
MARRIAGE BY CAPTURE IN THE HMONG CULTURE: THE LEGAL ISSUE OF CULTURAL RIGHTS VERSUS WOMEN'S RIGHTS

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Marriage by capture is a continuing cultural practice in the Hmong communities of America. Hmong American women have sought legal protection, but the American legal system has allowed for the use of cultural defense in most marriage by capture cases. The American legal system upholds criminal activities occurring in the Hmong community as a way to support cultural pluralism. The American court system has allowed the abductors to plead a lesser charge with no criminal punishment. With the use of cultural defense, Hmong women have no protection from sexual assault, kidnapping, or female subordination. America ought to provide human rights for Hmong women who are citizens of the country.

Hmong women in American society are considering new gender roles and are challenging the forms of gender inequality found in traditional Hmong culture. However, not all Hmong men and women agree that gender equality is desirable, nor do they favor the more gender-neutral culture in America. The practice of marriage by capture is the focal point for the cultural debates between Hmong in America. In marriage by capture, the man abducts a woman to be his wife and she is held captive for three days. After the third day, negotiations over bride price and a marriage ceremony is conducted by the *mej koob* (go-between) to legitimize the marriage. The Hmong communities in America cannot agree whether marriage by capture should be a cultural practice recognized by law, or a violation of human and women's rights. This paper argues that although recognizing culture in the American legal system may be a valid form of cultural pluralism in a racially diverse society, the principle ought not to apply in cases of marriage by capture as practiced amongst the Hmong. Marriage by capture promotes gender subordination and fails to acknowledge Hmong women's experiences as women of color, as well as their multiple oppressions in American Society. Although the American legal system should maintain cultural pluralism in general, the cultural defense of marriage by capture should not be privileged since it encourages and promotes gender inequality, male domination, and reinforces a patriarchal society.

Most Hmong women marry young and continue to do so in America. Marriage is the most important event in the Hmong culture, and an unmarried woman is a disgrace to the family. Pranee Rice states after her discussion with Vang, “The family will not receive a bride price and so will lose the money they spent in raising her as well as lose face. Vang points out that Hmong people see a woman without a husband as ‘worthless’; hence, she is not respected within the community.”¹ Marriage by capture is a marriage method practiced in the Hmong community; however, it is not the only method. Other methods include courtship, which leads to marriage proposals, and elopement marriages, which occur when parents do not give permission for marriage. To distinguish, elopement takes place when both the woman and the man agree to marry (consensual), whereas marriage by capture is an event where the man kidnaps the woman and forces marriage upon the woman (nonconsensual). Although Hmong couples in America are adopting American values and conforming to the belief that it is important to love each other before marriage, marriage by capture is still practiced as part of the Hmong culture. The *mej koob* makes the marriage legitimate by negotiation settlement, and conducts a proper ceremony for most Hmong marriages. The *mej koob* is a male clan member, who enforces and maintains the traditional culture by encouraging the woman to accept the marriage in marriage by capture. Ann Fadiman implies that Hmong are unwilling to conform and have been slow to assimilate into American culture, because Hmong families still encourage women to marry young, have large families, and pay bride prices.²

Gender Relations in the Hmong Culture

Women and men in the Hmong community disagree over what customs should be preserved in their culture. Gender inequality has been the leading issue in the Hmong community because some Hmong American women are challenging their subordinate status:

I have had culture conflicts over being a Hmong woman in the U.S. constantly, every day, every minute of my life. . . . There are certain things you must let go of, like marrying a second wife or having a mistress all the time. . . . We Hmong women are human, too.³

Hmong parents have the right to give their daughter to whomever they wish, without the daughter’s consent. Parents who are driven by money usually give their daughters away willingly (at young ages), in exchange for large sums of money (bride price). Hmong girls are taught how to be “good” women; when girls reach a certain age, they are expected to behave properly and obediently. Sucheng Chan points out that a Hmong woman is encouraged to be a good woman so that she will be chosen by a suitable man to be his wife. Women complete household chores and

serve the male members of their clan, and are not allowed to socialize.⁴ “Too much work for her to take care of everything at home. It’s always like that- women work, men sit and talk. Women are in the kitchen to make food, men sit at the table and eat everything good. When women get to eat after the men, nothing good is left.”⁵ Hmong women’s roles are confined in the domestic unit, while men are free to socialize in the public sphere, take leadership roles, participate in negotiations, and join gatherings. Dwight Watson states, “In this patriarchal culture, women had very limited autonomy. They followed the decisions of their husband or the clan leader without question.”⁶ Women have no power or authority over family and clan issues, no voice during negotiations, and carry no legal rights as women in society. Women’s invisibility is often not addressed in the Hmong community because only male clan members discuss issues and are allowed to make decisions for the family and community.

Many Hmong leaders argue that cultural preservation should be more important than gender equality in America. Thus, women should continue to practice the traditions and carry their dutiful roles in the family, and teach children to carry out the Hmong culture. Good Hmong women are to remain obedient, submissive, and respectful, while males in the culture maintain power and authority as part of traditional Hmong culture. “The ideology of Hmong society states that men are more important. Men are the ‘skeleton of the society’ upon which all else is built. If the skeleton breaks down . . . there is no Hmong society left.”⁷ Failing to work within the traditional Hmong hierarchy (in which males rank higher than females) not only insults the entire family, but also creates confusion, since the issues are not directed towards those who have the power to make the decisions.⁸ A Hmong woman’s voice does not rise to the level of community ideology, but when a Hmong man speaks, it is the voice of law and justice in the Hmong culture.

In America, Hmong men have lost a good portion of their power because some Hmong women have challenged their inferior status. However, gender inequality persists and women remain inferior by preserving some customs, such as marriage by capture. Hmong women are not recognized as being equal halves, only considered the “other” gender, which is second to men. Leti Volpp declares, “Intersectionality” is not acknowledged in cultural defense cases among Hmong American women, which portrays women’s identity as both women and persons of color.⁹ These two categorizations are not inseparable and are not independent of one another; race and gender are interconnected and intertwined. The Hmong community fails to understand and accept Hmong women’s experiences and multiple oppressions in America.

Hmong's Marriage by Capture

In Southeast Asia, and currently in America, marriage by capture is still practiced in the Hmong communities. Hmong men usually marry between ages 18 and 30, and Hmong women between ages 14 and 18.¹⁰ Assisted by his friends or family members, a man can literally capture a woman to become his bride. R.H. Barnes explains further in detail:

They then set up an ambush near a place where the girl must pass by. As soon as she appears, they jump out and seize her, take her goods off her head, grab her arms and clothing. [. . .] The girl cries, 'I don't want to' and defends herself with all her might, but is not strong enough to resist the superior force, and is pulled and dragged away.¹¹

As much as she struggles and cries, the abductor simply ignores her protests. According to the Hmong, women are supposed to resist; if they do not resist, they are not virtuous and become undesirable. "The Hmong man is required to ignore her mock objections, and firmly lead her into the bedroom and consummate the marriage. If the suitor is not assertive enough to take the initiative, he is regarded as too weak to be her husband."¹² The woman is taken for three days, and held captive in the man's sleeping area. On the second day, negotiators (*mej koob*) are sent to the woman's family, and negotiation over marriage and bride price is conducted. Marriage by capture usually results in a legitimate marriage, but not always, since the girl may not wish to marry the abductor.¹³

During the three days that she is forced to stay with the abductor, sexual assault and/or forced sexual intercourse (rape) are part of the marriage by capture custom. In my interview with Ka Vang, she reveals that even if the woman is not sexually assaulted or forced to have sexual intercourse, it is automatically assumed that because they slept on the same bed, they were sexually active or participated in sexual activity within those three days.¹⁴ Although the captured woman has a choice after the three-day capture, she is usually forced to marry the abductor to save face and uphold her family's good reputation. The Hmong community claims that the woman can refuse the marriage, however, most of the time the daughter's parents will not reject the traditions of marriage by capture because they do not want their daughter to lose respect, receive a bad reputation, and harm the family's status within the community. Women really do not have a choice, as some suggest since the capture will affect her chances of marriage in the future. In the Hmong culture, women are not allowed to have pre-marital sex and if they do, they become undesirable wives. A bad reputation heavily affects social interactions and the family's status within their clan. Parents will usually force their daughter to accept the marriage to save face, regardless of the daughter's

apparent resistance. In America, marriage by capture cases have allowed the abductor to plead a lesser charge due to cultural defense; cultural defense is taken into consideration in most cases brought to the American court system.

The Use of Cultural Defense in America

Hmong have tried to maintain their cultural traditions while living in America, and in many ways they have succeeded in preserving several cultural practices. However, James Emery asserts that Hmong Americans are apparently influenced by their new country: "Our challenge is to preserve the Hmong culture while learning the Western culture. The struggle is how to maintain the two cultures together."¹⁵ Marriage by capture is still practiced in the Hmong communities in America. Although it is not the primary form of marriage, it is hardly challenged when it takes place. Some who have adopted American values have challenged marriage by capture. In *People v. Moua, 4 S. Cal Interdis. L.J. 1 (1994)*, Kong Moua kidnaps Seng Xiong and engages in sexual intercourse with Seng, believing he is following Hmong customary marriage practices. Seng Xiong rejects the marriage by capture tradition and files kidnapping and rape charges against Kong Moua. Kong spends ninety days in jail and pays the woman's family one thousand dollars as he pleads a lesser charge, in which the judge accepts the plea bargain and dismisses the rape and kidnapping charges.¹⁶ Cultural conflicts between Hmong American women and men reflect the larger issue that gender relations among the Hmong are changing in the more gender-neutral American society,

Many Hmong girls don't like the way Hmong men think about. They know it can be different in the U.S. for girls. Not so hard like Laos. . . . Boys want it like before. Then girls have to do what they say. They only want to marry young girls, not old ones like me. They don't like it if a girl is smart. They say she is too much trouble.¹⁷

As women are receiving more education and legal rights, men feel that they are being pushed out of their superior status. Some Hmong perceive that the level of gender equality in America should not exist in the Hmong culture. Evans-Pritchard and Renteln states, "In order to maintain a sense of self-identity in the face of psychological stress (often compounded by racist tendencies on the part of the host country), first generation immigrants frequently rely heavily on their homeland's cultural values and community structure."¹⁸ Hmong have recreated their culture by successfully maintaining some customary practices in America, but American values have affected gender relations in the Hmong community.

The Hmong community has responded that although the marriage by capture custom conflicts with American laws concerning rape, marriage by capture is part of their history and traditional culture. An abductor captures a woman to be his wife, believing it is okay to do so, since it is part of his culture. Neal Gordon asserts, "Rape is governed by his cultural predispositions to such an extent that he became mentally unstable, and that he purposefully acted his part in a culturally rational traditional practice."¹⁹ The abductor's actions are influenced by his cultural norms, which prevent him from realizing the American law. According to some abductors, they know that rape is illegal in America, but they do not believe that their actions constitute rape because the woman is supposed to resist as part of the Hmong traditional culture. In the culture, having sexual intercourse with the woman is to persuade the parents for approval and permission for marriage as part of the custom.²⁰ The Hmong tradition of resistance in marriage by capture conflicts with the American legal system, where sexual intercourse is considered rape if the woman does not consent and has shown some form of resistance. "In many cases in which cultural defense are asserted, cultural evidence is introduced in order to provide insight into the defendant's state of mind."²¹ The abductors actions are primarily based on his cultural values, standards, and beliefs; the abductor's intent falls within his cultural norms. Rape, according to the Hmong, is loosely defined. Ka Vang reveals that rape in Laos occurs, but women do not report or discuss rape with male clan members because of the social acceptance of such sexual activity.²² It is no longer a mistake of law, but a mistake of facts in marriage by capture cases. Male abductors have a different understanding of the event compared to Hmong American women. Intent is questioned in marriage by capture; wrongful intent does not exist in the event of marriage by capture. "[...] 'reasonable person' varies from culture to culture, it would seem that the person's culture is relevant."²³ The abductor lacks the intent to commit the alleged crime because marriage by capture allows abductors to act in a particular way within a cultural condition.

Furthermore, the punishment of a convicted kidnapper and rapist from this country should not be the same punishment for people from other countries with different cultural standards. Ethnic minorities need to be treated equally in respect to their cultural standards. The American legal system is based on a Eurocentric value system that fails to consider other cultural practices that exist in America. Cultural evidence ensures equality, and is not seen as an unfair disadvantage because equal treatment involves taking cultural norms into perspective. It is impossible to exclude cultural defense because culture is very much part of a person's identity and his or her logical reasoning,

The value-pluralism that the cultural defense promotes is a necessary component of the American ideals of freedom and liberty. To maintain these ideals, Americans must not 'foist upon all others a single orthodoxy,' but rather accept the beliefs and practices of the various groups that comprise America as a whole.²⁴

A legitimate traditional practice as a cultural right should have standing and significance, otherwise cultural pluralism ceases to exist in America. The freedom to practice one's cultural traditions in America supports the fact that cultural defense should be valid and relevant in marriage by capture cases.

Hmong Women's Rights In America

Cultural defense should not be promoted since it continues to subordinate women, and fails to acknowledge their inferior status in a patriarchal culture. Hmong women have no legal rights in marriage by capture if cultural defense prevails in America. Although cultural defense respects cultural relativism, marriage by capture gives Hmong men more legal rights than Hmong women. Cultural defense seeks to excuse individuals because their actions are based upon their cultural traditions. However, culture is notoriously hard to define. According to Margaret Mead,

Culture means the whole complex of traditional [behavior] which has been developed by the human race and is successively learned by each generation. A culture is less precise. It can mean the forms of traditional [behavior] which are characteristic of a given society, or of a group of societies, or of a certain race, or of a certain area, or of a certain period of time.²⁵

Culture is a fluid and indefinite structure and a construction of categorization, which makes cultural defense difficult to apply in the American legal system. Cultural defense, in marriage by capture cases, suggests that women choose to be captured and sexually assaulted, and that the abductor does not commit a crime. Hmong women's resistance as part of the marriage by capture custom implies that women do not have a voice in the Hmong community or in the American society; women's resistance in marriage by capture is simply to make clear their inferior status. Her choice to say "no" is not accepted or acknowledged as an individual who may or may not have accepted the Hmong culture in the American society. Hmong women are not allowed to step out of the Hmong culture and its traditional practices, nor can they disagree with traditional values. Cultural defense, in marriage by capture proposes that Hmong women are strictly individuals of the Hmong culture, and no other culture. Who becomes part of the Hmong culture, all Hmong people, even those who resist and have adopted other cultures? Who becomes

part of the American culture, only Caucasians? Hmong women are invisible in the Hmong community, and if cultural defense is privileged, they will be invisible in the American society as well.

Moreover, cultural defense for marriage by capture reinforces the stereotypes of a Hmong woman, as silent and passive. “She appeared as an object, whose silence devalued her humanity to the extent that the taking of her life did not merit a prison sentence.”²⁶ Hmong American women cannot step outside the clearly defined gender roles in their culture, and cultural defense reinforces these gender boundaries. When Hmong women are kidnapped, they have no power or right to fight back, and when captured, the forced sexual intercourse is not considered to be a sexual assault. Under cultural defense, rape and kidnapping Hmong American women become legal as part of the traditional Hmong culture. Therefore, these women of color remain suppressed by their own communities and the American society. Cultural defense fails to acknowledge their experiences as both women and women of color. “This idea may take various forms, among them the notions that the cultural defense legitimizes violence toward women and that it permits violations of human rights.”²⁷ Cultural defense declares that Hmong women will also be subject to oppression outside the Hmong community. “The resulting image erased the prevalence of gendered violence in the United States-based spectator from both Dong Lu Chen and Jian Wan Chen in a way that rendered them unrecognizable and inhuman.”²⁸ Marriage by capture is a political problem, not a cultural practice simply to be accepted and ignored. These cultural factors harm Hmong women, and give men the right to subordinate women. Gender relations in Hmong society, where women receive no legal rights in the marriage by capture custom, is justified by way of cultural preservation and cultural pluralism in America, but in order to treat all citizens equally, a society must proclaim cultural defense in cases of marriage by capture as invalid and unsound.

Analysis: Gender Equality in America

Hmong American women have no protection from marriage by capture, where the man rapes the woman, regardless of whether the woman wishes to accept the culture and practice the traditional customs. “The victim in Moua was denied redress solely because of her membership in an ethnic minority.”²⁹ Not only does it violate the equal protection clause, marriage by capture also fails to acknowledge Hmong women as citizens of America. Cultural defense does not provide women the choice of whether they want to adopt the American cultural norms, or carry the Hmong cultural norms, or practice both. Women should have the right to choose what cultural customs to follow or not follow in America. Her cultural membership should not be strictly and solely with one culture; Hmong American women should be able to move interchangeably from one culture

to another without restrictions or clearly drawn cultural boundaries. Marriage by capture allows the man to plead cultural defense, but fails to acknowledge the woman’s cultural defense, her adoption to the American cultural customs and legal standards. Cultural defense fails to respect the victim’s values and rights in America, and privileges the abductor’s cultural standards. America does not allow Hmong women to be bicultural or multicultural. Hmong women can only be Hmong, not Hmong and American. America needs to allow Hmong women the ability to embrace both Hmong and American values and norms, otherwise America is simply defining a society that does not support cultural pluralism, but rather a society that defines individuals by one culture, one race, and one legal standard.

Although cultural relativism should remain an important factor in America, marriage by capture does nothing more than reinforce the inequalities between women and men in Hmong society. The American value of equality and the American legal standard of mutual consent should prevail over Hmong’s traditional values and customs in marriage by capture. Practicing marriage by capture should end altogether because there are alternative marriage methods (elopement marriages and love-proposal marriages) that do not subjugate women and preserve the Hmong culture at the same time. Culture itself changes over time, and its customs and traditions are dynamic. The Hmong culture is well defined but their culture does not remain stagnant. Hmong have no written history or concrete legal system, but rather their history and cultural traditions are orally transmitted from older generations. American culture is hard to define as well, with existing racial diversity and heavy encouragement of American assimilation, that it becomes a problem to distinguish between cultures in America. Hmong’s marriage by capture should not be practiced in America because women deserve equality and legal rights. Although some Hmong people perceive this level of equality as contrary to traditional practices, too many times Hmong women are the victims of abuse, violence, and sexual assault. Cultural preservation is important, but gender equality and justice are necessary for human rights. The Hmong community needs to work towards a more gender-neutral culture and change the existing patterns of male dominance and female subordination. American legal norms ought to prevail and provide gender equality for Hmong American women, and privilege human rights over cultural rights.

Hmong American Women Claiming Equal Human Rights

Marriage by capture reflects the gender inequalities that exist in the Hmong culture. Cultural defense in marriage by capture cases is an effort to preserve the Hmong culture, but it fails horribly in protecting women’s rights and human rights in America. Hmong women become victims in both societies, as individuals who receive very few legal rights. Hmong

women, as both women and persons of color, continue to bear the heavier cost of cultural defense in marriage by capture cases. As a culturally pluralistic society, America must allow a woman to choose her own culture(s), practice(s), and custom(s). America automatically assumes Hmong women's cultural identity, Hmong, not Hmong and American. America should support a gender-neutral legal system, and gender equality ought to prevail over the cultural preservation of marriage by capture. Practicing a culture as a legal right should not be privileged over human rights in America. Since America values equality, America should promise and secure both Hmong men and Hmong women equal legal rights.

Endnotes

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1. Pranee L. Rice, *Hmong Women and Reproduction* (Connecticut: Bergin & Garvey, 2000), 37.
2. Ann Fadiman, *The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and The Collision of Two Cultures* (New York: Farrar, Straus, and Giroux, 1997), 208.
3. Sucheng Chan, "Scarred, Yet Undefeated: Hmong and Cambodian Women and Girls in the United States," in *Asian/Pacific Islander American Women: A Historical Anthology*, eds. Shirely Hune and Gail M. Nomura (New York: New York University, 2003), 263.
4. Sucheng Chan, *Hmong Means Free: Life in Laos and America* (Philadelphia: Temple University Press, 1994), 166.
5. Chan, 263.
6. Dwight Watson, "Characteristics of Hmong Immigrant Scholars," *Childhood Education* 77 (2001): 303.
7. Rice, 25.
8. Fadiman, 65.
9. Leti Volpp, "(Mis)Identifying Culture: Asian Women and the 'Cultural Defense,'" *Harvard Women's Journal* 17 (1994): 57.
10. Watson, 303.
11. R.H. Barnes, "Marriage by Capture," *Journal of the Royal Anthropological Institute* 5 (1999): 57.
12. Fadiman, 241.
13. Rice, 39.
14. Interview with Ka Vang, Marriage by Capture- Personal Account, Santa Barbara, California, 14 November 2003.
15. James Emery, "Their World, Not Ours- Problems Grip the Hmong in America," *World and I* 17 (2002): 170.
16. For a discussion on *People v. Moua*, see Deirdre Evans-Pritchard and Alison D. Renteln, "The Interpretation and Distortion of Culture: A

- Hmong 'Marriage by Capture' Case in Fresno, California," *Southern California Interdisciplinary Law Journal* 4 S. Cal. Interdis. L.J. 1 (1994): 10.
17. Chan, 263.
 18. Evans-Pritchard and Renteln, 2.
 19. Neal Gordon, "The Implication of Memetics for the Cultural Defense (the legal strategy drawn from culturally specific norms for marriage and domestic relations)," *Duke Law Journal* 50 (2001): 1809.
 20. Interview with Ka Vang, Marriage by Capture- Personal Account, Santa Barbara, California, 14 November 2003.
 21. Evans-Pritchard and Renteln, 14.
 22. Interview with Ka Vang, Marriage by Capture- Personal Account, Santa Barbara, California, 14 November 2003.
 23. Evans-Pritchard and Renteln, 14.
 24. Gordon, 1809.
 25. For further discussion on culture, see John Monaghan and Peter Just, *Social and Cultural Anthropology: A Very Short Introduction* (Oxford: Oxford University Press, 2000), 47.
 26. Volpp, 57.
 27. Gordon, 1809.
 28. Volpp, 57.
 29. Gordon, 1809.

Works Cited

- Barnes, R.H. "Marriage by Capture." *Journal of the Royal Anthropological Institute* 5 (1999): 57.
- Chan, Sucheng. *Hmong Means Free: Life in Laos and America*. Philadelphia: Temple University Press, 1994.
- Chan, Sucheng. "Scarred, Yet Undefeated: Hmong and Cambodian Women and Girls in the United States." In *Asian/Pacific Islander American Women: A Historical Anthology*, edited by Shirely Hune and Gail M. Nomura, 253-267. New York: New York University Press, 2003.
- Emery, James. "Their World, Not Ours- Problems Grip the Hmong in America." *World and I* 17 (2002): 170.
- Evans-Pritchard, Deirdre and Alison D. Renteln. "The Interpretation and Distortion of Culture: A Hmong 'Marriage by Capture' Case in Fresno, California." *Southern California Interdisciplinary Law Journal* 4 S. Cal. Interdis. L.J. 1 (1994): 1-15.

Fadiman, Anne. *The Spirit Catches You and You Fall Down: A Hmong Child, Her American Doctors, and The Collision of Two Cultures*. New York: Farrar, Straus, and Giroux, 1997.

Gordon, Neal A. "The Implications of Memetics for the Cultural Defense (legal strategy drawn from culturally specific norms for marriage and domestic relations)." *Duke Law Journal* 50 (2001): 1809.

McCall, Ava L. "Speaking Through Cloth: Teaching Hmong History and Culture Through Textile Art." *The Social Studies* 90 (1999): 230.

Monaghan, John and Peter Just. *Social and Cultural Anthropology: A Very Short Introduction*. Oxford: Oxford University Press, 2000.

Rice, Pranee L. *Hmong Women and Reproduction*. Connecticut: Bergin & Garvey, 2000. Vang, Ka. Interview by Jennifer Yang. Marriage by Capture- Personal Account. Santa Barbara, California, 14 November 2003.

Volpp, Leti. "(Mis)Identifying Culture: Asian Women and the 'Cultural Defense.'" *Harvard Women's Law Journal* 17 (1994): 57.

Watson, Dwight C. "Characteristics of Hmong Immigrant Students." *Childhood Education* 77 (2001): 303.