CHAPTER 2

ETHNIC DIVERSITY AND THE DELIVERY OF JUSTICE: THE CHALLENGE OF PLURALITY

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As a result of the arrival of large numbers of labour migrants of non-European origin during the latter half of the twentieth century, British society, and English society in particular, has become markedly more plural in ethnic, religious and linguistic terms. The resultant conditions of non-homogeneity – such that anyone who now inspects the character of the passengers aboard the Clapham omnibus will find that they now display a high level of linguistic, cultural, social and religious diversity – has begun to pose ever more pressing challenges to the capacity of English courts to deliver justice on an equitable basis. These issues are by no means confined to matters of immigration and asylum. Given that members of the new minorities, now over four million strong and still growing fast, are an integral part of the British social order, minority litigants have begun to appear in virtually every kind of court and tribunal known to English law.

Does that make a difference? A strict constructionist might argue that it cannot and must not, on the grounds that the letter of the law should always be applied without fear and favour, no matter who the person arraigned before the court may be. By contrast, the English common law tradition has always rejected that approach, preferring instead to take careful cognisance of the specific context in which the matters under dispute took place. This perspective is epitomised in the widespread use of the concept of the 'reasonable man', a fictional construction used to establish a normative yardstick which can by definition change over time and vary from context to context. The point is yet further underlined by the use, in the more serious criminal cases, of a jury of the litigants' peers to sift through the evidence set before them in the process of reaching an equitable verdict. Issues of context are not only explicitly catered for, but lie at the very heart of the common law approach to equitable justice.

In mediaeval England law was applied in a far more explicitly contextual fashion than it is today. 'A jury of one's peers' meant just that: a jury composed of leading members of the local community, such that personal acquaintance with the litigants was regarded as grounds for inclusion in – rather than disbarment from – its membership. As the social order grew ever more diverse, such practices were steadily abandoned. Juries are now quite explicitly selected at random from a cross-section of the community at large, with the objective – amongst other things – of ensuring that in reaching verdicts they can be expected to apply 'common law' as well as 'common sense' yardsticks of 'reasonable behaviour'. Yet although this approach undoubtedly provides a vital bastion against attempts by overbearing rulers to establish unacceptable forms of legal hegemony over their unwilling subjects, as well as providing a constant reminder that acceptable forms of behaviour change and develop over time, it also has a substantial downside. It can only live

up to its promise in the context of a society in which there are indeed common yardsticks – or in other words, those which are close to being socially, culturally, religiously and linguistically homogeneous. The more a society deviates from this (inevitably fictional) condition of homogeneity, the more those who differ are likely to find themselves disadvantaged by the uncritical application of notions of commonality, if only because their behaviour can so easily be adjudged as unacceptably deviant as a result of the application of inappropriate yardsticks of 'reasonableness' and 'normality'.

JUDGES, JURIES AND ETHNIC PLURALITY

These issues are no longer a matter of abstract theory. As any visitor to the Criminal, Civil and Family courts in any of Britain's major urban centres can readily observe, any thought that litigants can reasonably be regarded as constituting much of a common muchness, such that they all routinely organise their personal and domestic lives in terms of a common linguistic, cultural and behavioural code is no longer sustainable – if, indeed, it ever was. In other words, the prospect that inappropriate yardsticks might be used to adjudge the litigants' behaviour is very real. Language also poses similar problems. As languages other than English become ever more widely spoken, interpreters have become familiar figures in the courts. But no matter how hard interpreters may try to fill their role (in which they rarely, if ever, have any formal training), problems of *traditore tradutore* (to translate is to traduce) still inevitably loom large.

Logic suggests that in the absence of active and informed efforts to address challenges of these kinds, there is a very real prospect that the delivery of justice will begin to turn into a random lottery as far as members of minority groups are concerned. If judges, juries, counsel and solicitors regularly grab the wrong end of the stick – not so much by design but simply as a result of their inability adequately to comprehend the evidence before them – the prospect that the innocent will be found guilty and the guilty will walk free becomes ever more likely; the greater the disjunction between litigants' own conventional behavioural, conceptual and linguistic conventions and the taken for granted conventions deployed amongst the dominant majority, the greater the prospect of miscarriages of justice will inevitably become.

ON BEING INSTRUCTED AS AN ANTHROPOLOGICAL EXPERT

With such concerns in mind, this chapter has been written on the basis of my own first-hand observation of – and indeed participation in – these very processes. As a result of my longstanding academic involvement in conducting anthropological studies of internal dynamics of British-based communities of Indian and Pakistani origin, and the consequent publication of numerous analytical commentaries setting out my findings, it was perhaps inevitable that solicitors would begin to track me down, seek to instruct me to act as an expert witness in proceedings in which issues of South Asian culture were in some sense at stake. At first I responded to these requests on an *ad hoc* basis, but as time passed, what began as a trickle began to expand into a flood, so much so that I have now prepared no less than 300 such reports. As might be expected, many of these have concerned matters of immigration and asylum; however as time has passed I have also been instructed

in a wide range of proceedings in the criminal, civil and family courts, in cases dealing with a truly bewildering range of issues, ranging from homicide and rape to drug-smuggling and money-laundering and on to matters of libel, inheritance, divorce and child custody. In responding to these instructions I found that I had entered largely virgin territory, in the sense that I seem to have played a pioneering role in introducing the prospect of 'expert anthropologists' playing a significant role in English judicial processes.

Nevertheless, as I soon discovered, this is by definition, a tricky role to fulfil, for which there appear to be few precedents in English Law. Whilst the introduction of expert evidence is now relatively commonplace in all manner of proceedings, particularly when the proceedings turn in some way on techniques and processes with which it would not be reasonable to expect that the court would be adequately familiar, it soon became apparent that in fulfilling my duty to assist the court, my reports invariably went well beyond 'filling in the background' in this sense. Since the grounds on which I was instructed were often that those instructing me found aspects of their client's behaviour hard to comprehend, and consequently feared that their evidence might well be misinterpreted in court, it was *the evidence itself* which often needed to be put in context if the court was to see how best its significance might be understood. This caused problems.

Whilst English law readily accepts that behaviour very often does not simply 'speak for itself', and hence that efforts should be made to ensure that it is understood in its appropriate context, very little attention has yet been paid to the issue just how this is to be achieved – especially when there is a very real prospect that neither the judge nor the jury will be sufficiently familiar with the context in question to be able to undertake that task with any confidence. From my own perspective as an anthropologist, the underlying problem can be plainly stated. Given that the greater part – and certainly the most significant part – of the material I set out in my reports invariably takes the form of a commentary on, rather than a *de novo* contribution to, the evidence presented to the court, my contribution is in severe danger of being ruled inadmissible, especially in cases heard before a jury. It is easy to see why. Since it is quite impossible to draw a hard-and-fast boundary between placing evidence in its appropriate context and making some sort of assessment of its probable significance, the expert anthropologist is in constant danger of sailing across the line into territory which can properly only be occupied by the jury, since it is a fundamental principle of English law that matters of credibility are for the jury, and the jury alone to decide. But what if the common sense of the members of the jury runs out – not so much because of lack of intellectual capacity, but rather because its members lack the relevant degree of cultural and linguistic experience?

Case study 1: Regina v Jameel Akhtar

A case in which I myself was involved neatly highlights the problem. Jameel Akhtar found himself in court, having been charged with conspiring to import 20 kilogrammes of heroin. The charge came about in the context of an elaborate sting operation organised by Customs and Excise, who had themselves imported the consignment of heroin into the UK in a process known as 'controlled delivery'. Against that background the prosecution case was straightforward. Customs produced evidence indicating that a Participating Informant, codenamed 'Mark', had approached a Drugs Liaison Officer attached to the British High Commission in Islamabad, indicating that he had been asked to act as a

'mule' to take a consignment of heroin to the UK. In return for a substantial reward, 'Mark' agreed to allow the DLO to surreptiously tape-record a series of telephone conversations between himself and the supplier in Pakistan, and (equally surreptiously) to hand over the consignment to the DLO once he had received it from the supplier. Both 'Mark' and the consignment of drugs were then flown to the UK by Customs, and 'Mark' was set up in a ready-prepared Customs safe house in Birmingham. From there 'Mark' made a number of telephone calls to Jameel (which were again surreptiously recorded), as a result of which Jameel eventually agreed to meet 'Mark' in the car-park in Birmingham New Street station. 'Mark' opened the boot of his car, and handed a hold-all to Jameel. Before he had even had an opportunity to examine the contents of the hold-all, Jameel was arrested by Customs Officers who were waiting to pounce the moment the 'delivery' took place. On being questioned, Jameel vigorously denied having anything to do with the importation of drugs, and insisted that 'Mark' was merely a friend of a friend who had phoned him up to ask him to help him start up a business in herbal medicines.

On the face of it this seemed a very lame excuse in contrast to the case advanced by the prosecution, which seemed virtually open and shut if taken at face value. Nevertheless having carefully inspected the evidence, I found myself becoming ever more suspicious about the role which the Participating Informer had allegedly played in the whole operation. If, as his statement suggested, he had only been able to obtain less than £1,000 from Jameel to recompense the Pakistan-based supplier for the 20kg of heroin which Customs had seized having arrested Jameel, it seemed to me that Mark could not have returned to Pakistan with any degree of equanimity.

If his account was correct, the exporter in Peshawar, Abdullah Khan, who had provided him with the heroin in the first place, was owed a great deal of money as a result of both failing to persuade Jameel to pay up, and of losing the consignment with which he had been entrusted to the police. If this was true, Abdullah Khan would undoubtedly have demanded his pound of flesh when 'Mark' returned to Pakistan. If not, something very fishy was undoubtedly going on.

With a number of other similar concerns in mind, I asked for access to tape-recordings of the original conversations between 'Mark' and Jameel, which were conducted in Urdu, rather than the transcripts into English on which the prosecution otherwise intended to rely. Their contents were a revelation. Two points were immediately apparent. In the first place 'Mark', who was nominally a mere mule, was clearly the dominant partner in all the conversations. Secondly there were clear indications that had 'Mark' had conducted the conversations in such a way that Jameel's polite expressions of acknowledgement (*ji, hanji* and so forth) in response to a whole series of deeply incriminating statements which 'Mark' himself had made would be read and transliterated as indicating that Jameel had offered his active consent to the whole operation. For these and other reasons I reached the conclusion that the whole operation appeared to be a put-up job in which 'Mark' had deliberately ensnared a victim who seemed – at least in my opinion – wholly innocent. I also reached the conclusion that that if the Customs Officers who had engaged 'Mark' as a PI were unaware of what their informant was up to, they must have been remarkably naïve and short-sighted.

Having set out my conclusions in a detailed report[1], I attended the trial, expecting to

1 A copy of this report can be found at www.art.man.ac.uk/casas/pdfpapers/akhtar.pdf

give my evidence in person. However, that was not to be. After an extended legal debate – from which I myself was excluded – the trial judge ruled that my report was inadmissible. The proceedings went ahead. Jameel was duly found guilty, and sentenced to thirteen years' imprisonment. Moreover his defence team had no greater success when the matter was taken to the Court of Appeal, which roundly supported the trial judge's decision to exclude my report from the proceedings. The arguments developed by Buxton LJ in support of this conclusion are worth quoting in full:

> It is difficult to summarise Dr Ballard's report and we will not seek to do so, save to say in very brief terms that first of all Dr Ballard sought to analyse the conversations between Mark and Mr Akhtar and to indicate how they fitted into the cultural background of those taking part, and how therefore that might reflect on the alleged credibility or content of those conversations; and also gave extensive evidence, or wished to do so, about cultural and social aspects of life and politics in Pakistan: the importance that would be attached to persons like the Khans, the dangers for a man like Mark of double crossing them as Mark, in effect, said he had done in this case, and the extent to which unfair practices took place in Pakistani politics, such as Mr Akhtar alleged had been his fate in this case.
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> The judge was clear that none of it should be admitted. . . . The substance of the judge's ruling was that in so far as the evidence went to an issue in the case, it concerned issues that were for the jury to decide.
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> Mr Enright [counsel for Akhtar] has stressed the different cultural background of the jurors in this case and those concerned in events in Pakistan. That is true, but juries in this country often find themselves trying cases of this sort, and with assistance from the judge, such as the jury certainly received in this case, they are able to do that perfectly fairly. None of the issues in this case are unusual.
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> Again, as was pointed out in argument, it is not the prerogative of Pakistan or of any country for it to be the case that to cross an influential drugs dealer is something that is only done with caution and trepidation. Nor will it be surprising to people in any country that there may be political plots which lead to events such as Mr Akhtar alleged to have happened in this case. To that extent, therefore, the judge was quite right to think that the additional evidence of Dr Ballard would not add anything in substance; quite apart from the fact, and we emphasise the judge did not rely on this, that Dr Ballard's evidence, no doubt, would have been met by other evidence from other anthropologists or other universities, an accretion of evidence that would be wholly unjustified.
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> We further say, however, for the avoidance of doubt, that insofar as Dr Ballard's evidence was going to be relied upon by the defence to seek to elucidate the truth or plausibility of what Mr Akhtar gave as the explanation of his various conversations with Mark, we consider it was inadmissible in any event. *It was or would be evidence seeking to support the credibility or truth of another witness* [my italics]. This was nothing to do with the evidence of Mr Akhtar's psychology, state of mind or anything of that sort. It was evidence of cultural background which, in our judgement, would not be admissible in any event when the issue in the case was whether when they met on those occasions Mark and Akhtar had been discussing heroin or herbal remedies: a matter in our judgement not illuminated at all by any expert in any discipline whatsoever.
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> It was for the trial judge to decide whether Dr Ballard should be allowed to give evidence. He was entirely right in not admitting his evidence.[2]

2 *R v Akhtar ~~(Jameel)~~* (1998).

The door was thereby closed on any prospect of a further appeal, and Jameel Akhtar went on to serve his sentence. However, as he did so the procedures deployed by Customs and Excise in these controlled delivery cases was coming under ever closer scrutiny, so much so that West Midlands Police were instructed to investigate the prospect that there might have been some serious abuses of due process in the way in which this case, and many others like it, had been investigated and prosecuted. The investigation proceeded very slowly indeed, with the result that it was not until 2005 that a reference from the Criminal Cases Review Commission (CCRC) brought the whole matter back to the Court of Appeal.

This time the outcome was very different. By the time Aktar's case, along with three others, returned to the Court of Appeal, the core of the appellants' case rested on suggestions that

- between 1994 and 1998, a group of people in Pakistan acted in concert to entice innocent people in the United Kingdom to import heroin;
- the suppliers of the heroin induced people to approach the Drug Liaison Officers of HM Customs and Excise stationed in Pakistan, in order to act as participating informants and secure reward money;
- the participating informants entrapped or enticed innocent people in the United Kingdom to receive the heroin by offering it for sale at very low prices and then lied in their evidence;
- part of the reward money paid by the UK Government to the participating informants was paid by the participating informants to the suppliers of the heroin;
- certain officers of HM Customs and Excise were complicit in the activities of the participating informants;
- there was a systemic failure or *mala fides* on the part of HM Customs and Excise in relation to the management of informants and the controlled delivery system.

But by now Custom's case had crumbled away, and in the event the prosecution offered no evidence to contest these allegations: as was therefore inevitable, all the convictions were quashed. To be sure the Court of Appeal was able to reach its conclusions without further reference to my report, not least, I suspect, because the CCRC feared – given the vigour of Lord Justice Buxton's previous ruling – that the Court of Appeal might still not entertain its contents. Nevertheless, the material on which they did rely comprehensively confirmed all the suspicions about the credibility of 'Mark's' evidence, and the role which he had actually played in the whole operation which I had set out seven years previously. The convictions of all the appellants were quashed.[3] With that in mind, it seems reasonable to conclude that if the trial judge had been prepared to admit my evidence, or failing

3 Following a lengthy investigation by the West Midlands Police, it has since been confirmed that the 'controlled deliveries' through which Customs had obtained a string of convictions were severely compromised by breaches of due process. Following an appeal mounted by five men found guilty of drug smuggling in three such sting operations, Lord Justice Hooper quashed their convictions because of a failure to disclose vital information about the relationships between Customs and Excise officers, informants and drug suppliers to judges and juries in the appellants' trials. [2005] EWCA Crim 1788.

that if the Court of Appeal had not so roundly confirmed his decision to rule it inadmissible – so exposing the Participating Informant's evidence to the kind of scrutiny which it would have received had it been given in English – there is a very good prospect that an acquittal would have been achieved despite Custom's success in deliberately concealing a huge amount of hugely damaging evidence from the court. In that case it would not have taken a further eight years before the Court of Appeal, having at long last had sight of all the material which Customs and Excise had hitherto failed to disclose, was able uncover the depth of the scams to which Akhtar and others had been exposed, leaving it with no alternative but to conclude that he did not receive a fair trial.

CONTEXTUALISING ETHNICITY

In many respects *Jameel Akhtar* can best be defined as a 'transnational' case: even though the whole operation which generated his prosecution (and a whole string of others like it) was set up in collaboration with HM Customs and Excise, the PI who pushed it through was Pakistan based, and most of the evidence either took the form of taped conversations in Urdu, or of actions which took place in contexts which were comprehensively conditioned by Pakistani cultural norms. As the world's population becomes progressively more mobile, it is only to be expected that that scenarios such as this – in which activities in conducted in any given legal jurisdiction are in practice organised in terms of the linguistic and cultural conventions of some distant and quite different social order – will become increasingly frequent. In these circumstances arguments of the kind advanced by Buxton LJ to the effect that 'juries in this country often find themselves trying cases of this sort, and with assistance from the judge, such as the jury certainly received in this case, they are able to do that perfectly fairly. None of the issues in this case are unusual' can now be seen to be wildly over-optimistic. To be sure it is essential to ensure that the autonomy of the jury's decision-making role is carefully preserved, but if their autonomy were regularly to be circumscribed as tightly as the learned judge suggested, it would appear to leave open the floodgates for the repetition of miscarriages of justice of precisely this kind.

Nor are these issues solely restricted to such actively transnational circumstances. Whilst most members of the many non-European ethnic colonies which have grown up in Britain during the course of the past half century still sustain very active transnational linkages with an extensive network of kinsfolk living in other jurisdictions – hence giving rise to the prospect of such conundrums – the complex cultural strategies that settlers and their offspring have developed in response to the local circumstances they have encountered here in the UK pose as great – if not greater – challenges to the equitable delivery of justice. Some of these complexities can conveniently be illustrated in yet another case study, although this time one in which the judicial system emerges with rather greater credit.

Case study 2: *Regina v Majid Ali*

At 8.47 am one weekday morning, the British Telecom emergency operator in Newcastle upon Tyne answered a 999 call. Before the operator could even begin to run through her standard pattern, an alarmed and excited woman's voice shouted 'Fire Brigade, Fire

Brigade', followed so quickly by an address in Bradford that the operator could not catch the details. Confusion followed as the operator tried to return to her standard script for details, so much so that the caller rang off. Within a minute the caller was back on the line again, breathlessly indicating that 'I've got a baby and I've got a fire', but once again there was confusion over the address. There were all sorts of noises in the background, and the caller was clearly having difficulty breathing. She eventually managed to say 'it's my husband what done it', and then nothing more was heard but background noises. Whilst all this was going on the emergency services ran a trace on the call, and found that it had been made on a mobile phone registered to an address in Hull.

Meanwhile in the Lidget Green area of Bradford, where the population is overwhelmingly of Asian origin, several parents taking their children to school noticed smoke coming from the bedroom window of a terraced house. Hearing cries for help one of these passers by broke the glass in the front door, reached inside to open the latch, and rushed upstairs, only to find that the door was locked and couldn't be opened. At 8.53 the Fire Brigade arrived, having been called by one of the local onlookers, and after breaking into the locked bedroom promptly the blaze was promptly extinguished. Nevertheless, by then the room's two occupants – Nazia Bi and her baby daughter – had succumbed to the effects of smoke inhalation. They were found to be dead when the ambulance arrived. The Police were soon on the scene, and swiftly set about trying to establish the circumstances in which the tragedy occurred. The more pieces of the jigsaw they gathered together, the more suspicious they became. Whilst Nazia was locally born, her husband had only recently arrived from Pakistan; then they heard stories from various quarters that Nazia was planning to run away. When the Police also discovered that Nazia's husband Majid Ali had left the house to go to work only minutes before the emergency services were called, that the door of Nazia's bedroom was locked, and also that during the course of calling the emergency services Nazia had suggested that it was her husband who had set the fire, the prospect that this was an 'honour killing' came immediately to mind. Majid Ali was taken to the police station, in a state of shock. When charged with arson all he had to say was 'I didn't start the fire. I don't know anything about it. I heard about the fire from somebody else'. He had little else to say. Within hours, Majid was charged with Nazia's murder. The case seemed to be open and shut.

Solicitors for the defence instructed two experts to prepare reports on the underlying issues: the first to explore the way in which the fire had started and progressed, and the second (myself) to report on the underlying social, cultural and familial issues. Having closely examined the condition of the bedroom in which the fire took place, the fire expert reported that the seat of the fire had been located at the foot of the bed (i.e. at some distance from the door), probably at floor level; that there was no evidence to suggest that a fire accelerant had been spread around the room to assist the development of the blaze, or that either Nazia or her daughter's clothes had been doused with such an accelerant; he also noted that a key for the lock had been found within the room and that, in his opinion, if Nazia had indeed had access to the key she would have had plenty of time to unlock the bedroom and escape. All this led him to conclude that 'On the evidence available to me, I cannot rule out the possibility that Nazia may have started the fire in her bedroom accidentally or deliberately immediately after Mr. Ali had left the house'.

It was at this stage that the case papers were passed on to me. From these I learned that Nazia belonged to a large extended family from Mirpur District in Pakistan, many of

whose members had also settled in Bradford.[4] Nazia herself had arrived in the UK at the age of seven and, during the course of her childhood, had made several extended visits back to Mirpur. She had been married at seventeen. As is customary in this community, her marriage had been arranged by her parents, and the groom they chose for Nazia was her cousin: in this case her father's younger brother's son. The marriage was celebrated in Pakistan, and once married the pair seemed to get on well: Majid Ali was reported to have taken Nazia around on the back of his motor cycle to show her the sights of the District. During this period Nazia also became pregnant. Some considerable time before the child was due Nazia decided to return to the UK, leaving Majid Ali behind to complete the procedures required to obtain entry clearance for the UK. As is so often the case in such circumstances it took two years before all the paperwork was complete. As soon as Majid Ali received his entry clearance he promptly set off to join his wife and daughter in the UK.

However the reception he received in Bradford was not at all what he had been expecting. In principle his arrival was a family reunion, for in addition to his wife and her immediate family (to whom he was of course already related) his presence was also welcomed by three maternal uncles, two paternal uncles, and three maternal aunts – together with all their spouses and children. However, the one person who was clearly not pleased to see him was his own wife. In sharp contrast to the intimacy of their relationship when they were together in Pakistan two years earlier, Nazia now sought to avoid Majid Ali's company as much as possible. Moreover, she adamantly refused to share a bed with him, despite a great deal of good natured but concerned ragging from Nazia's mother and sisters. Eventually her mother, who had initially decided to keep the couple company in the house which had been bought for them, decided to move out, fearing that her presence might be interfering in the newly-reunited couple's relationship. However that was not the case. Once her mother had moved out, Nazia promptly moved herself and her daughter into the room in which her mother had hitherto slept, and refused to let Majid Ali enter. It was in this small room at the rear of the house that Nazia and her daughter met their deaths.

Why did Nazia become so hostile to Majid Ali? As is commonplace in Mirpuri contexts, Nazia's parents had two objectives in mind when they set up their daughter's marriage to Majid: firstly to facilitate the entry of an additional member of the descent group into the UK, and secondly as a backstop against the prospect of her running off the rails. In the confident expectation that once nubile young women have been exposed to the pleasures of sexual activity they will be much less likely to run off and become involved in a less acceptable relationship, and that they will find themselves tied down even more firmly should they swiftly fall pregnant, girls in this community are normally married soon after they pass school leaving age. Nazia was seventeen when she was married to Majid Ali.

Their marriage might have developed differently had the issue of Majid's entry certificate not been so long delayed. However, as all too frequently occurs in contexts such as

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4 I was consequently well equipped to address the issues in this case, having carried out detailed ethnographic fieldwork both in Mirpur District and within Mirpuri ethnic colonies in the UK. See Ballard, R (1990) Migration and kinship: the differential effect of marriage rules on processes of Punjabi migration to Britain, in Clarke, C, Vertovec, S and Peach, C, *South Asians Overseas: Contexts and Communities*, Cambridge: Cambridge University Press, pp 219–249.

this, two years passed before the couple were reunited. However, two years is a very long time in the life of a teenager. Moreover, in order to sponsor her husband's entry to the UK, she was required to show that she was in a position to support him without recourse to public funds when he arrived. In other words contrary to the expectations of her mother's generation, she needed have to have paid employment – which she promptly obtained. However having a job brought her (and others like her) access to much more than a weekly wage: not only did it take her out of the house on a daily basis, but given her new status as a respectably married woman, there was no need for her to be carefully chaperoned. Hence she gained a great deal more personal freedom than she would otherwise have been allowed, with the result that she had no difficulty in getting together 'for a laugh' with other young Pakistani women in the same position as herself and, having taken the necessary precautions to avoid being found out, getting involved in all manner of escapades – including re-establishing contact with other young Pakistani males.

As Nazia stepped into her new career as a married woman, Majid faded further and further into the background; instead she developed a steadily intensifying crush on a young man (also of Mirpuri origin) whom she had known since her schooldays, and who was by now pursuing a degree course in Hull. With the assistance of one of her *saheli* (female friends) Nazia managed to drive surreptiously over to Hull several times to meet him. All the indications suggest that her boyfriend was much less interested in Nazia than she in him, but this seems only to have sharpened her determination to pursue him. One can see why. As her new alternative lifestyle developed, so Nazia – like many others in her position – dreamed of taking it still further. She dreamed of a handsome husband with a big house and a large car – and it was quite clear that Majid was not going to be able to provide her with either of those any time soon, even if he managed to make it to Britain. Hence Nazia began to make plans to run away and join her boyfriend. These plans remained largely hypothetical whilst Majid was safely ensconced in Pakistan, but as the prospects of his arrival hardened, and then turned into reality, Nazia began to implement them in ever more concrete terms.

However, by now Nazia was 'English' enough in her thinking not to let her boyfriend about her plans – not least because he did not display a similar degree of enthusiasm for such a prospect. Moreover, like virtually all other members of the British-raised second generation, she was just as familiar with the modes of behaviour routinely deployed within the external 'English' world as she was with those with which she was expected to conform within the confines of the ethnic colony, and equally skilled in playing off both sides against the other. Hence even though Nazia was firmly ensconced in the bosom of her *biraderi* – both because they provided endless childcare for her much loved baby daughter, and because of the strength of her emotional bonds with a wide range of siblings and cousins – she decided that her objectives could best be fulfilled by presenting herself to the Benefits Agency as a young Asian woman in serious domestic distress. As a highly competent cross-cultural navigator, she was well aware of the relevant patter: wholly fictitious accounts of being put through a forced marriage by violent and authoritarian parents loomed large in her account. She also came up with an equally imaginative solution to her largely imaginary problems: in order to avoid the 'bounty hunters' which her parents would surely engage in an effort to track her down, she decided that her best option was to change her name, which would enable her to 'disappear' to Hull, and to train as a nursery nurse well beyond the vindictive reach of her family. An officer at the Benefits Agency in Bradford was assigned her case, and together they began to work out an action plan.

Everything was now falling into place. Along with her *saheli* Nazia made several further trips to Hull, where she put down a deposit on a flat, and set the date when she would take up the tenancy.

However, as her plans progressed Nazia also appears to have begun to get cold feet, with the result that she spent a great deal of time justifying her plans to herself. Hence she began an extraordinary round of encounters with English interlocutors – including a solicitor, the local Community Liaison Police Officer (Asian families), her family's Financial Advisor, a visiting Loss Adjuster, and the manager of the Benefits Agency in Hull – to all of whom she recounted much the same story of being forced into marriage to a violent husband by authoritarian and traditional minded Asian parents who would indubitably kill her if they discovered that she was planning to run away. What I found most striking about all these interactions is that at no stage did any of those to whom she spilled out her sob story make a serious effort to establish its veracity. Of course situations of the kind Nazia describes can and do occur – albeit with considerably less frequency than most English observers assume will necessarily be the case. So it never seems to have crossed the minds of any of the helpful souls from whom she sought reassurance and legitimation to have attempted to cross-check any aspect of her account, or to enquire how it was that if her family did indeed curtail her freedom as comprehensively as she suggested, she was nevertheless in a position to participate so actively in the external 'English' world.

So what was actually happening back home? Even though Nazia insisted on sleeping in a separate room from Majid, other aspects of household organisation proceeded normally, and other *biraderi* members were constant and welcome visitors in their house. Moreover Majid was making great efforts to establish himself in his new environment: not only did he rapidly re-establish good relationships with his many male cousins, but through their good offices he swiftly found a job. To be sure it was low-paid, but it actually produced an income. Nevertheless, his wages also became a bone of contention between himself and his wife. Whilst Majid wanted to send a significant portion of his first month's earnings back to his parents in Pakistan (thereby following established South Asian conventions) Nazia objected angrily, arguing that since she was effectively looking after the finances of the household, Majid should hand over his unopened wage-packet to her – so effectively reversing the conventional patterns of gender hierarchy within Mirpuri households. This was too much for Majid: he refused to conform to her demands.

Nazia, meanwhile was nothing if not a compulsive bean-spiller. One of her closest *saheli* within the *biraderi* was her mother's elder sister's daughter [i.e. her cousin], who was much the same age as she. Not only did she tell her cousin of her plans to run away to Hull, but she also outlined the complex series of steps she planned to take in order to implement her escape. As her cousin subsequently told the police:

> It was a way to leave Bradford and prevent her relatives from searching for her. Firstly she had to change the names of herself and [her daughter] Sana to something else and then get a credit card in new names. Before leaving her house in Bradford, she would give Majid his breakfast and see him off to work. She would then set fire to the bedroom (the small one at the back, where people taking their children to school would not notice), and then she and Sana would escape, unseen, in [her *saheli's*] car and go to her new flat. They would be gone long before the Police and the Fire Brigade arrived. I told her to use her brain, and that if she had burned down the house the Police would find a bit of bone or something, but if they didn't find anything, they'd know she'd gone. You cannot burn away completely. Nazia said

> that she would buy the stuff in bottles that you use to wash paint brushes with, to start the fire. She would sprinkle it in the bedroom. Then she laughed and told me that she was only kidding.

That was far from the case, however. Late in the evening before she died in the fire, Nazia went to a corner-shop in the immediate neighbourhood with one of her nieces, who subsequently reported that she had bought two bottles of turpentine. Earlier that evening Nazia also rang the friend who had helped her to set up the flat in Hull, asking her to come round in her car to pick up some bags of clothes and, when this had been done, agreed that they would get in contact again the next morning, when her friend had agreed to ferry Nazia to Hull. At 8.30 the next morning her friend rang Nazia's mobile, but there was no reply. However, a few minutes later her phone rang, and Nazia told her 'There's a fire on – what shall I do'. Her friend promptly advised her either to ring the fire service or the police, and then the line went dead. In the event more than five minutes passed before Nazia put her call through to the emergency services – but as we know it was by then too late.

Whilst there is no way of knowing the precise circumstances in which the fire in the bedroom came to be lit, a careful review of all the available material about Nazia's behaviour prior to her death (all of which was contained in the 'unused material' gathered by the police and subsequently disclosed to the defence), and which I used to prepare my report,[5] suggested that the prospect that it was Majid rather than Nazia herself who was responsible for the blaze became increasingly small. That was certainly the view of the Judge, who dismissed the case against Majid the moment proceedings began, declaring that in the light of additional evidence placed before him, the defendant had no case to answer.

But although the Judge's decision was undoubtedly as fair as it was just, it still left several puzzles hanging in the air. First of all there is the issue of just what was Nazia up to. Secondly, and just as importantly, how did she manage to continue to run rings around so many professional observers, no less after her death than beforehand?[6] In making sense of Nazia's own behaviour, it seems to me that these events provide an object lesson in the potentially perilous consequences of trying to have one's cake whilst also taking the opportunity to eat it. From this perspective the underlying contradictions which she was trying to resolve can be straightforwardly identified: how could she simultaneously back out of her marriage to Majid and establish herself on a more independent basis whilst still sustaining positive relationships with all the members of her *biraderi* – from amongst whose ranks her husband was drawn? If so her ultimate objective appears to have been to arrange an incident in which Majid Ali would either have been arrested and charged either with murder (if she had implemented the plan which she set out to her cousin) or alternatively, been charged with arson and attempted murder if she had implemented plan *b*, in which she and her daughter would have been rescued at the last minute by the fire brigade.

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5 A copy of my report can be found at www.art.man.ac.uk/casas/pdfpapers/majid.pdf

6 Moreover, even the judge's decision to set aside all charges against Majid Ali did not bring the matter to an end. Southall Black Sisters promptly denounced his decision, suggesting that an 'honour killing' had been deliberately overlooked, largely because 'the family and wider Asian community closed ranks and did not want a public hearing'.

Moreover, if she was indeed planning such elaborate manoeuvres – as all the evidence appears to indicate – there is in my view no reason to invoke elaborate and largely unsubstantiated theories of 'culture conflict' to explain apparently bizarre patterns of behaviour. To be sure she found herself facing all sorts of dilemmas as to how she wished to organise her life – a common enough problem for teenagers, albeit one which was heightened in her case because of the wide variety of differently structured ethnic arenas in which she routinely participated. Not that participation in a multiplicity of arenas posed any great problems *per se*: like most other young British-based South Asians, she had developed a high degree of skill in cross-cultural navigation, with the result that she was at ease in all the arenas in which she chose to participate. Rather the challenge she found herself facing was ultimately far more mundane: how to fulfil her wish for greater independence from what she had come to view as the unnecessarily onerous consequences of the obligations arising from *biraderi* membership, of which she had concluded that those arising from her marriage to Majid were particularly unwelcome, whilst also continuing to take advantage of the very real social, emotional and material benefits to which *biraderi* membership also gave rise.

After all, if Nazia's sole concern had been to escape from *biraderi* membership and all that that implied, the difficulties before her would have been few. She had already set up a bolt-hole in Hull, a city with no significant Mirpuri presence, and had even taken steps to change her name by deed poll. Even if her family had caught up with her, there are no indications that she would have been placed under anything more than moral pressure to return. Why, then, the complex 'house-fire' charade – about whose detailed implementation she appears to have changed her mind at the last minute? Two considerations seem to have been important. In the first place her most immediate goal appears to have been to collapse her relationship with her husband and cousin Majid. As things stood, she could have no legitimate complaint about his behaviour in the eyes of her *biraderi*. However, Nazia had good reason to suppose that all that would change if Majid had been found guilty of attempted murder and deported back to Pakistan – as she could reasonably expect if the scenario that she sketched out to her niece had gone according to plan.

But if so, why did she partially abort her plan at the last moment, so exposing herself to the fate which she and her beloved daughter eventually suffered? There are no indications that this was a suicide bid. Instead, a far more likely explanation is that when the prospect of putting all her links with her family behind her – rather than merely weaving her way in and out of their world in the way in which so many others in her position have become adept – she appears to have realised that the losses would significantly outweigh the benefits. So she chickened out. Rather than escaping to Hull the moment the fire was set, she decided – or so I would suggest – that a better option would be to call the fire brigade once the fire was comparatively well-established. If, as there seems little doubt that she confidently expected, she was rescued in good time by the fire brigade, she could heap all the blame on her husband for his dastardly act of attempted arson. Having gained the moral high ground no less in the eyes of English society at large than her own family, she appears to have calculated that she would able to implement her strategy of having her cake and eating it even more successfully than before by maintaining all her links with her family and the wider *biraderi* whilst also participating ever more extensively in the wider English world. But in setting out her scheme, there is one point which Nazia appears to have overlooked: in such a conflagration it is smoke and fumes which are a far greater threat to life rather than flames. Hence she waited far too long before dialling 999 – with

tragic consequences. Nevertheless, it was one which also left her intended scapegoat dreadfully exposed: in the absence of an appropriately-ordered exercise in context setting, as well as the application of some judicial common sense, Majid could easily have been found guilty of an offence which he had not committed.

THE CHALLENGE OF ETHNIC PLURALITY TO ENGLISH LEGAL PRACTICE

It would be idle to suggest that the specific pattern of the events described in either of these case studies are in any way 'typical': issues and conflicts which lead to proceedings in the courts, whether in criminal or civil contexts, are always in some sense exceptional – as I am well aware as a result of my activities as an expert witness.[7] Hence I have chosen these two cases out of the many others which I could have cited with three main considerations in mind. Firstly to demonstrate that if inadequate efforts are made to set the issues which the court is seeking to resolve in their appropriate cultural contexts, there is a very real prospect that a miscarriage of justice will occur. Secondly to highlight the difficulties which can all too easily arise when one seeks to introduce relevant material on linguistic and cultural issues into the proceedings, given the current conventions deployed in English law. Thirdly to provide some substantial indications of just how and why all manner of conundrums are likely to arise when the court is considering the events and behaviours which are (or may be) ordered in terms with which all those involved in the processes of delivery of justice are unfamiliar.

In exploring these issues from an empirically-grounded anthropological perspective, my approach – as well as many of my conclusions – differs strikingly from that of many of the other commentators who have begun to traverse the same territory from a more theoretical perspective. Thus far, at least, most such commentators have adopted a perspective which differs relatively little from lay expectations amongst the indigenous population at large. In doing so they have assumed that having placed themselves within the jurisdiction of the English courts, immigrants from overseas, and even more so their British-born offspring, are necessarily bound by the commonly understood expectations of English law. The principle which underpins this expectation is well established: if members of minority groups fail to follow the injunction 'when in Rome, do as the Romans do', preferring instead doggedly follow their own alternative conventions, they have only themselves to blame if this leads them into trouble with the law.

To be sure many lawyers would temper this approach by acknowledging that when the behaviour in question only amounts to but a minor variation on normative English expectations, such that it does not contradict established conventions of justice, equity and good conscience, it would be inappropriate to dismiss the resultant patterns of alterity as being *ipso facto* illegitimate. This is, of course, precisely the stance which Poulter adopts in the ground-breaking theoretical review of these challenges which he presents in his

7 For the avoidance of doubt, I must also emphasise that I would certainly not want to suggest that the majority of domestic homicides in South Asian contexts are fictions in the sense which was ultimately revealed in both these cases. What I can confirm, however, in every one of the remaining ~~15~~ homicide cases with respect to which I have been instructed to prepare an expert report, ~~I identified a whole series of contextualising cultural which I considered it vital to bring to the attention of the court. Most of these focused on issues of motive and provocation.~~

monograph *Ethnicity, Law and Human Rights*, which is reviewed in some detail by Menski in Chapter 1 of this volume. However from my own anthropological perspective the most striking feature of Poulter's approach is the narrowness of its conceptual foundations. Besides excluding as irrelevant or mistaken all those systems of law which stand outside the established Euro-American canon, his whole perspective is ultimately grounded in *political* rather than legal considerations. From this perspective his argument is the assumption that if the bar against plurality is raised above the minimal level of toleration which he (and indeed many other members of the indigenous majority) regard as acceptable, the cohesiveness and unity of the English social order will be irredeemably compromised.

To be sure that conclusion – and the underlying premises that support it – may currently receive widespread popular support. However not only is it a judgment which is inherently political in character, but it also gives rise to a vision of the future which may well prove unachievable. What if the genie has already left the bottle? If it is the case that Britain, no less than virtually all other contemporary Euro-American societies, has *already* been rendered irredeemably plural as result of mass migration, how much sense does it makes to suggest that the resultant legal conundra can be resolved simply by arguing that our *de facto* condition of plurality can simply be dismissed as illegitimate? Genies whose existence is denied invariably come back to haunt those who choose to ignore them – most usually return with a vengeance.

AN ANTHROPOLOGICAL PERSPECTIVE

Whilst Poulter reaches his conclusions on the basis of his experience as an academic lawyer, my own entrée into this field has taken place on a very different basis. I am manifestly not a lawyer by training. Rather my interest in the legal consequences of ethnic plurality arose as a by-product of my professional interest in the internal dynamics of the ethnic colonies which South Asians have established in Britain's cities during the course of the past half century, and of the impact which their emergence has had on the established social order. In doing so, my approach to the issues has been empirical, descriptive and analytical, rather than normative. Moreover when I first set out on this journey I had no inkling that I would find myself exploring the applied implications of ethnic plurality. But with the benefit of hindsight, the destination at which I subsequently arrived now seems more or less inevitable.

I entered this field in somewhat unusual circumstances. Although I had been brought up in rural Dorset, when I began fieldwork amongst the Sikh community in Leeds in 1971 I had just returned from completing my doctorate at the University of Delhi. My dissertation was constructed around a detailed ethnographic study of a village in the Himalayan foothills several hundred miles further to the north. From this perspective the Punjabi Sikh settlers whom I encountered in Leeds were in no sense strangers: rather they ordered their lives according to values, expectations and assumptions with which I had already grown familiar in India. Indeed, their lifestyles were closely akin to those pursued by my Sikh friends in Delhi. Hence, if there was any section of the population in the portion of inner-city Leeds in which I settled to down to do fieldwork with whose lifestyles I was unfamiliar, it was members of the local white working class population – who I soon discovered were as likely to be of Irish, Jewish or Eastern European ancestry as of straightforward English descent.

My local Sikh informants were manifestly not English, but nevertheless, from my own perspective, their preferred lifestyles were far from unfamiliar. Hence whatever the expectations other members of Britain's indigenous population may then have had about the necessity – and indeed the inevitability – of my Sikh informants following a trajectory of rapid cultural assimilation, I was in no way surprised to find that they were continuing to deploy their own distinctive values, conventions and expectations to order their personal and domestic lives. Nor, given my starting point, did their preferred strategies seem in any way problematic. As I was well aware as a result of my own personal experience in India, no matter how alien the environment in which one finds oneself, migrants do not forget the values into which they themselves were socialised, nor do they comprehensively detach themselves from the reciprocities which bind them to their families and kinsfolk simply by virtue of their contact with, and the acquisition of, the capacity to navigate their way through arenas ordered in terms of hitherto unfamiliar linguistic, conceptual and behavioural premises. As I soon began to realise, as a result of taking a crash course in cross-cultural navigation ~~by~~ during the course of the three years I had spent in India, I approached the issues before me from an entirely different perspective from that deployed by the great majority of my academic colleagues.

To be sure my Sikh informants found themselves exposed to racial exclusionism, whose impact I witnessed myself on an everyday basis. However, the suggestion that my informants were in any sense helpless victims of these processes was way off the mark. Not only did they almost all display an active capacity to act as agents in their own cause, the secret of their success in so doing lay not so much in their capacity to mimic English modes of behaviour – for by the time I arrived in Leeds many were becoming highly skilled cross-cultural navigators – but rather from their highly creative capacity to utilise the alterity of their cultural heritage either to colonise hitherto unexploited niches in the established socio-economic order, or failing that, to exploit existing niches in highly imaginative but hitherto largely untried ways. In other words, the cultural alterity which ~~most~~ outside observers assumed would ~~necessarily~~ handicap the newcomers proved, to the contrary, to be an excellent source of adaptive, ideological and entrepreneurial inspiration.[8] This was nothing new of course: throughout history, the deployment of such culturally grounded entrepreneurial strategies has been a salient component of almost every instance of ethnic colonisation. What appears to have caused a great deal of consternation in this context was that a selection of Britain's imperial chickens had come home to roost by playing a well-established colonial game in reverse, so much so that the deposed imperialists could not, quite literally, believe their eyes. The prospect that those over whom they had so recently exercised colonial control could turn the tables – and in doing so outcompete them at their own game – was as far as I could see beyond the bounds of local comprehension.[9]

Yet although my Sikh informants had been patently successful in reconstructing their personal and domestic lives on their own preferred terms, they most certainly did not enjoy an entirely trouble-free existence. No-one lives in paradise. Though constructed on their own terms, ethnic colonies are as wracked by as many internal disputes as any other

8 Ballard, R and Ballard, C (1977) The Sikhs, in J L Watson (ed) *Between Two Cultures: Migrants and Minorities in Britain*, Oxford: Blackwell, pp 21–56

9 Ballard, R (1992) New clothes for the emperor? The conceptual nakedness of the British race relations industry, in *New Community*, Vol 18, pp 481–492.

community; moreover, even if one set those issues to one side, there were all sorts of contexts – especially those of health care, education, employment and welfare which drew even the most enclosed members of any given colony into all manner of interactions across the boundary. Likewise, there was no way in which they could escape occasional scrutiny from outside agencies such as the Inland Revenue, the Immigration service and the Police. Their new-found status as British citizens demanded no less.

Given that there were all manner of contradictions between the conventions deployed within such ethnic colonies and those routinely deployed by members of the indigenous 'English majority', the scope for mutual incomprehension was manifestly enormous. Hence at the outset of my academic career the bulk of my published findings – like those produced by most of my colleagues – simply sought to make coherent sense of my informants' everyday behavioural strategies.[10] We did so in the hope, amongst other things, that access to our analyses and conclusions would prove helpful to all those whose professional activities brought them into face-to-face contact with members of the minorities on the grounds that unless they could open up reasonably effective channels of communication with their pupils, patients and clients with respect to their activities in domestic contexts, the prospect of their being able to provide a professional service of any kind became increasingly remote. My ethnographic observations provided plentiful evidence that the communication gap between professionals and their clients was often huge, and that even those professionals with the best of intentions were simply not in a position to offer an effective service to many of their minority clients.[11]

Yet although I initially assumed – as did most of my colleagues – that it would be those engaged in the so-called 'caring professions' – such as social work, psychology, psychiatry, teaching and so forth – who would prove to be the most avid consumers of the ethnographic insights which I was in a position to produce, so far at least, it is lawyers who have begun to display the most consistent interest in my findings.[12] To be sure the level of their professional interest remains patchy and should most certainly not be overblown, but nevertheless its reality accounts both for the production of this paper and for the volume in which it appears. Why, though, should lawyers have displayed more interest in my findings than have members of most other professions? In my view two specific factors may well be of some significance. Firstly the adversarial character of English law, such that public funding is in principle available – albeit on an increasingly compromised basis – to many classes of litigant, so producing a potential funding-stream to support the commissioning of expert anthropological reports; and secondly the fact that the grounds of all legal decisions – unlike those in most other professional contexts – not only have to be set out in detail in writing, but are published and subject to further public scrutiny by way of appeal.

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10 See, for example Watson, J (ed) (1977) *Between Two Cultures: Migrants and Minorities in Britain*, Oxford: Blackwell; Khan, V (ed) (~~1999~~) *Minority Families in Britain: Support and Stress*, London: Macmillan.

11 Ballard, R (1989) 'Social work with black people: what's the difference?', in Rojek, C, Peacock, G and Collins, S, *The Haunt of Misery: Critical Essays in Caring and Helping*, London: Tavistock, pp 123–147

12 It is also worth noting that there are good reasons for suggesting that anthropologists should also be included in the list of professions reluctant to take cognisance our findings, not least because these caused us to challenge many of the taken-for-granted assumptions around which large parts of anthropological theory had hitherto been constructed. See www.art.man.ac.uk/~~CASAS/~~pdfpapers/racecult.pdf.

In these circumstances, it is rather more difficult to sweep hard cases into oblivion beneath the carpet.

JUST WHERE DOES THE SHOE PINCH?

Whilst this may serve to highlight how and why it is that in the course of developing a career as an applied anthropologist I have as yet been drawn into much more extensive engagement with lawyers than with any body of professionals, it is also worth considering which kind of cases – and even more significantly, just which kinds of issues – have leapt to the forefront as I have done so. Despite having been instructed to produce reports in an ever-widening range of legal contexts, I have nevertheless found that the issues on which my reports almost invariably focus is tightly delimited to one or other (and not infrequently all) of a small number of inter-connected issues. They include:

- The strongly corporate character of social relationships in South Asian contexts, such that members of social networks – from extended families onwards – are bound together by necessary relationships of mutual reciprocity, rendering them far less individualistic than those with which most English observers are familiar.
- The extent to which marriage consequently serves as a vehicle for the transfer of women between such corporately constructed families, and the consequent role of conjugality in establishing, reinforcing and/or undermining established patterns of interpersonal reciprocity.
- The extensive opportunities for female agency available within the resultant social networks, even if public appearances are regularly ordered in such a way as to suggest that they are characterised by untrammelled male dominance.
- The immense significance of considerations of honour (*izzat*) and modesty (*sharam*) in ordering patterns of personal behaviour, and beyond that competition for status within such networks, such that such matters are frequently the driving force behind all manner of intra- and inter-familial manoeuvres.
- The strong preference for settling all conflicts on an in-house, or more precisely a within-the-network basis, most usually through some kind of family meeting or *panchayat*.
- The routine use of the customs and conventions of the community in question (*riwaj*), rather than more formal sources of law such as the *shari'a*, the *rehat maryada* or the *dharmashastra* as guidelines dispute settlement towards an equitable basis within any given network

What these inter-related points all serve to indicate is that it is not isolated 'laws' or 'customs' which precipitate the unusual forms of behaviour with which the courts now find themselves confronted, but rather with the presence of a plurality of broadly self-sufficient and self-regulating communities whose members deploy coherent ideological frameworks – with whose underlying premises European audiences are largely unfamiliar – to order participants' within-the-network behaviour. Hence it is not so much isolated and discretely construable items of unfamiliar behaviour such as 'forced marriage', 'honour killing', 'spirit possession' and so forth with which courts and lawyers need to get to grips, but

rather with the overall grammar of the cultural and ideological systems within which these specific practices are set.

This is not such a daunting prospect as it may seem at first sight, for it is certainly not to suggest that judges, juries or lawyers need to be intimately familiar with every aspect of the multiplicity of cultural traditions from which the litigants appearing before them are now likely to be drawn. Rather I am suggesting something much more straightforward: namely that if justice is to be delivered on an equitable basis, all those involved in the delivery process should at the very least be aware that:

- everyone without exception orders their thought and behaviour within a cultural and ideological framework of some kind
- those frameworks are *contextual*, and hence that individuals who have acquired the necessary cultural competence may order their behaviour according to differing premises as they move from context to context
- the framework within which one routinely operates is ~~not universally applicable, and~~ other frameworks ~~are~~ just as reasonable, rational, sensible and comfortable to their users as one's own taken-for-granted assumptions
- and that if this is indeed the case, care must be taken to take cognisance of the cultural context within which any particular item of behaviour was framed before jumping to taken-for-granted conclusions about what its significance might be.

If all this was readily accepted, the task of the anthropological expert would be much more straightforward. If the courts – and more specifically the advocates responsible for arguing their clients' cases in court – were more adept in recognising the need to take the cultural context into account, there would be far less need for experts such as myself to make an active contribution to the proceedings, at least in those cases where the issues at stake were not particularly complex. Once the importance of thinking oneself into another person's shoes is recognised, moving towards the implementation of that goal is a relatively straightforward task. This is not to suggest, however, that there is consequently no scope for expert assistance, especially when the stakes are high, and when the matters in contention include salient dimensions of ethno-cultural distinctiveness to which no amount of common-sense context-setting could reasonably be expected to suffice. All my experience suggests that in those circumstances an expert contribution is essential if an equitable outcome is to be achieved.

If all that did indeed hold, the expert anthropologist's task would be relatively straightforward: to provide a contextualised commentary on the relevant issues within the specific community or communities from which the litigants were drawn, in the confident understanding that in doing so one was not stepping on the jury's toes, but rather providing them with a perspective and a set of yardsticks against the background of which they would be in a better position to reach an equitable verdict. Unfortunately, we are still far removed from such a happy position. Those like myself who are in a position to offer such assistance to the courts find ourselves creeping our way across largely unsignposted territory. Worse still, one not infrequently finds that the few signposts on which one thought one could rely have been surreptiously removed.

GUIDELINES THAT COME AND GO

An anecdote is in order here. In 1999 I was one of those commissioned by the Judicial Studies Board (JSB) to prepare material for inclusion in a new edition of its *Handbook on Ethnic Minority Issues*, which was to be updated and re-named the *Equal Treatment Benchbook*. The section to which I was assigned dealt with language, culture and communication, rather than more substantive issues such as religion, naming systems, demography and so forth. I was very happy with my assignment, most especially since the section on communication provided me with an opportunity to highlight the problems which could so easily arise in the course of interactions across linguistic and cultural boundaries, and about which I had by then accumulated a good deal of first-hand experience. I was not greatly surprised that my draft chapter appeared to have caused a good deal of consternation amongst members of the editorial board, most of whom were serving judges. But the results were plain to see: whilst the chapters dealing with more factual issues appear to have been sent to the printers virtually unchanged, my own contribution was subjected to severe editorial pruning.

Whilst I was disappointed that my arguments and analyses – and above all my conclusions – had attracted so much attention from blue editorial pencils, I was not greatly surprised. If I had sailed to close to the wind in preparing my draft, I took comfort from the fact that the truncated version published in the 1999 *Benchbook* still retained the essence of my arguments. Unfortunately, however, those arguments did not stand for long. The *Benchbook* was designed to be updated, not least to take account of issues such as gender and sexual orientation, rather than simply those of race and ethnicity. What I had not realised was that updating could also mean excision: when I accessed the JSB's website in early 2005, I found that the chapter on Communication had been re-written, and that all mention of the issues which I had sought to raise in my earlier version – and which were precisely those with which this chapter is concerned – had been excised.[13]

All this leaves the whole field in a condition of considerable confusion, most particularly with respect to the admissibility of context-setting anthropological evidence with respect to religious and cultural developments within the UK. Whilst the Court of Appeal has explicitly acknowledged the utility of anthropological evidence with respect to overseas contexts,[14] as far as I am aware Buxton LJ's conclusions cited earlier, in which he dismissed the admissibility of anthropological evidence in the UK, still remains unchallenged. Even so, the learned Judge's ruling has by no means halted my career as an expert witness. Whilst counsel have often expressed concern as to whether or not my reports could be treated as admissible in principle, and have also been equally doubtful about how much of the material included in them would prove acceptable even if the principle of admissibility

13 My initial draft of the chapter can be found at www.art.man.ac.uk/~~CASAS/~~pdfpapers/communication.pdf, whilst the version which was subsequently published in as Chapter Six in the *Equal Treatment Benchbook* is at www.art.man.ac.uk/~~CASAS/~~pdfpapers/jsbch6.pdf

14 In *Husna Begum* (an immigration case), Buxton LJ ruled that 'Our attention in this connection was drawn . . . to a specific passage in the evidence of one of the experts, Dr Gardner of the University of Sussex, who has a most impressive curriculum vitae of experience over a period of 20 years, both in practical and theoretical terms, in Bangladesh. . . . That evidence it seemed to me, deserved consideration in the context of the position of the relationship of the applicant with her uncle and aunt'. The contrast between this ruling and the emphatic position which the same learned Judge adopted in *Jameel Akhtar* could hardly be more stark.

was indeed accepted, I have still continued to receive instructions, to prepare reports and, when called upon, to give evidence in person – even though my appearances in court are not infrequently preceded by extensive legal arguments and the occasional *voire dire*.

However, my experience has also revealed another paradox. Serious problems of admissibility only seem to arise in those cases being heard before a jury, and on precisely the grounds which Lord Buxton set out in *Jameel Akhtar*. Yet all my experience suggests that when the when the judge rather the jury is the decision maker, as is the case in civil cases, the presiding judge invariably welcomes my contribution, and not infrequently goes out of his or her way to thank me for providing enlightenment on issues with which s/he was largely unfamiliar. It seems very odd that whilst highly educated and widely experienced judges regularly welcome the capacity of anthropological experts to set the evidence before them in its appropriate context, juries – who can reasonably be expected to be far less well educated than judges – are expected to rely solely on their 'common sense' to reach their verdicts.

THE STATUS OF CODIFIED LAW AS AGAINST INFORMALLY CONSTRUCTED CUSTOM AND PRACTICE

Over and above the issue of admissibility, there are yet more knotty problems lying in wait only a little further down the road for those who pursue this line of analysis. Whilst it is relatively easy to argue that in a society which is as ethnically diverse as contemporary Britain, it is vital to take adequate cognisance of the relevant cultural context if justice is to be equitably delivered, transmuting those proposals into practice throws up yet more serious problems – not least with respect to the sources on which it is appropriate for those presenting such evidence to the court to rely.

Is there, for example a ready source of alternative legal precepts which could be slotted into the established legal order, thereby rendering English Law more plural? At least some Muslims have argued that there is. On the grounds that followers of Islam are duty-bound to follow the precepts of the *shari'a* in organising their personal and domestic lives, it has been argued that Muslims in Britain should not only be entitled to follow their own distinctive personal code, but also that whenever cases involving Muslim litigants come before the courts, they should be entitled to have their disputes resolved in terms of the *shari'a*, rather than in terms of the established precepts of English Law. In practice this would appear to mean that wherever the requirements of the *shari'a* stood in conflict with those with which members of Britain's non-Muslim majority were expected to conform, Muslims should be entitled to insist that their own alternative conventions should have priority.[15]

Whilst such proposals undoubtedly attract a good deal of support from politically disaffected young Muslims, careful consideration soon reveals that implementation of the *shari'a* in this sense would be most unlikely to provide a significant remedy to the problems I have sought to highlight here. Quite apart from the fact that the *shari'a* does not set out a

15 Travis, A and Bunting, M, 'British Muslims want Islamic law and prayers at work', *The Guardian*, 30 November 2004.

comprehensive set of Austinian-style precepts and prescriptions, and hence is in no sense a 'legal code' in a prescriptive and hence directly enforceable sense, it is also worth noting that the greater part of the *sharî'a* literature is far more concerned with regulating religious than social practices, and that with respect to the latter one of its principal concerns – at least as currently interpreted – is to restrict the rights of women *vis-à-vis* men.[16] Moreover, close examination soon reveals that there are huge discrepancies between the formal and comprehensively idealised premises set out in the *sharî'a* and the conventions which are actually deployed to order everyday social and family life within most of Britain's many Muslim communities. Nor is this discrepancy in any way novel: personal lifestyles within Muslim ethnic colonies are still primarily grounded in locally-specific customs and practices which that particular group of settlers brought with them from their villages of origin. Moreover, for those who arrived from South Asia, the *sharî'a* was rarely, if ever, the principal source of legal and administrative authority to which they turned prior to their departure.

With this in mind it is worth remembering that 'law' has never been understood in the singular in South Asian contexts. Instead, a careful distinction is routinely made between the religious prescriptions of the *sharî'a* articulated by scholarly *maulvis*,[17] state-made injunctions known as *qanun* laid down by the Sultan and/or his modern parliamentary successors, and last but not least the all-important domain of *riwaj*, the conventions, assumptions and practices in terms of which the members of each local self-governing community (*qaum*) seek to order their interactions.[18] It is also worth noting that there is no expectation that the rules and conventions in each of these spheres should necessarily be congruent with one another, and that the relationship of these spheres with one another is quite different from that which Western observers might naively expect.

Although religious law is undoubtedly treated with respect throughout South Asia, in neither Muslim, Sikh or Hindu contexts does it out-trump other sources of law, especially when it comes to the regulation of everyday behaviour or achieving dispute settlement. In South Asia *qazi* (or *qadi*) courts are virtually unknown, partly because the rulers' *firman* (executive orders) necessarily out-trumped all else, and partly because India's Muslim rulers routinely followed local Hindu precedent by devolving the resolution of interpersonal disputes to local communities. Hence the ruler only intervened with his *danda* to knock heads together if and when the *panchayat* was unable fulfil its task of brokering an equitable settlement which was acceptable to all concerned. Such settlements were by definition grounded in parochial understandings of *riwaj*, rather than law in any more universalistic, let alone Austinian, sense.[19] Hence it is in terms of the ideas and expectations arising from this locally- and community-specific sphere of *riwaj*, rather than those set out in the much more religiously and politically distant arenas of *sharî'a* and *qanun*, to which South Asian settlers in Britain have turned for inspiration as they have set about

16 Mehdi, R (1994) *The Islamization of the Law in Pakistan*, Richmond: Curzon Press.
17 In Hindu contexts the *dharmashastras* occupy a similar position to the *sharî'a* for Muslims, and the *rehat maryada* for Sikhs.
18 For an active contemporary example of such practices, see Ballard, R (2005) Coalitions of reciprocity and the maintenance of financial integrity within informal value transmission systems: the operational dynamics of contemporary hawala networks, *The Journal of Banking Regulation*, 6, pp 319–352.
19 For an extended discussion of this point see Menski, W (2003) *Hindu Law: Beyond Tradition and Modernity*, Delhi: Oxford University Press, pp 107 *ff*.

establishing themselves overseas. Likewise it is to these selfsame principles (which are regularly, but mistakenly assumed to be congruent with those of the *shari'a*[20]) to which the elders routinely turn in the efforts to achieve dispute resolution in the UK – just as they did back home in South Asia.

Riwaj is a classic example of what Chiba[21] and Menski[22] have usefully identified as 'unofficial law.' Owing little or nothing to the state, unofficial law is in my view best understood as being embedded in the set of (continuously renegotiated) consensual understandings which members of a specific community deploy as a convenient means of maintaining order amongst themselves. It follows that although *riwaj* is 'traditional' in the sense that it is the outcome of autonomous developments within a specific community, it is anything but static.[23] Just as the grammatical systems underpinning every language gradually change, develop and diversify over time, so the consensual understandings which underpin any given set of *riwaj* are constantly being re-articulated and re-negotiated by its users. Moreover the vigour of those processes of renegotiation tends to be particularly intense when its users find themselves facing the challenge of a new environment. Hence if I am right in arguing that South Asian settlers in Britain have successfully established *Desh Pardesh* ('home abroad')[24] – or, in other words, the multitude of ethnic colonies whose existence I have also sought to highlight here – then it also follows that the members of each of these colonies can also be seen to have developed what can best be described as their own distinctive form of *bilayati* or *pardeshi*[25] *riwaj*, based on (although by no means always identical with) the local customs and practices in terms of which the founders of the settlement ordered their lives prior to their departure overseas.

In so suggesting my argument is in many ways closely congruent that developed by Pearl and Menski in their lengthy discussion of what they describe as *angrezi shari'at* (or British Muslim law) in their very useful textbook on *Muslim Family Law*.[26] Nevertheless, my preference for *bilayati riwaj* as opposed to *angrezi shari'at* emphasises several crucial differences between their position and the analytical perspectives advanced in this chapter. First of all it seems to me to be quite clear that the expectations and conventions around which South Asian settlers have organised their lives in the UK owe far more to parochial conventions of unofficial law of the communities to which they belong – or in other words to *riwaj* – than they do either to *qanun* or to *shari'a*.

Secondly it seems equally clear that the changes that have occurred since settlers first began to establish ethnic colonies in Britain are part and parcel of a range of responses to the specific challenges they have encountered as *pardeshis* in the UK, as well as in the

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20 Ballard, R (2006) 'Popular Islam in Northern Pakistan and its reconstruction in urban Britain', in Hinnells, J and Malik, J (eds) *Sufism in the West*, London: Routledge.
21 Chiba, M (ed) (1986) *Asian Indigenous Law in Interaction with Received Law*, London: Kegan Paul International.
22 Menski, W (2000) *Comparative Law in a Global Context*, London: Platinium.
23 'It is tradition that changes: indeed, that is all that it can do' Strathern, M (1992) *After Nature: English Kinship in the late Twentieth Century*, Cambridge: Cambridge University Press, p 11.
24 For further discussion of the term and its use in this context see Ballard, R (ed) (1994) *Desh Pardesh: The South Asian Presence in Britain*, London: Hurst and Co.
25 Whilst both terms have somewhat similar meanings, *bilayat* points rather more explicitly to a distant overseas territory than does *pardesh*, which refers more straightforwardly to any place distant from one's home.
26 Pearl, D and Menski, W (1998) *Muslim Family Law*, London: Sweet and Maxwell.

equally *pardeshi* transnational networks which link these colonies into a global diaspora.[27] Last but not least, the resultant forms of *pardeshi riwaj* which have emerged within each network have not only been autonomously – and hence 'unofficially' – developed by their users, but have also been subject to an extensive degree of renegotiation and change precisely because of the distinctively *pardeshi* character of the contexts in which they occur. However, that has most certainly not led to any straightforward process of Westernisation. Just as Srinivas long ago suggested that upwardly mobile Hindus frequently adopted a strategy of Sanskritisation as opposed to Westernisation,[28] so it should come as no surprise that at least some of the principles of *shari'a* orthodoxy are being actively incorporated into current understandings of *pardeshi riwaj*. However, in this context one swallow most certainly does not make a summer. Plurality is an endlessly dynamic phenomenon, not least because it is subject to a constant process of dialectical interaction between those who differ: in these circumstances any attempt to tie the resultant disjunctions down to an essentialised vision of permanently constituted difference by definition misses the point.[29]

CONCLUSION

Contemporary Britain is in no sense unique in finding itself facing the challenge of ethnic plurality: the time when states could define themselves as nation-states, and insist that all citizens of an ideally envisioned republic must by definition be linguistically homogeneous are now long past. Over and above the internal diversities which such republican assumptions sought (and very often failed) to address, the ever-growing scale of global migration has made a nonsense of such hopes and expectations. All contemporary societies – except, perhaps, for a few small and exceedingly remote islands, are now irredeemably ethnically plural.

In responding to all this, the British – unlike our near neighbours, the French – have not had to cope with the homogenising expectations of the twin forces of republicanism and *laicité*. But although Britain has consequently been rather more open to the prospect of 'multiculturalism' than most of its neighbours in mainland Europe,[30] once considered in historical terms, matters in this sphere are far less straightforward than is commonly imagined. One of the central results of England's Henrician and Elizabethan reformation was to reduce all those who refused to subscribe to the 39 Articles of the Church of England to the status of second-class subjects of the Crown, who were thereby barred from public offices of all kinds. Britain's Catholic minority was not emancipated from this disability until 1829 – and even then in the midst of much contention. Yet, although the hierarchisation of ethno-religious plurality has never been formally revived since then, the

27 Ballard, R (2003) 'The South Asian presence in Britain and its transnational connections', in Parekh, B, Singh, H and Vertovec, S (eds) *Culture and Economy in the Indian Diaspora*, London: Routledge, pp 197–222

28 Srinivas, M N (1966) *Social Change in Modern India*, Berkeley: University of California Press.

29 For an extended discussion of what can undoubtedly be described as a form of *pardeshi riwaj*, albeit implemented in the global foreign exchange market, see Ballard, R (2005) 'Coalitions of reciprocity and the maintenance of financial integrity within informal value transmission systems: the operational dynamics of contemporary hawala networks', *Journal of Banking Regulation* Vol 6, pp 319–352

30 Modood, T (2005) *Multicultural Politics*, Edinburgh: University of Edinburgh Press.

expectation that those of alien origin should and must follow a comprehensive strategy of assimilation if they wish to gain wholehearted public acceptance remains as widespread as ever.[31] To be sure British expectations on this front may be 'unofficial', rather than written into the Constitution, as they are in France. But on a practical level the difference between the two traditions is much less great than such formal considerations suggest.

Be that as it may, Britain – like France, Germany and many other countries – has found itself rendered significantly more ethnically plural as a result of the arrival of large numbers of non-European (and largely non-Christian) migrants during the course of the past half century. They and their offspring are now permanent fixtures in all developed societies. To be sure almost all have set about constructing self-sustaining ethnic colonies since their arrival, but that process is nothing new: it precisely mirrors the strategies adopted by the European settlers who flocked in their millions to colonise the so-called New World during the previous two centuries. The only difference between the two developments is that whilst European settlers for the most part managed to impose themselves 'from above', their non-European counterparts who have moved more recently moved in the opposite direction have overwhelmingly entered from below'. Hence while Europeans were able to take their hegemony over those they termed 'the natives' for granted, so much so that they rapidly constructed Empires around themselves, the core concerns of their counterparts who moved in the opposite direction has been to establish the legitimacy of their presence – no less legally than physically and politically – *vis-à-vis* the native English.

Even so, it is well worth remembering that European colonists only enjoyed a position of global hegemony from the late nineteenth century onwards: at the outset of their adventures their position of privilege was nowhere near so comprehensively untrammelled as it later became. Hence whilst the merchants who pioneered the European presence in India swiftly constructed self-governing 'factories' within which they organised their interactions according to their own preferred conventions, their actual position was that of colonists 'from below'. No matter how much they may have held the local population in contempt, and no matter how superior they may have considered their own laws to those of 'the natives' who surrounded them, their presence in India was always at the pleasure of local rulers, whose military capabilities were such that they were in a position to boot the settlers out whenever they so chose. Hence they were ultimately in no position to ignore the demands of the Mughal authorities. In these circumstances the legal conventions deployed within each of the European factories – be they English, Portuguese or French – had the status of 'unofficial' rather than 'official' law, at least as far as the sovereign authorities were concerned. It also followed that in disputes with native Indians, early European settlers had no alternative but to rely on indigenous modes of dispute resolution if they were to have any hope of achieving an effective remedy – a prospect which they frequently found irksome in the extreme.

Of course this state of affairs did not last for very long. As the British steadily gained in military power and hence in political influence, the boot gradually began to shift from one foot to the other. The process was only completed in 1858, when the British Government formally replaced the East India Company in the aftermath of the great mutiny of 1857.

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31 To cite just two well known examples, Norman Tebbitt's much derided 'cricket test', as well as the thinking which underlines much of the current government's policy of community cohesion is closely in keeping with these assumptions.

With the shift in formal sovereignty, the institutions of the British Raj became the sole source of official law, whilst native law was effectively reduced to unofficial 'custom'. To be sure British officials promptly set about establishing a new system of Anglo-Indian law, but now that they were in the political driving seat they were in a position to discard as illegitimate all those practices which appeared from their Eurocentric perspective to be contrary to justice, equity and good conscience. Now it was the Indians' turn to find the outcome inequitable.

It follows that while the position taken by Sebastian Poulter undoubtedly has a historical precedent, that imperial precedent is intrinsically hegemonic as well as political in character. Not only was and is its aim to secure the stability of an established socio-political order, but it does so in such a way as to de-legitimate *de facto* conditions of cultural, religious and ethnic alterity. There are also good reasons to suppose that such an outlook still has widespread popular support. If a referendum was conducted seeking assent for or rejection of Poulter's prescriptions, there can be little doubt that a large majority would register their assent. However, in contexts of plurality majoritarian democracy does not necessarily make for viable – let alone equitable – law.

Nevertheless, to argue in favour of the formal recognition of the existence of plurality is in no way to suggest that the members of minority groups should consequently be able to get away with whatever they may have done simply by mounting what is sometimes described as a cultural defence in the face of criminal prosecution. Most such arguments rest on an understanding of culture which is as essentialist as it is determinist, generating an expectation that a defence along the lines of 'my culture demands that dishonour should be avenged, and hence it is entirely legitimate for me to kill anyone who has dishonoured me' might consequently be rendered legitimate. In my view this argument is wholly without merit. Homicide is homicide. There is no getting away from that.

What is far more significant, however, is that contemporary English law distinguishes (whether for good or ill) between inexcusable murder and the lesser crime of manslaughter, and accepts provocation as a legitimate defence to an untrammelled charge of murder. The test of provocation is whether a reasonable man might have found the things said or the acts done prior to the offence provocative and, given the presence of the reasonable man in the definition, we promptly return to the issues discussed here. Just because notions of honour and shame have little or no purchase in contemporary English society, is it reasonable to dismiss the significance of insults to honour as a source of provocation? If the notion of provocation is good in law, and plurality is the *de facto* reality, equity demands that which is sauce for the goose should also be sauce for the gander.

However, the adoption of such a perspective most certainly does not open the doors to a 'cultural defence' of the kind indicated above. To be sure it accepts that the cultural context may well be an issue which the court should take very seriously into account, most usually to establish a suitable yardstick against which 'reasonable behaviour' might sensibly be measured, given the specific context in which the events in question occurred. Sometimes the task of context-setting is quite straightforward. There can surely be no dispute that there is no way in which a non-Urdu speaking jury (or court) could be expected properly to assess the significance of the tape-recorded Urdu conversations without expert assistance. Moreover, the provision of such assistance – as I sought to do in *Jameel Akhtar* – should in my view be regarded as uncontentious, most especially since Urdu is a standard linguistic

code, even if it is one with which very few members of Britain's indigenous majority are at all familiar.

By contrast, matters become a great deal more tricky in contexts of cultural change, and are rendered still more complex when those whose actions are to be set in context have the capacity – as did Nazia – to navigate their way through a wide variety of differently structured arenas. Indeed, what her story serves to demonstrate is that in conditions of well-entrenched plurality it is no longer sufficient merely to be familiar with the logic of an unmodified minority tradition with all its conventional expectations with respect to arranged marriages, *biraderi* loyalties and so forth. In such circumstances one's role is much more than that of an interpreter in the linguistic sense: what also needs to be brought to the attention of the court is the extent to which individual actors may have gained the capacity to weave their way back and forth between majority and minority cultural universes, as well as through a variety of hybrid possibilities in between. In my experience these issues invariably prove to be of great significance in all those cases where South Asian litigants' behaviour in familial, domestic and leisure contexts is in some sense at stake – in other words, in a far wider range of cases than those of homicide.

Much follows from this. Most strikingly, all my experience suggests that the frequent suggestion that whilst a degree of diversity in private may be acceptable, British citizens should, as a matter of principle, follow uniform standards of behaviour in public, such that – as Poulter argues – the law can expect to lay down standards to which minorities can be *required* to conform, is wholly unrealistic. In everyday practice it is manifestly impossible to maintain such a clear distinction between public and private domains: of necessity they run into one another. Plurality is ~~a phenomenon and as such an integral part~~ of the social order. Whether or not lawyers, the law and the courts feel comfortable with the prospect of responding positively to growing plurality, it seems quite clear that it is law which ultimately has to bend to the realities of extant social activity, rather than vice-versa.

To sum up, a multitude of systems of unofficial law now are now in active development in all of Britain's ethnic colonies. To be sure such systems of *riwaj* are rooted in their user's ancestral traditions~~,~~ but they have by no means remained untouched by social, cultural, linguistic, moral and legal pressures stemming from their new surroundings. Precisely because unofficial law is autonomously sustained by its users, it is constantly amended in the light of the common sense understandings of members of the communities within which it is articulated. It is therefore inherently flexible. It also follows that *bilayati riwaj* and the practices which it enshrines can in no way be seen as a model of perfection. Since changes in established norms within any given context always lag behind changes in the real world, those in authority often find themselves out of their depth when seeking to cope with the behaviour of those who operate in a different universe from their own. In such circumstances it is all too easy for them to make judgements and to attempt to lay down rulings which are as short-sighted as they are inequitable.

It is by no means just the elders who are prone to making such mistakes. For precisely similar reasons – namely, lack of familiarity with the premises and practices deployed within the specific arenas within which the events and behaviours in question took place – psychologists, benefit officers, solicitors, detectives and social workers, let alone learned judges and unlearned juries can just as easily reach mistaken and inequitable conclusions about what is going on. In a society which is becoming ever more ethnically plural, cultural competence – the capacity to navigate one's way successfully through a variety of

differently structured arenas – is becoming an ever more essential *professional* as well as a personal capability.

If the law is to live up to its promise to act in defence of justice, equity and good conscience, legal theorists – no less than social theorists – need to make much more active efforts to confront the philosophical and analytical consequences of the ever-growing salience of ethnic plurality. Like it or not, the process of globalisation is changing the character of the world in which we live, such that hubristic assumptions about the innate superiority of all things Euro-American have become increasingly threadbare. So long as Europeans continue to take it for granted that their own values, practices and conceptual constructions are *ipso facto* superior to those of all others, and hence universally applicable, they will doubtless regard the prospect of taking others seriously as an unacceptable challenge to the integrity of their own self-constructed worlds.

That was precisely King Canute's mistake when he sought to forbid the incoming tide from swamping his throne. The growth of transnational migration, powered as it is by current processes of globalisation, is undoubtedly precipitating a similarly unstoppable inflow; but is the result any more threatening to Britain's integrity than a rising tide?