

## BOOK REVIEW

Ralph Grillo, Roger Ballard, Alessandro Ferrari André J. Hoekema, Marcel Maussen and Prakash Shah (eds.), *Legal Practice and Cultural Diversity*. Farnham UK and Burlington VT: Ashgate. 2009.

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The editors assembled the chapters of this collection from papers based on those presented at a conference hosted by the Law School, Queen Mary, University of London in July 2007. The conference was sponsored by the multi-disciplinary research programme International Migration, Integration and Social Cohesion, (IMISCOE) which is a 'network of excellence' funded by the European Commission. One of the principal aims of IMISCOE is to provide a platform for the exchange of innovative ideas related to issues of migration. Due to the emphasis on the exchange of ideas, in comparison to previous collections on law and cultural diversity, such as human rights and culture through anthropological perspectives (Cowan et al. 2001) or immigration in the European context (Shah and Menski 2006), the present collection contributes both a comparative and a theoretical account of the interaction between legal practice and cultural diversity from a range of leading international anthropologists, political scientists and legal specialists.

The collection opens with the Archbishop of Canterbury's statement that scholars and practitioners should consider "the role and rule of law in a plural society of overlapping identities (Williams 2008: 271). The Archbishop made the statement during his comments in February 2008 when he suggested debating the "transformative accommodation" (Shachar 2001) of shari'a councils in the English legal system. His comments were heavily criticised by scholars (Ahmed 2008: 495; Bano 2008). The use of the Archbishop's statement contextualises the contentious nature of the discussions throughout the collection related to whether, and under what conditions, legal systems should acknowledge cultural and religious differences (2). The collection accordingly raises important questions related to

how contemporary cultural and religious diversity challenges legal practice, how legal practice responds to that challenge and how practice is changing in the encounter with cultural diversity occasioned by large-scale, post-war immigration” (1).

The objective is to consider how legal practice should respond to cultural diversity as both change and challenge the other in various ways. The insights of the collection are beneficial to legal scholars and practitioners for two reasons. It will enable them, first, to gain comparative insights from the experiences and debates surrounding cultural diversity other jurisdictions, and secondly, to understand the theoretical insights that legal pluralism may add to this field of study.

In relation to the comparative insights presented in the collection, several chapters reveal valuable perspectives from the experiences of cultural diversity in an array of jurisdictions. Several authors stress the particular context of each situation. It is still beneficial, however, for legal scholars and practitioners to pose questions about possible comparisons of such experiences and debates. For example, although India is a formerly colonised country with a historical tradition of religious plurality, what could be learned from the Indian notion of secularism as equality of religious pluralism rather than the division of religion from the realm of the state (Menski)? What potential lessons could be learned from the debate in Ontario, Canada related to establishing a Darul-Qada, Muslim Arbitration Tribunal (Bader)? Although Québec holds a particular historical and geopolitical position as a linguistic minority in Canada, what could be learned from the debate related to the doctrine of ‘reasonable accommodation’ and the recommendations of the report by the Bouchard-Taylor Commission (Gaudreault-DesBiens)? The Dutch constitution places importance on the separation of law from religion, but what could be drawn out from the judicial behaviour which recognises the laws of ‘distinct’ communities and consequently pluralizes law (Hoekema)? What insights can be gained from a comparative study of North American and European civil cases and the possibility of higher damages being awarded to claimants based on their cultural backgrounds (Renteln)? Finally, what could be learned from the French debate surrounding *laïcité* and multiculturalism, bearing in mind that the French experience strongly differs from that of other European countries (Cohen)?

Legal scholars and practitioners may also benefit from considering the innovative approaches of English legal practice to other situations of cultural diversity. For example, lessons can be learned from the English legal culture’s treatment of minority ethnic settlers in other contexts such as African customary laws

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(Woodman). It is arguable that Muslim communities should be able to put their beliefs into practice in their daily lives through the frameworks governing European legal orders (Rohe), a view which is reminiscent of that of liberal multicultural theorists (such as Kymlicka 1995). In this regard the particular situation of cultural diversity related to public wearing of the Islamic veil (in its many forms) by women is considered in detail in several other chapters of the collection. For example, the reaction by an English judge to a woman wearing a *Niqab* in a courtroom is presented (Bakht). The European context of the issue of veiling related to the right to manifest religion, under Article 9 European Convention on Human Rights and Fundamental Freedoms 1950, is presented in relation to experiences and contentions in France (de Galembert), and through the subsequent approaches of other European domestic courts (Knights). The way in which freedom to manifest religion under Article 9 has been treated in the English courts following the House of Lords decision in the *Begum* case<sup>1</sup> is further considered in depth (Sandberg). The possibility of learning lessons from these specific experiences and debates is beneficial to scholars and practitioners interested in this area of law.

The collection is also beneficial to legal scholars and practitioners eager to understand the theoretical insights of legal pluralism. Several chapters of the collection allude to the different contexts and ways in which anthropological and socio-legal scholars approach situations of legal pluralism (Benda-Beckmann 2002). For example, one prominent articulation of legal pluralism mentioned in the collection is that of methodological legal pluralism. Thus in his discussion Shah considers the benefits of legal pluralism in relation to current debates surrounding cultural diversity in England. He states that the “Archbishop did not actually use the phrase ‘legal pluralism’ [in his comments] but he clearly referred to it in several senses of the word ‘pluralism’ and...[he] would classify him as a legal pluralist” (86). The Archbishop certainly analysed a social situation in which multiple normative orders (such as the laws of the state or those of social associations) operate, interact and conflict with one another within a particular social space (such as within the territory of a nation state) (Griffiths 1986). Shah further states, however, that legal pluralism “has received a more complex” definition than that of the Archbishop’s articulation from Chiba and Menski which views “law as an inherently plural and dynamic phenomenon...needing a combination of...approaches to be able to ‘see’ how it [law] works” (86). For

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<sup>1</sup> *Regina (SB) v. Governors of Denbigh High School* [2007] 1 AC 100; [2006] UKHL 15 [2006] 2 WLR 719; [2006] HRLR 21.

example Menski, in his discussion in this collection, presents India's plurality-conscious approach to multiculturalism to illustrate how other jurisdictions have responded to the challenges of cultural diversity (Menski). This follows his previous call on scholars to use 'legal methodologies' in order to respond to the challenges of cultural diversity (Menski 2006: 17). He advocated Chiba's approach of a dynamic model of law which held a dual structure of official and unofficial law as well as legal postulates (the three-level structure of law) which adhered to the plurality-conscious approach to law (Chiba 1986: 4; Menski 2006: 19). The benefit of methodological legal pluralism for scholars and practitioners interested in the relationship between cultural diversity and the law is that the use of a plurality of legal methods illuminates the complexity of normative orders within a social space, rather than establishing that several normative orders simply exist within a social space. Another approach to legal pluralism mentioned in the collection, presented by Hoekema, is the notion of 'inter-legality' proposed by De Sousa Santos (2002). Inter-legality is a process rather than an outcome where "elements of a dominant legal order [or a normative order], both national and international and ... the frames of meaning that constitute these orders, [are adopted] into the practice of a local legal order and/or the other way round" (191-192). The approach stipulates that different normative orders cannot be said to have a separate existence from one another, but rather are interconnected. The benefit of inter-legality for scholars and practitioners is the introduction of a dynamic process to situations of legal pluralism, rather than a dynamic approach to law, as advocated by Chiba and Menski.

It is contended that a notion of homogeneous cultures and normative orders is assumed by the articulations of legal pluralism mentioned in the collection. For example, the foundational chapter of the collection, which presents an overview of the challenges and accommodation of cultural diversity in law, asserts that "[r]esolving competing demands and entitlements grounded in a plurality of legal orders [or normative orders], themselves multiple, cross-cutting and internally complex is never a straightforward task" (Ballard, Ferrari, Grillio, Hoekema, Maussen and Shah: 25). The statement *prima facie* refers to the heterogeneous nature of normative orders as the notion of homogeneous cultures and normative orders is assumed in the chapter. For example, the research of Bano into women's experiences of family law related to the proceedings of shari'a councils is cited in the chapter (2008). Her research responds to the Archbishop's comments, finding that "the view that Muslims increasingly seek freedom to live under shari'a is not only extremely problematic", which she evidences by capturing the experiences of Muslim women in relation to the councils through their narratives, but also that

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such an approach “fails to capture the complexity of British Muslim identity as fragmented, porous and hybrid” (2008: 309). Bano’s research highlights two important issues. The first relates to the potential for gender discrimination in the establishment of shari’a councils under English law. The second issue relates to the fact that there is no homogeneous British Muslim identity. In relation to the potential for gender discrimination it is stated in the chapter that Bano’s research “throws much light on the complex relationship of women to [shari’a] councils... [Consequently] ‘accommodation’ may mean conceding to patriarchal interests” (Ballard, Ferrari, Grillio, Hoekema, Maussen and Shah: 24). It is merely argued that gender discrimination may have to be conceded in order to uphold cultural diversity, without any further discussion of the reasons for this. Moreover, the lack of a homogeneous identity of a cultural group is also given no detailed discussion other than the mention that normative orders are multiple, cross-cutting and internally complex. This situation could have been further evidenced by referring to the *Begum* case (for example, where respected scholars disagreed as to the particular level of modest dressing which an Islamic woman should practice (*Begum* case: paras. 13-14)) or even through further discussion of Bano’s own work. This would have been beneficial as, in comparison to the question as to which normative orders may be interacting within a particular social space (the question posed by the Archbishop), Bano further questioned what claims Muslim women, confronted by claims of different normative orders, made in their own lives. This type of reasoning reflects the ‘critical’ legal pluralist question which turns the traditional agency pattern inside out (Kleinhans and Macdonald 1997: 46). Posing both the former and the latter questions challenges the assumption of a homogeneous or essentialised notion of culture and normative orders. Such an approach is non-essential as it points towards normative orders being internally complex due to legal subject’s own understanding of their subjectivity or legal identity. It is contended that the collection would have benefited from further discussion of the approach taken by Bano.

The collection concludes with an important theoretical discussion on whether human rights, in the context of ethnic plurality, are always a vehicle for liberation (Ballard). Ballard focuses on family law. He argues that one of the most *serious lacunae* in the human rights discourse is “its failure to take cognizance of one of the most salient features of the human condition, our capacity to order our interpersonal relationships on the basis of our own self-constructed conceptual premises” (301). His argument is that the self-construction of a person’s own normative orders is not considered by scholars concerned with human rights. Other discussions in the collection could have benefited from considering Ballard’s

approach. Furthermore, the self-construction of normativity is considered in Bano's approach.

Overall, the collection adequately responds to the Archbishop of Canterbury's statement quoted in the introductory chapter. The role and rule of law is illustrated in various ways and from a range of multicultural societies to depict how it is changed and challenged by cultural diversity and *visa versa*. Although the experiences recorded and the surrounding debates are context specific, it is beneficial for legal scholars and practitioners to contemplate the possible comparisons. The collection is also beneficial for scholars and practitioners interested to gain further understanding of the theoretical insights of legal pluralism. However, in relation to the Archbishop's statement referring to the consideration of overlapping identities in plural societies, the collection is on the one hand successful in highlighting the range of contexts and ways in which scholars within various disciplines define law and legal pluralism. On the other hand, the collection could have presented a more detailed discussion of Bano's research which captured the complexity of British Muslim identity as fragmented, porous and hybrid. Discussion of the complexities of religious identity, as highlighted in the *Begum* case which illuminated the fact that there can be many different interpretations of religious practices, would also have been beneficial for the collection in order to defeat any possible presumption of homogeneous cultures or normative orders. Furthermore, consideration of Ballard's concluding remarks, that it is important for scholars to question the self-construction of a person's own normativity, would also have also overcome any presuppositions of the existence of homogeneous cultural groups. Whether the collection is successful in considering the nature of overlapping *identities* in multicultural societies depends on how one interprets the terms 'legal pluralism' and legal 'identity'.

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