

BOOK REVIEW

Stephen Tierney (ed.), *Accommodating Cultural Diversity*. Aldershot UK and Burlington VT: Ashgate. 2007. ix + 240 pp.

Matthias Koenig and Paul de Guchteneire (eds.), *Democracy and Human Rights in Multicultural Societies*. Aldershot UK and Burlington VT: Ashgate. Paris: UNESCO. 2007. xvii + 308 pp.

Prakash Shah and Werner F. Menski (eds.), *Migration, Diasporas and Legal Systems in Europe*. London and New York: Routledge-Cavendish. 2006. xviii + 405 pp.

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These three collections concern the consequences in law of the multicultural character of the modern state of the North. Thus they consider some of the most prominent topics in current debates about legal policy in these states. Political scientists and sociologists were writing intensively about the nature and consequences of the cultural diversity of modern societies 30 or 40 years ago, at a time when those legal scholars who took account of situations of cultural diversity concentrated on anti-discrimination laws. As in recent years public political debate in countries of the North has been increasingly concerned with the reaction of the state to the phenomenon of cultural diversity, lawyers have been led to examine ever more closely the options of legal policy in this regard.

The debates have been of limited scope and have made limited progress. They have been constrained by a tendency to look exclusively at the state and its laws and policies. They have, moreover, generally ignored the extensive experience of cultural diversity in other regions of the world and at other periods of history. We must hope that this not very fruitful stage will blossom into a fuller, deeper debate in the future. These three books all contribute significantly to the present stage of development, but they illustrate also the limited degree of development so far achieved.

Accommodating Cultural Diversity emerges from a conference organised by the

Centre for Canadian Studies and the School of Law at the University of Edinburgh, and focuses primarily on Canadian experience and questions about Canadian state legal policy. Its object is to

... offer a variety of perspectives, both describing how contemporary democracies manage diversity and offering normative prescriptions for how they might better do so (Tierney: 1),

although the possibility of very wide variation in perspective must be viewed with doubt. Six of the ten contributors are law academics, and another is a member of the Department of Justice of Canada.

After the editor's introductory chapter, Part I consists of three chapters on 'the evolving theory of cultural diversity'. Will Kymlicka, the political philosopher whose contribution to this field of theory has been profound and influential, gives an informative general overview of the current 'global diffusion of multiculturalism', while Helder de Schutter and Dwight Newman present critical, constructive papers on Kymlicka's theories. Part II takes 'the case of Aboriginal peoples' and consists of three papers which consider different questions. Avigail Eisenberg's is a discussion with world-wide references of the use of the concept of group identity in claims by Aboriginal peoples. Sonia Harris-Short considers critically how far self-government of Aboriginal groups in Canada tends towards better protection for children. Kathryn Last studies the question of the return to Aboriginal peoples of objects of cultural heritage. The three papers in Part III are concerned with the interpretation of the Canadian constitution in relation to issues of cultural diversity. Mayo Moran is concerned with the varying interpretations by the Supreme Court of the equality guarantee in section 15. Peter Oliver asks how constitutional changes may enable the special identity of Quebec to be satisfactorily reflected. Warren Newman examines the relationship between judicial conceptions of the rule of law and the status of the constitutional text in the context of an increasingly diverse society.

Democracy and Human Rights in Multicultural Societies is a collection of 14 papers published in earlier versions in UNESCO's *International Journal on Multicultural Societies (IJMS)* following the Member States' adoption in 2001 of the Universal Declaration of Cultural Diversity. It is not limited to one state, although it focuses overwhelmingly on states of the North. It is stated that

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...its major aim is to understand, explain and assess public policy responses to ethnic, linguistic and religious diversity (Koenig and de Guchteneire: 3).

The contributors come from a range of disciplines, from academic law through sociology to linguistics.

The editors' introduction contains a wide-ranging survey of current ideas on 'Political Governance of Cultural Diversity', Part I is concerned with 'Ethno-National Movements', that is, on ethnic groups which can feasibly claim that they would be viable political entities were they able to secede from the states within which they are politically incorporated. All those considered are engaged in conflicts, carried on with little or much violence, over their current status. The Part begins with a chapter giving a general theoretical discussion, developed by reference to various instances, including those discussed in the following chapters (Juan Díez-Medrano). These chapters report on and consider the cases of Basque nationalism (Enric Martínez-Herrera), Northern Ireland (Stefan Wolff) and the Kurdish independence movement in Turkey (Matthew Adam Kocher). Díez-Medrano also discusses briefly Québec and Chiapas, but the papers on these groups published in the *IJMS* are not included in the book. Part II, 'Linguistic Diversity', considers national and international language policy in multi-lingual states. After a study of the legal perspective on language rights as human rights (Fernand de Varennes), there follow chapters on the role of the Organization for Security and Co-operation in Europe in the protection of linguistic minorities (Sally Holt and John Packer), language rights in the Baltic states (Boriss Cilevičs) and South Africa (Kristin Henrard), and the impact of language policies on endangered languages (Suzanne Romaine). Part III is about 'Religious Diversity'. The first chapter here examines the contemporary, global rise of 'fundamentalist and communal-religious movements', and argues that these should be seen as 'the multiplication of different, yet presumably universalistic, interpretations of modernity', not as involving a 'clash of civilizations' (Shmuel N. Eisenstadt). The next examines modes of religious pluralism in the modern, globalizing world (Ole Riis). The last two report on and discuss respectively the new multi-faith approach in prison chaplaincy in England and Wales (James A. Beckford), and religious pluralism in post-Soviet Russia (Kathy Rousselet).

Migration, Diasporas and Legal Systems in Europe does not expressly indicate in its title that it addresses the issues of law in multicultural societies, but by

implication, given the nature of the prominent streams of migration in Europe today, it clearly is concerned with these.

The questions being asked in this volume [are] about what European legal systems have been doing and ought to be doing about these immigration streams (Shah and Menski: 1).

It consists of 19 papers first delivered at a WG Hart Legal Workshop on ‘The Challenge of Migration to Legal Systems’ at the Institute of Advanced Legal Studies, University of London. All but one of the 23 contributors are lawyers, but a certain variety of approaches follows from the fact that they come from a wide range of different national backgrounds.

The book is not divided by titles into sections, but the editors’ Introduction gives a labelling of successive sets of chapters. The first four papers, thus, seek to present a ‘long range view ... [of] the structural implications raised for legal systems resulting from significant South-North migration,’ that is, the migration which produces in Europe coexistence of different contrasting cultures. Menski in his opening paper argues the case for looking at models from the South of state laws which include the personal laws of different ethnic and religious groups. Roger Ballard, a social anthropologist, recounts details of the cultural experience and ‘cultural navigation’ strategies of South Asian immigrants to Europe. Mathias Rohe examines the different approaches in European state laws to the Islamic presence. Mohamed M. Keshavjee reports on the Conciliation and Arbitration Boards set up by the Shia Ismaili community to provide dispute settlement procedures in communities in Europe. The next section is concerned with nationality and citizenship. Helen Toner focuses on the introduction of citizenship of the European Union (EU), and the case-law of the European Court of Justice developing it. Nicholas Sitaropoulos studies the Greek law of nationality, Ciara Smyth and Donncha O’Connell developments in Irish citizenship law, and Melanie Smith and Jo Shaw changes in the Lithuanian law of citizenship and their effects on political life.

Almost all the remaining sections focus on migration. The three chapters of the next section are directed at family reunification through immigration, and the related human rights issues. Helena Wray studies the decisions of British entry clearance immigration officials in cases where entry applications are based on the applicant’s marriage to a member of an ethnic minority community resident in the UK. Sarah K. van Walsum takes the attitudes of Dutch state officials when migrant mothers decide that their children should be reared in their countries of origin. She

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examines the impact of the European Court of Human Rights on these cases, while Esther Weizsäcker examines the case-law in general of the court on the entry and residence of aliens. There follows a section concerned with laws affecting migration within the EU. Philippa Gingell-Littlejohn takes issues concerning the ten member states which joined in 2004, and the reluctance to accede to their nationals' claims to rights of migration within the EU. Nathalia Berkowitz and Maria Delgado examine the position of Moroccan migrants in Spain, while Bülent Çiçekli takes Turkish state immigration control, which has been changing as a result of the growing prospects of Turkey's joining the EU. Ryszard Cholewinski critically studies EU immigration law generally, arguing that the lawmakers show insufficient realism regarding the economic issues related to immigration. The next section contains two more specific studies of immigration control systems, one by Fiona Lindsley on that of the UK (of which she has been the Independent Monitor), the other by Gbenga Oduntan on the Juxtaposed Control Systems between Britain and her near neighbours, France, Belgium and the Netherlands, through which many immigrants and would-be immigrants travel. The final section consists of two chapters which study the rather different subject of systems of property law, but relate them to issues of immigration. Anneke Rachel Smit argues, on the basis of research in Kosovo and Georgia, that an international right of return can be frustrated by difficulties in implementing property restitution programmes. Caroline Sawyer shows how in post-communist Bulgaria the pressures of economic globalization on land law has tended to produce conflict and exclusion along ethnic lines.

These three collections undoubtedly provide a wealth of useful contributions to the development of this field of legal pluralism, that is, the study of laws of all types in relation to the multicultural aspect of societies. The papers here do not provide a comprehensive account nor a definitive theorisation (which might of course consist of formulations of competing theories) of the field. The study of this field has not yet reached the stage where such general results can be expected. Far more information is needed, and theories need to be related to that empirical work. A certain proportion of the work presented in these volumes consists of reports of information collected uninformed by much concern with theory. A certain part of the theorising in some papers seems to be unduly formalistic and distanced from any scientifically developed information. However, generally progress is being made, and if the rigour and interest of most contributions can be sustained, the subject will advance.

It is necessary to delimit portions of the field for the purpose of specific studies, but it is important that each such study should be related, as far as possible, to all

other parts of the field. Each of these volumes is limited in its scope. It is to be hoped that the particular limitations are not entrenched in the field of study.

The first and obvious limitation is in geographical space. In general *Accommodating Cultural Diversity* is limited to Canada, *Democracy and Human Rights in Multicultural Societies* to the North, and *Migration, Diasporas and Legal Systems in Europe* to Europe. As in any field of comparative legal studies, issues will be illuminated by the greatest possible number and variety of comparable instances. The regions concentrated on in these collections have generally not displayed high, obvious degrees of cultural diversity or of state recognition of differing cultures. Law makers and students in these regions could benefit from the experience of countries in Africa and Asia which have. Even in these overtly limited studies, experience of law and multiculturalism in other regions of the world enhances the papers of contributors such as Ballard and Menski.

The other principal limitation is the restriction to the viewpoint of the state and to policy options available to the state (in which term we may include the supra-state or multi-state entity such as the EU). As the quotations given above show, the collections are directed to the consideration of state ‘management’ of, or ‘response’ to, or what the state ‘does about’ the multicultural character of its population. This is especially dangerous when the tendency of the state is to try to sweep the problem away by decreeing ‘assimilation’. The notion of ‘accommodation’ on the other hand suggests that the state may generously make adjustments to enable cultural diversity to continue to exist. The tendency is the likely result of engaging lawyers to conduct the studies, as has been overwhelmingly done in these volumes. Lawyers generally have expertise only in the doctrines and pronouncements of state laws. They are likely to take as their field of study a state, that is, the entire population over which the state asserts jurisdiction, even if this is a huge population within which there is a multitude of different cultures. They are likely to have little knowledge or empathy with the non-state normative orders effective in the multicultural society, for these are not within their field of expertise. They are likely to respond to any social problem by seeking to formulate the best legal prescriptions on the subject, and to show little inclination to investigate the social reality, either as to the problem aimed at or as to the effects of their laws. More specifically, if state law stipulates ‘recognition’ of a non-state ethnic or religious normative order, lawyers are likely to assume that the living law (or unofficial law, or customary law) will take effect in state fora. All of these assumptions tend to reduce the possibilities of broad and profound thought on the subject.

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It is to be hoped that, after the worthwhile studies in these volumes and others published in the past few years, work in the field will complement these with other approaches, less limited by the tenets of legal positivism and state law pluralism.