When, why and how far should legal systems take cognisance of cultural diversity?

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As globalisation steadily shrinks the spatial dimensions of the world in which we live, long-distance migration has become steadily more commonplace, such that social orders everywhere are becoming ever more culturally diverse. Europe is no exception to this trend. National boundaries have become steadily more porous, and so every country in Europe has witnessed the emergence of substantial minority populations originating not just from elsewhere in Europe, but from much more distant parts of the globe. As a result addition dimensions of plurality have now been added to the European social order: in addition to Protestants, Catholics and Jews, it now contains significant Hindu, Sikh, and above all Muslim minorities. And as Tariq Ramadan was emphasising the day before yesterday, it is no longer possible to dismiss either the carriers of these traditions, or the traditions themselves as alien. They have no become an intrinsic component of European social order. They are not going to go away.

Let us be clear about what all this means. It is not as though ethnic, linguistic and religious plurality is a novel phenomenon in European space. Differences between Catholics, Protestants and Jews, and between speakers of Slavic languages, Germanic languages and Romance languages, let alone between all the diverse cultural traditions which each of those linguistic traditions support are as much a part of the contemporary European tradition as they ever have been; and none of those differences shows any sign of going away. Not so long ago those differences have frequently been a source of conflict – and indeed of bloody warfare. But over the centuries we have gradually learned to accommodate one another, and to create – and most crucially of all to negotiate – conditions of plurality such that we can all respect, accept and above all *accommodate* our differing interests and concerns.

It follows that if there is any novelty in the issues which we are seeking to confront, it does not arise from the presence of religious and cultural plurality *per se*. Rather it is the unfamiliar – the extra-European, and above all the extra-Judeo-Christian – *source* of these new dimensions of plurality which lies at the root of increasingly widespread – and indeed pan-European – expressions of alarm and distress about these developments.

However I am not going to talk about the roots of these feelings, and still less about the legitimacy of the minority presence: Professor Ramadan did that with great eloquence the day before yesterday. Rather I want to focus on some much specific questions: given these additional dimensions of religious and cultural plurality, when, why, and if so how far and on what basis should the courts take cognisance of these unfamiliar patterns of distinctiveness when deciding legal proceedings which have come before them? That said, I must also begin by making plain the perspective from which I have sought to do so.

First of all I am not a lawyer, but a social scientist. More specifically still I am a social anthropologist – an ethnologist, in German terms – who has spent many years exploring the ways in which migrants from India, Pakistan and Bangladesh – or to put in religious terms, Hindus, Muslims and Sikhs – have set about moving to, and recreating their domestic, personal and familial lives within, Britain's major industrial cities. This process of settlement began over half a century ago, and I have now been observing its development for more than 30 years. And if there is one thing I can tell you loud and clear on the basis of my observations it is this: any assumption that such a process of settlement and adaptation will result in a rapid process of assimilation – such that settlers and their offspring disappear seamlessly into the body of the indigenous population – is mistaken.

However lack of assimilation should not be mistaken with lack of adaptation. Far from it. During the course of thirty years of observation and research, I have watched settlers – and even more so their offspring – devising all manner of adaptive responses to their new environment. Settlers, and even more so their offspring, have rapidly acquired the social, cultural and linguistic competence which enables them to act 'as if' they were indigenes. But just because such persons have consequently gained the capacity to presenting themselves as if they were English, German, French, or Danish if they so choose, do not for one moment assume that they are English or German in any unqualified sense: that is only half the picture.

Like all migrants everywhere – including Europeans themselves when they went off to colonize the 'New World' – the new Europeans have displayed a strong tendency to cluster together within their own ethnic colonies, within which they have done their best to recreate all the most significant social, cultural, linguistic and religious institutions of their homelands. The reasons why they chose to do so were complex, but can nevertheless be boiled down to two main themes:

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- colony formation is grounded in an adaptive closure of ranks deployed as a self-defensive response to the external forces of misunderstanding, hostility and exclusion to which the settlers so routinely found themselves exposed
- such patterns of crystallisation are most likely to be ethnic in character when the ancestral religious, linguistic, social and cultural capital of those excluded provide an effective foundation around which to build entrepreneurial strategies on the basis of which to resist, to circumvent and ultimately to overcome the obstacles to which they find themselves exposed.

It goes without saying that neither of these processes are in any way foreign or familiar to members of Europe's indigenous population: they are, indeed, the foundation of Europe's current condition of national, linguistic and religious plurality. Precisely the same processes are responsible for the additional dimensions of ethnic plurality which are currently springing up around us.

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As an anthropologist I do not intend to say anything more about this *de facto* reality. I shall simply take our current condition of ethnic plurality as a given, and having done so go on to explore some of its consequences – most especially in legal contexts. I should also add that whilst I am in no sense a lawyer, I have nevertheless had a great deal of first-hand experience of how these issues play out in legal contexts. During the last few years I have prepared around 400 expert reports for use in all manner of proceedings in the criminal, civil, family, immigration and asylum courts in the UK, and in cases where issues of South Asian religion, language or cultural practice have in some way been at stake. Hence in attempting to untangle issues as to how the issues of law and culture can, might, and do interact with one another, I do not do so merely as a theoretician. Rather my remarks today are also based on first hand experience of the linguistic, cultural, conceptual, evidential and judicial dilemmas which are routinely thrown up in contexts of ethnic plurality.

I should also add that in addressing these issues I am not greatly concerned about precisely what form our laws currently take, and still less as to whether what opinions members of the dominant majority might have about the prospect that most of the New Europeans continue to organise their domestic and personal lives around the principles which owe at least as much, and sometime much more, to their own ancestral heritage rather than those of the more indigenous populations which surround them. Instead my concerns here are much more specific: namely how far, and on what basis the courts need to take the relevant cultural context into account when the cases before them, *if the outcome of such judicial proceedings are to be fair and equitable.* In other words I am not concerned with issues of right and wrong in the abstract. Nor am I concerned with political questions about the legitimacy of plurality itself. I simply take it as a given. Hence my sole concern here is with matters of justice and *fairness.* In my experience the issue which matters most to members of minority groups is *equity.* Hence it is not exceptional privileges which they seek, but merely to ensure – as the English proverb puts it – that what is sauce for the Goose is likewise doled out as sauce for the Gander.

But however innocuous and – and indeed reasonable and legitimate – the search for justice in this sense may seem, my experience suggests that all sort of pitfalls stand in the way of achieving it, especially in contexts of plurality. Indeed I have reached the conclusion that unless all those involved in the proceedings – whether as investigators, lawyers, judges or as jurors – are extremely well informed in ethnological terms, and equally alert to all the prospective pitfalls, just and equitable outcomes can be alarmingly difficult to achieve. What I want to do today is to set out some of my own observation-based conclusions as to why this is so.

In the first place it is worth noting that any system of law is of necessity a social and indeed a cultural construct. In that sense law, or to put it more accurately laws, are not and cannot be universally applicable. The reason is obvious enough: every legal system is a product of, as well as designed to be applied within, a specific social and cultural context. Likewise their contents are not static: as social and cultural conventions change, so do the legal systems which seek to order them.

Secondly the more any given component of a legal system is directed at ordering forms of behaviour which are powerfully culturally conditioned, the *less* universally applicable their content is likely to be. Hence, for example, the rules of the road are more or less universal – other than with respect to the crucial issue as to whether one is expected to keep to the right or the left hand side of the road whilst driving along it. Meanwhile the conventions on which we draw to order our familial relationships, and the conceptual assumptions which we deploy in the course of organising and presenting arguments and analyses are profoundly culturally conditioned. Hence whilst technical activities may well be governed by universally generalisable rules, the more those activities involve and order our interactions as *persons*, the more a fundamental aspect of a humanity shines through: our unique human capacity to create the terms of own existence – and to do so in a myriad different ways.

Nevertheless some of us find it much easier to ignore such differences than others. Hegemons occupying positions of untrammelled power have always preferred to do so. By insisting that their own preferred and carefully chosen ways of doing things are of necessity inherently and absolutely correct, power-holders can readily dismiss they can readily dismiss the conventions used by others as inferior, misguided and uncivilised – and indeed as the cause of their own inferiority. This stance, which enables hegemons to re-label their narrow parochial values as being of universal validity, has always been attractive to tyrants and absolutist dictators: it enables them quite legitimately to identify all those who fail to obey their totalitarian injunctions as misguided as deviants, and if necessary to charge them with all manner a criminal offences on that basis. At a somewhat milder level authoritarian regimes have frequently resorted to the delegitimisation of difference – whether in terms of the languages spoken, clothes worn, modes of making a living of or alleged racial origin – as a means of demoting members of minority groups to the status of second-class citizens, or worse. The delegitimisation of difference may provide an extremely convenient basis on which to institutionalise inequality – but it cannot be described as just or fair.

That is by no means the end of the story. No matter how plural any given society may be, we cannot avoid having some common rules which must be obeyed. Is it just and fair that I should be required to drive on the right-hand side of the road when I came to Germany, whilst you are required to drive on the left when you come to Britain? It is clear quite that there are all sorts of circumstances in which conformity with rules which could in principle be identified as alien and arbitrary is in fact merely a matter of common sense. But if there is

consequently a spectrum of possibilities between those which are universally applicable and/or are arbitrary and necessary, and those which inextricably parochial and culturally grounded, just where should we draw the line? At what point along the spectrum do demands for conformity cease to be a matter of common-sense, and instead become a vehicle for the implementation of unjustified and unjustifiable hegemony?

The answers to such questions are by no means straightforward. At just what point does a wholly unacceptable hat become a wholly unacceptable veil? Is the criterion which makes this an issue at all a matter of the character of the head-covering, the origin of the person who uses it to cover his or her head, or the precise circumstances in which the head-gear is worn? Should we ban the use of all head coverings, of whatever character, in the name of equity – or does the equitable solution lie at the other end of the spectrum by making no such specifications whatsoever?

The more close-up and personal the issue one chooses to address, the more challenging such questions become. What are the pre-requisites for a legitimate marriage? Must the partners be of opposite sexes? Is polygamy permissible? And following such a marriage, however constituted, what expectations can and should each spouse have of the other(s)? And of their children? Is it legitimate for members of an extended family to regard themselves as forming a corporate group, bound together by inescapable ties of mutual reciprocity, and by an equally strong commitment to the maintenance of a collective sense of honour? Or are such structures better regarded as barbarian, authoritarian, patriarchal and inherently oppressive relics, whose practices contradict the inalienable right of individuals to personal freedom?

But that is only to set out the questions at the level of principle. Once we ask them at the level of practice – and especially in the way in which they are routinely asked in a court of law, the conundrums grow deeper still. What amounts to ‘unreasonable behaviour’ in the context of a marriage? Or indeed as between parents and their children? What sorts of obligations can parents reasonably expect their children to fulfil towards them – and of course vice-versa? What sort of role should parents have in determining their children’s choice of a spouse? Or is any such expectation a gross and unjustified interference in the freedom of their offspring to behave in any way they choose? Is it reasonable to attempt to maintain a sense of honour on behalf of oneself and one’s family, and if so what are the steps which one might reasonably take to protect and defend it? Moreover if an extended family has collapsed in the

midst of a welter of mutual recriminations which have led to violence, what should one make of claims that those involved have been involved in witchcraft, or been possessed by spirits? Should one call for an anthropologist or a psychiatrist – or merely hand out lengthy prison sentences to all concerned? I should emphasise that none of these queries are hypothetical examples: I have met them all in legal proceedings in which I myself have been involved.

How should matters – all of which are a direct product of the steadily more plural character of our contemporary social order – be resolved? One suggestion is that the behaviour of members of minorities should not just be ordered by, but adjudged by, their own separate set of personal laws. Hence, for example, there have been numerous demands that members of Muslim communities should be subject to the provisions of the *shari'a.* What response should we offer to such demands?

On the basis of the arguments which I have advanced so far, it goes without saying that I am strongly in favour of the proposition that the behaviour of members of minority groups should be adjudged from a culturally appropriate perspective. However that outcome is much more difficult to achieve than many of its more naïve advocates commonly realised. Above all it demands that all those seeking to make sense of behaviour generated on the far side of a cultural boundary need to be aware that that unless they have taken great care to step beyond their pre-conceived assumptions which underpin their own gaze, their conceptual starting point will be far less universalistic than they routinely assume. If the prism through which they routine look out one world is powerfully conditioned by taken for granted Euro-centric cultural premises – as will normally be the case – then the distortions so generated can be disastrous be disastrous. In such circumstances their is every prospect that they will frequently misread the everyday practices of their cultural alters as bizarre, inappropriate, psychotic, and worse still as criminal.

An ability to step beyond one's own taken-for-granted premises is a necessary prerequisite for making sense of activities on the far side of cultural and religious boundaries. Moreover that is also true for those on *both* sides of a cultural boundary.

With that in mind, I am equally unconvinced that by suggestions that 'enforcement of the *shari'a*' would resolve these quandaries, let alone produce significantly more equitable outcomes, even in the context of the resolution of inter-personal disputes between Muslims in

domestic contexts – the sole arena in which, in my view, the *shari'a* might reasonably be expected to have some bite.

Let me explain why. First of all I would suggest that those who make such demands – and even more so those who fear that such demands are in fact being widely articulated – routinely ground their arguments in a serious category mistake: namely the assumption that everyone else's legal systems are constructed around the same premises of contemporary Euro-American systems. Hence they make the further assumption that the *shari'a* is an alternative Austinian black-letter code, ready and waiting to be wheeled out and applied in parallel to established majoritarian practices.

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Such assumptions, though widespread, are seriously misleading. If analogies are sought, the *shari'a* is much more akin to the Talmud than the carefully organised and state-supported formal precepts set out in the Justinian Code and its many successors. In keeping with its status as a quasi-Talmudic exercise, the *shari'a* is best viewed as a vast storehouse of scholarly opinions generated on the basis of centuries of systematic exegesis of Islam's sacred texts, the Qur'an and the *Sunna*. And whilst contemporary scholars (*'ulema*) are ready and willing to offer further opinions (*fatwa*) as to how the propositions set out in the *shari'a* should be applied in any given context, they have no means of enforcing their opinions. In other words they have no judicial powers in their own right; moreover if two such scholars come to differing opinions, they have no means of deciding which of their opinions should be preferred other than by engaging in arcane theological debates – at the end of which both sides are likely to claim victory.

To be sure individual Islamic scholars may indeed assume a judicial role, but only in specific circumstances. Either when the Sultan appoints them to act as a *Qadi*, or when individual disputants, or more likely the community to which they belong invites a scholar to assist in *dispute resolution*. With this in mind it is worth noting that although the Islamic tradition places a great deal of emphasis on *insaaf*, justice, what virtually all the proponents of *insaaf* had in mind – at least until the recent arrival of the *salafi* inspired *Taliban* was equitable dispute resolution. Equitably minded *Qadis* had no interest in, let alone the power to enforce the bloodthirsty sanctions of *Hudood*; if they mentioned them at all it was merely as an additional hypothetical club which it was sometimes convenient to deploy as they set about

knocking the heads of the contending parties together in an effort to drive them towards accepting an equitable compromise.[1]

Moreover in the process of so doing, Islamic dispute settlers – who were in practice much more likely to be elders of the local community than a Qadi – rarely, if ever, relied solely on prescriptions drawn from the *shari'a*. Instead the yardsticks they deployed were much more usually derived from the customary conventions – *'urf* in Arabic, *riwaj* in Urdu – in terms of which members of most Muslim communities routinely order their everyday inter-personal behaviour. In other words the search for justice, *insaaf*, was not centrally driven by ideological and theological considerations, as the Islamists insist and their Western critics all too often assume it always must have been. Instead it was – and in practical terms still very largely is – grounded in much more *pragmatically-oriented* efforts to broker mutually satisfactory resolutions to the inter-personal quarrels. Such brokers may well refer to the *shari'a* – and to much else besides – in the process of knocking the contending parties' heads together, but they most certainly do not *enforce* its provisions: indeed they never have.

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By now several key points should now be clear. They include:

- Current debates about Islamic law, as well as about real-life Islamic legal procedures, are for the most part exceedingly ill informed
- Islamic legal practice is strongly pragmatic, and directed at dispute-resolution
- At least at an elders-in-the-community level, such modes of dispute resolution have actively been reconstructed in many ethnic colonies – and most certainly in the Pakistani communities with which I am familiar
- These modes of dispute resolution are largely unknown to – and ignored by – more formally constituted tribunals
- Those formally constituted tribunals might well have much to learn from their Islamic counterparts
- In resolving disputes involving members of the younger, locally born generation, such Islamic tribunals often find themselves out of their depth:
    - the elders' knowledge of *'urf* and *riwaj* is an insufficient basis on which to comprehend the Islamo-European customs and practices of the rising generation

[1] An exceedingly illuminating exploration of these practices can be found in Rosen, L., 1989 *The anthropology of Justice: Law as culture in Islamic Society* Cambridge University Press

- More formally constituted tribunals often find themselves in precisely the same position as their informal counterparts:
    - it is not just the principles of *shari'a*, *'urf* and *riwaj* with which they are unfamiliar, but also the Islamo-European customs and practices of the rising generation

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Does this lack of familiarity matter? How far should formally constituted legal tribunals take cognisance of all the complexities thrown up by conditions of religious and ethnic plurality? Or is it acceptable for the state and its tribunals simply fall back on the proposition 'When in Rome, do as the Romans do', and require all those who fall within its jurisdiction to conform to the established rules, come what may? One way of answering that question is by asking about the precise status of those required to act in this way: are the insiders or outsiders – immigrants or New Europeans? Indeed harking back to Professor Ramadan's contribution, is there any indications that Europeans prepared to accept that the New Europeans – *in all their intrinsic alterity* – are, or indeed ever can be, fully European. Quite frankly I do not know the answer to that question, because – as one of the Professor Ramadan's questioners put – the issue is political rather than academic. All I can say in this context is that if the answer is no – and it may well be – we setting ourselves on course for war. And with 10 million European citizens on the other side of the fence, we can only expect that such a war will have as bloody consequences as all of Europe's previous religious war. Hence it is my profound hope that it will never happen – even if we are currently steaming in precisely such a direction.

But to climb down from politics to my core theme of the law, I would argue that practical issues associated with the legitimacy of religious and cultural alterity have already become a pressing issue of social policy – and also that they manifest themselves with particular clarity in the courts. The issue can be starkly stated: given that their role is to deliver justice, how are the courts to proceed when seek to fulfil that role with respect to litigants who utilise values and conventions whose everyday customs and conventions are unfamiliar to the officers and the court, and indeed to most members of the established social order, because those conventions are of extra-European, and above all of extra-Judeo-Christian, provenance. Should they ignore such differences, and treat the New Europeans just like everybody else? Or does justice and equity require that in at least some circumstances a broader perspective should be adopted, and in the process of exercising their judicial powers the courts should take urgent steps to place the matters that come before them in their appropriate social, cultural and indeed personal context?

With such considerations in mind, let me conclude by exploring the extent to which these arguments can be resolved with respect to an issue which has recently become the focus of some extremely heated arguments: honour killing. But before exploring the legal issues, let me begin by establishing the precise nature of the scenario with which we are concerned.

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- Whilst all incidents of 'honour killing' are much publicised in the media, only a very small proportion of homicides attract this label
- Such incidents are a sub-category in a much larger class of homicides: those in which the perpetrator and victim have a personal relationship of some kind
  - At present around 15% of all homicides in the UK are 'domestic'; the figure rises to 50% in the case of female victims
- As in most jurisdictions, English law recognises differing degrees of homicide
  - Deliberate pre-meditated murder attracts a sentence of life imprisonment
  - If provocation can be proved, the offence moves on step down to manslaughter, which attracts a lesser term of imprisonment

Hence in the aftermath of any given incident of homicide, the court will eventually have to determine whether the incident was the outcome of a deliberate and pre-mediated act of first degree murder, or whether it should be viewed as an otherwise out of character response to unbearable provocation, and hence should be classified as at least partially excusable manslaughter. With such considerations in mind the court will always take very careful cognisance of the specific context within which any given case of homicide occurred, the verdict reached accordingly. You may or may not approve of the use of this distinction. All I can report is that for reasons of equity and justice, virtually every legal jurisdiction in the globe has found it necessary to distinguish between various degrees of homicide; once introduced, circumstantial issues leap, of necessity to the fore. Given all this, can one expect the court to ignore the specific character of religious, cultural and familial context within which any given case of 'domestic' homicide can be avoided? I think not. Not only can failure to do so only lead to the actual perpetrator being misidentified, but even if he – or she – is properly identified, failure to properly contextualise the issue of provocation is also likely to produce inequitable outcomes, and hence contravene a basic tenet of justice: that the sauce served out the majoritarian Geese should also be made equally available to members of unfortunate minorities.

It so suggesting I am in no sense arguing that minority perpetrators should 'get away with it' on cultural grounds. Homicide is a crime whichever way one looks at it. All I am suggesting in deciding which category of homicide any given incident falls, equally sensitive context-setting exercise should be carried in all cases. To hand out punishments for 'cultural deviance' – such as adhering to a differing set of expectations about normative forms of interpersonal behaviour within the family, or for simply for having a notion of honour in such a manner that its conditions one's behaviour – are in my view manifestly inequitable.

Finally, and perhaps most crucially, just what are the circumstances in which so-called 'honour killings' *actually* take place? Having acted as an expert witness in more than twenty homicide trials in which both perpetrator and victim were of South Asian descent, I find it impossible to generalise. What I can confirm that since *izzat* (honour) and its close partner *sharam* (modesty) are an intrinsic dimension of interpersonal relationships in South Asian contexts, and that they tend to loom larger if and when those relationships begin to break down, honour was invariably a factor – but my no means always the most significant factor – in every one of these cases.

Secondly, and equally importantly, all these cases had a history of deteriorating relationships, of more or less determined efforts to patch them up – often by use of traditional dispute resolution mechanisms – before the ultimate breakdown occurred.

Sometimes that led to a quite deliberate case of honour killing, as for example when the cousin of a young woman who had been promised to him in marriage ran off with, and married a young man drawn from a family who were long-standing rivals of family of her promised husband-to-be. In this case, his anger was not directed at the young woman herself, but at her 'abductor' – her husband – who was stabbed through the heart and his body dumped in a remote corner of a supermarket car-park in the neighbouring city where the couple had sought sanctuary. There was little doubt that the killing was premeditated, and the motive was self-evident: to restore the *izzat* of their own extended family after its reputation had been so seriously besmirched by the family of the abductor of one of their women-folk.

However in other cases the issues were far more complex. What are we to make, for example, of case in which an overseas-born night-shift worker discovered that his British born and raised wife – who was clearly the dominant partner in the relationship – had had a long-

standing relationship with a lover, which had regularly been consummated in her husband's very own bed. Moreover when the husband sought to confront his wife, she responded with a string of taunts mocking his lack of capabilities, and especially his sexual capabilities – topped off with his wife wrapping a length of cord round her neck, and then telling him for all his pleas, he hadn't even got the balls to pull it. She was wrong. This was too much: he stepped forward and strangled her. The outcome was undoubtedly an honour-driven killing. But was it murder or manslaughter? Not only was the court left unmoved by the husband's account of the level of dishonour he felt as a result of his wife's behaviour, but dismissed out of hand his account of their final interaction. Muslim women are deemed to lack the capacity to answer back. He was consequently found guilty of murder, and sentenced to life imprisonment. Would the court have reached the same decision had a similar kind of deterioration in a marital relationship had occurred where the partners ordered their behaviour in terms of more familiar cultural conventions? In my view there would have been an excellent prospect of a verdict of manslaughter being pronounced in such circumstances.

Let me finally close by emphasising that I am no way suggesting that there are any easy answers here. Rather those seeking solutions in this sphere regularly find themselves caught – as I do myself – uneasily caught between the horns of a severe dilemma. Some aspects of our laws make universal demands: hence those who engage in unlawful killing can only expect to suffer severe sanctions, which will of necessity become all the more severe when the killing occurs not just in a moment of angry and un-self controlled passion, but is implemented on a carefully planned and pre-meditated basis. Nor is there any inherent problem with the existence of that distinction.

Instead the problems come to the fore when we seek to implement those originally clear-cut principles in real court proceedings. Human diversity just cannot be gainsaid: moreover globalisation is rendering it an ever more salient component of our existence. Hence unless our courts of law – no less and no more than all our other major public institutions – begin to be able to take more adequate cognisance of the plural character of our society, there is a grave danger that they will all too frequently find themselves delivering injustice rather than justice when New European litigants appear before. That is certainly my own conclusion, on the basis of my observations of the outcome of all too many of the cases in which I have found myself involved.

How is this state of affairs to be remedied? In my view the last thing we need to do is to introduce culturally specific offences, such as laws which seek specifically to criminalise honour killings, forced marriages and so forth. Many legislatures – including the British parliament – are currently considering such measures. However in my view such initiatives, if introduced, will cause many more problems than they resolve. Homicide is already a criminal offence, and a marriage can readily be declared null and void if it has been improperly contracted. If laws on such subjects, as well as sanctions against those who contravene them, are already in place I can see no point in expanding on them, especially if – as all my experience suggests – central source of our difficulties lies in the way in which the existing legislation is interpreted and applied in practice.

But if I am consequently arguing that that our existing laws should be interpreted and applied on a contextualised basis, I am in no way seeking to argue that members of ethnic and religious minorities should be excused from taking cognisance from the basic principles enshrined in those laws. Rather I am advancing that argument the other way round, and insisting that if we are to avoid enforcing those laws on a mindless and hegemonic basis, we need take care to apply them on an equitable and contextualised basis, just as the *qadis* do. Hence we should seek to ensure that in the course of the application of justice, serious cognisance is taken of the distinctive cultural, conceptual and religious conventions – the *values* in other words – in terms of which members of religious and ethnic minorities choose to organise their lives. In the absence of serious and well-informed efforts to do so, there is a very real prospect that our courts will deliver injustice rather than justice to those whose differ. Failure to do merely invites yet further degrees of resistance and rebellion.

I am well aware that such suggestions are likely precipitate bitter complaints from all those who are hostile to the steady pluralisation of the world in which we live, and above all to those who feel that accepting the legitimacy of the addition of an Islamic component to our liberal, post-enlightenment Judaeo-Christian tradition will undermine the vision of the good life around which the contemporary European cultural order has been built. But if the complaints of those who are fearful of those developments are indeed becoming ever more vocal, it is as well to remember that in historical terms those who feared that their position of hegemony was being undermined from below have all too often sought sustain themselves by the imposition of authoritarian tyranny, on the nominally righteous grounds that the foundations of civilisation itself are in danger of being swept away. But however attractive

such anti-pluralistic solutions may seem in the short run, history shows that hubris of this kind invariably leads to disaster, not because the manifest injustices so generated invariably further reinforces the will to resist amongst those from whom such nominally well-meaning hierarchs sought to extract compliance.

If the counter-reformation did not destroy the Protestant rebels, despite many years of bloody warfare. Do we really want to take on 10 million New Europeans on the same basis? Given the increasingly salient position which Europe occupies in the contemporary global social order, efforts to reinforce to resolve this problem on such an authoritarian and unilateralist basis would seem most unwise. The varied conceptual structures and value systems which underpin differing religious and cultural traditions cannot readily be arranged into a universally accepted hierarchy – even if history shows that hegemons have regularly sought to impose such evaluation by exercising their evanescent and always challengeable power. We would be most unwise to follow in their footsteps. The sooner we get to grips with humanity's future is set to be just as plural as its past, and redevelop the negotiating and navigational skills which enabled at least some of our forefathers to feel at ease with the patterns of difference associated with our human condition of ethnic and religious plurality, the better.

Additional reading

More extended analyses and discussions of the issues explored in the paper can be found elsewhere in Dr Ballard's published work, including:

2007 "Common Law and Common Sense: Juries, Justice and the Challenge of Ethnic Plurality", in Shah, Prakash (ed) *Law and Ethnic Plurality: Socio-Legal Perspectives*. Leiden: Martinus Nijhoff. < http://www.art.man.ac.uk/CASAS/pdfpapers/justiceandjuries.pdf >

2007 "Living with Difference: a forgotten art in urgent need of revival?" in Hinnells, J.R. (ed) *Religious Reconstruction in the South Asian Diasporas: From one generation to another*" London: Palgrave Macmillan p. 265 - 301 < http://www.art.man.ac.uk/casas/pdfpapers/difference.pdf >

2006 "Popular Islam in Northern Pakistan and its Reconstruction in Urban Britain" in Hinnells and Malik (eds.) *Sufism in the West* London: Routledge p. 160 – 186. < *http://www.art.man.ac.uk/CASAS/pdfpapers/popularislam.pdf* >

2006 "Ethnic diversity and the delivery of justice: the challenge of plurality" in Shah, Prakash (ed) *Migrations, Diasporas and Legal Systems in Europe* London: Routledge Cavendish p. 29 – 56 < http://www.art.man.ac.uk/CASAS/pdfpapers/plurality.pdf >

1994 *Desh Pardesh: The South Asian Presence in Britai*n. London: C.Hurst and Co. < http://www.art.man.ac.uk/CASAS/pdfpapers/deshpardesh.pdf >