fresno, California, Tou Moua, a refugee member of the Hmong mountain tribe of Laos killed his wife, Yeg Yang Moua, for having an affair. He was convicted of manslaughter. His lawyer said there was no provision for divorce under Hmong custom, and that a Hmong husband was required to "execute justice" in such circumstances, as one traditional option. He got eight years in jail.

Case 4:

A 23-year-old African male immigrant to the United States faced a rape charge after engaging in what appeared to be forcible sex with an African girl, age 13. But the prosecutor dismissed the case after learning that under the courtship ritual of "marriage by capture," the young woman only "pretends" to be resisting. The prosecutor was not completely convinced, but decided the case was too weak for a jury.

Case 5:

Two Native American Indians were fired from their jobs in Oregon for their use of peyote in a traditional Indian ceremony during non-working hours. They were denied unemployment benefits because they were fired for misconduct. They were also criminally prosecuted for drug use. Their cultural defense to the use of peyote under freedom of religion was denied by the U.S. Supreme Court.

Case 6:

Amish parents refused to permit their children to attend school after eighth grade, in violation of state law, which required school attendance until age 16. The Amish claimed a cultural defense: that their children were required to work on their farms as part of the Amish life. The U.S. Supreme Court ruled in favor of the Amish.

Source:

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