

## BOOK REVIEW

Marie-Claire Foblets, Jean-François Gaudreault-DesBiens and Alison Dundes Renteln (eds.), *Cultural Diversity and the Law. State Responses from Around the World*. Brussels and Québec: Bruylant and Éditions Yvon Blais. 2010.

Katayoun Alidadi

### Introduction

The streets of urban Europe have never looked more multicultural. The story of the immigration waves to Western Europe after the Second World War is well-known. The labor gap created by the devastation of large parts of Europe necessitated the import of cheap labor from abroad. In spite of the 'myth of return', most so-called 'guest laborers' settled down in the receiving Western countries and, together with their reunited family members, became European immigrants. Other new citizens often came in search of a safe refuge after violent conflicts back home, from former colonies, or were driven by the wish to start a life in a more economically prosperous environment. Certain segments of this group, in particular Muslim immigrants, soon became an *issue* challenging various European state governments, some formed by right wing protest votes. Becoming the subject of state policies in the areas of immigration, nationality, labor and social rights, human rights and family law, in more recent times this group has been presenting claims based on cultural or religious identity, sometimes questioning established state policies.

The biggest challenge for many states, home to a wide-ranging constituency with potential dual or plural loyalties, is to determine how much room to leave for expressions of cultural difference in various policies. Clearly there are limits to 'the right to be different', because ensuring a level of solidarity and unity in the social and cultural fabric of society as well as maintaining public order and formal equality within the political community is generally a non-negligible objective of any state project (See also Shweder et al. 2002, another edited volume dealing with cultural accommodation and its limits in Germany, France, India, South Africa, and the United States).

This is the fundamental dilemma addressed in the volume under review, namely, “how are we to handle cultural diversity within a state, without endangering the necessary social cohesion within that state?” (Foblets Gaudreault-DesBiens and Rebnatein, ‘Introduction’: xiii).

Comprised of an impressive collection of some 30 essays and bringing together a number of leading voices from the fields of law and legal studies, anthropology and socio-political sciences, *Cultural Diversity and the Law* offers case studies from various countries and regions in an attempt to add body to the existing debates and to allow for lessons to be drawn in the policy-relevant domain of states managing (or attempting, or not attempting to manage) cultural and religious diversity. The essays, written by academics themselves from diverse cultural backgrounds, provide a sampling of experiences with cultural and religious diversity and legal pluralism in Europe (and in particular France, the Netherlands, Belgium, Germany, Spain, Britain, and Denmark), Africa and the Middle East (South Africa, Ghana, Zambia, Lebanon, Egypt, and Tunisia), Asia (Indonesia, India, East Timor), Canada and Latin America (Peru).

### Cultural Diversity and the Law

This volume is largely the result of a Colloquium held in Brussels from September to October 2006, entitled “The Response of State Law to the Expression of Cultural Diversity”. In 2004 the Belgian academic Francqui Prize<sup>1</sup> was awarded to Marie-Claire Foblets, Professor of Law and Anthropology at the Universities of Leuven and Antwerp and only the second female Prize recipient since 1933, in recognition of her achievements in *inter alia* interdisciplinary research that “aims to settle problems of modern multicultural and multi-confessional migrant societies”. A prize winner has the prerogative of organizing an international symposium on a topic closely related to his or her academic specialization or

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<sup>1</sup> The Francqui Prize, arguably the most prestigious academic distinction in Belgium, has been awarded annually since 1933 by the Francqui Foundation, set up by Emile Francqui and Herbert Hoover “to further the development of higher education and scientific research in Belgium” (Article 2 of the ‘Constitution of the foundation’). The Prize is awarded every year to a young Belgian scientist under the age of 50, in the following three-year rotation of subjects: Exact Sciences, Social Sciences, Biological and Medical Sciences.

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interest with the support of the Foundation, and cultural diversity and its limits was thus chosen. For the resultant publication Foblets chose two co-editors with complementary legal expertise: Canadian constitutionalist Jean-François Gaudreault-DesBiens and American Alison Dundes Renteln who is mostly known for her work on the 'cultural defense' (e.g. Renteln 2005; Foblets and Renteln 2009; Renteln, 'The Cultural Defense: Challenging the monocultural paradigm': 791-817).

Truly mono-cultural societies are probably non-existent, and at the international level there seems to be "a growing consensus ... that cultural diversity is a good thing, that its promotion and protection are or ought to be state obligations, that where necessary national legal systems must accommodate diversity" (Peter Wesley Smith: 282, on East Timor). However, that does not mean that states are now settled on how to deal with or 'manage' the cultural diversity of constituencies. The term with its religious component is frequently used as a euphemism for the many challenges of Muslims or other groups in the West, with patterns of discrimination, exploitation, poverty, inequality, and other forms of oppression often lying behind it. Politicians, depending on their positions, use distinct discourses. Scholars often deal with this issue in terms of legal pluralism, meaning that migrants are bringing their own '(quasi) legal system' into the receiving state.<sup>2</sup> Together with the related framework of legal pluralism,<sup>3</sup> academic and policy studies related to diversity issues are gaining momentum in both anthropological and socio-legal studies (Shah 2005; Paquet 2008; Shweder et al. 2002).

Presenting an internal diversity appropriate to the topic, the essays have been grouped in four unequal parts, the larger being Parts I ('Comprehensive country reports') and III ('Various techniques in national and international law(s)'). Together they show well that things are never black and white when it comes to

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<sup>2</sup> M. Nuijten (on Peru and Latin America): 253-4, raises the issue of material foundations of difference (unequal distribution of resources) and challenges the tacit presupposition of scholars with regard to cultural diversity, its desirability and effectiveness.

<sup>3</sup> This framework has been challenged by, among others, Tamanaha (1993). Tamanaha's ideas have evolved since that time, and in this volume, joining the legal pluralists, he offers a theoretical framework for legal pluralism in 'A framework for pluralistic socio-legal arenas': 381-401.

the interpretation and perception of state responses and discourses with regard to cultural and religious diversity. Responses are embedded in historic institutions, and often conjectural, event-driven and, as Gaudreault-DesBiens puts it, “volatile” (‘Introduction to Part I’: 3).

The first part contains ten analyses examining how ‘official law’ responds to the changing circumstances in a particular country or geographical area.<sup>4</sup> The second part includes a theoretical contribution by Brian Tamanaha and three comparative contributions by Werner Menski (on the British and Indian experiences), John Bowen (on Islam in France and Indonesia) and Silvio Ferrari (on church-state systems throughout Europe). The essays in the third part address “various techniques in national and international law(s)” mainly with regard to issues of personal status law<sup>5</sup> and human rights<sup>6</sup> (Foblets, ‘Introduction to Part III’). The last Part, introduced by Renteln and Nader, consists of three empirical case studies that draw upon field observations.<sup>7</sup>

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<sup>4</sup> These country reports are by: Tom W. Bennett on South Africa; B.P. Vermeulen on the Netherlands (discussed below); Mathias Rohe on Germany; Jean-François Gaudreault-DesBiens on Canada; Monique Nuijten on Latin America; Gordon R. Woodman on Ghana; Peter Wesley-Smith on East Timor; Chuma Himonga on Zambia; Pierre Gannagé on Lebanon; and María Elósegui and Cesar Arjona on Spain.

<sup>5</sup> Paul Lagarde on French private international law and Hugues Fulchiron on French family judges’ experiences with cultural pluralism; Hossam El-Ehwany on Egypt’s experience of religious pluralism; M. Ben Jémia on Tunisian family law; Rubya Mehdi on Islam in Denmark; and Natasha Bakht on religious pluralism in Canada.

<sup>6</sup> Eva Brems explores case-law of the European Court of Human Rights in search of a framework for protecting cultural differences; Bruno De Witte writes on European Minority Rights; Ann Griffiths writes on Africa. This Part also includes essays by Jean-Yves Carlier on European Citizenship, Jan Wouters and Maarten Vidal on UNESCO, Alison Dundes Renteln on the cultural defense, and Louis-Léon Christians on the Belgian model of state recognition of religions.

<sup>7</sup> André Hoekema and Wibo Van Rossum on Dutch cases of cultural diversity; Franz and Keebet von Benda-Beckmann on multiple citizenship in Indonesia; and Andrée Lajoie, Cécile Bergada and Alexandre Courtemanche on aboriginal rights in Canada.

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It is doubtful whether anyone would read this 1007-page volume in one go (except perhaps an overzealous student of cultural diversity and the law), but likely that it will be consulted for its individual contributions and perspectives. As it would be impractical to discuss every essay – notwithstanding that many contributions merit consideration – an attempt is made to look at the volume as a whole, and in particular at certain presuppositions, common interests and intentions that the editors and most of the contributors share. This is done in the next part of this review. In light of the above consideration, the last part focuses on two selected essays, one country study and one empirical study, both on the Netherlands, a country which has in the recent past seen considerable ups and down in respect of multiculturalism and diversity.

### Dual Loyalties versus Social Cohesion: Common Pillars

A number of understandings seem to form the backbone of this volume. At least in conception, it bears the mark of academia with practical aspirations:

It is our hope that the insights contained in this volume will inspire others to study new ways of responding to cultural *differences* to ensure that people are successfully *included* in their political systems....We are indeed convinced that greater attention to the realities of legal pluralism will improve the lives of many in quite practical ways. ('Introduction': xx. Italics added.)

The focus thus seems to be on the *differences* between individuals and groups, and the aim to be participation, inclusion and agency of some of the most vulnerable members of society. While the scholarly “propensity to abstractly and a-contextually promote the right to cultural difference in spite of what the people concerned actually want” ('Introduction to Part I': 15, referring to the essay by Nuijten) is criticized by Nuijten, it still seems to be the redline in much of the volume.

The realization that there is, and has to be, a limit to the right to difference is a fundamental part of the project identity. The focus on diversity and difference should not be taken for granted. Some believe that the way to equality is through formal equality and a level of “blindness to difference”, even though it must be

agreed that “liberalism’s official blindness to differences and subordination of the latter to an abstract notion of equality, has become increasingly problematic” (‘Introduction’: xvi). A recent example comes from the UK, where the ‘One Law for All’ Campaign argued that Sharia Councils and Muslim Arbitration Tribunals were “in violation of UK law, public policy and human rights” (Namazie et al. 2010, as summarized on the website of the Campaign.<sup>8</sup>) The Campaign was set up after the speech of Archbishop Rowan Williams in favor of awarding Islamic law some official status in the UK legal system, and thus of official legal pluralism (Williams 2008).<sup>9</sup> One main concern of this campaign is the protection of vulnerable members of the minority Muslim societies: “As long as Sharia Councils and Tribunals are allowed to continue to make rulings on issues of family law, women will be pressured into accepting decisions which are prejudicial to them and their children” (Namazie et al. 2010, as summarised by Namazie, quoted on the website of the Campaign<sup>10</sup>). Thus different avenues can be travelled in defense of the same minorities, and of the minorities within those minorities.

A central issue in the debate on cultural diversity remains the “search for the right vocabulary to talk about difference and citizenship” (Nuijten: 237). One example discussed in this volume is Peru, which according to Nuijten is “an example of a society where serious discrimination against ethnic minorities is combined with a public discourse that denies the existence of ethnic difference and discrimination” (Nuijten: 237). So one could argue that recognition of cultural difference as such is a basic requirement for the equal enjoyment of human rights.

But other examples in the volume show that the emphasis on difference may be unwarranted in particular historical settings. Thus in post-apartheid South Africa, a country with an undeniable level of cultural diversity, a focus on difference between citizens has particular connotations: “One of the ironies of apartheid was

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<sup>8</sup> <http://www.onelawforall.org.uk/>

<sup>9</sup> The Archbishop argued in favor of

a scheme in which individuals retain the liberty to choose the jurisdiction under which they will seek to resolve certain carefully specified matters, so that power-holders are forced to compete for the loyalty of their shared constituents (Williams 2008).

<sup>10</sup> Above note 8.

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its success in fostering awareness of separate identity, both racial and cultural” (Bennett: South Africa’: 17). Legal pluralism, because it was reminiscent of the old regime where under a policy of racial segregation different legal systems applied to Whites and Non-Whites, was “not necessarily a popular option” in the process of designing a new democratic South African Constitution (Bennett: 24; the Final Constitution did include rights to culture and customary law). The South African ‘mixed’ legal system has known important evolutions: from different bodies of customary law on its land to the imposition by the Dutch of their civil law system, followed by the British with the common law tradition. From the early 1900s the recognition of customary laws was ‘radicalized’, separating the legal system applicable to Whites and that applicable to Non-Whites, a tool for the policy of racial segregation and then apartheid. Bennett highlights the ambiguous stance that the democratic South African legal order adopts towards culture as a ground of distinction between individuals. Separate legal regimes for separate groups of people tend to be viewed with even more suspicion. “It is as if legal pluralism has been tainted by the deleterious use of particularized legal regimes during apartheid” (‘Introduction to Part I’: 10). Further, a focus on cultural rights is perhaps unwarranted “in a context where, as in the case of South Africa, poverty is endemic, and socio-economic rights are at the top of decision-makers’ agendas”(‘Introduction to Part I’: 11). The same overshadowing of socio-economic positions by cultural rights is addressed by Nuijten with regard to Peru: “The right to ‘cultural difference’ makes little sense for an Indian peasant who does not have enough land to feed his children” (Nuijten: 253). The discourse in difference being used in different ways and having different consequences, she argues that,

beyond and perhaps above considerations pertaining to identities, socio-economic conditions may have a major impact on the successful management of diversity within a particular state, and that, somehow counter-intuitively, the current political and scholarly emphasis on difference may entail unintended consequences (‘Introduction to Part I’: 14).

Another general belief of the editors is that the state “cannot avoid dealing with” the reality that is cultural diversity (‘Introduction’: xvii): “If the state does not respond, it risks leaving the question of identities in question to strategic manipulation, thereby leading to a process of cultural and identity fragmentation” (‘Introduction’: xvii). But the same risk is present when the state, perhaps on the basis of an exaggerated notion of state powers, and a too optimistic idea of the effects of its decisions, takes steps to ‘manage’ the reality of individual and group

diversity (Schuck 2003, arguing that diversity is an asset but that government should remain out of this; Tamanaha 1993, pointing to the law's limited effects in certain areas and unexpected counterproductive effects in other areas).

Further, the editors argue that the management of cultural diversity requires “a legal policy in its own right, organized around mechanisms of participation” (‘Introduction to Part III’: 505). The techniques of legal pluralism should aim for a balance between “the ideal of equality” and “the powerful pull of identities” (‘Introduction to Part III’: 505). In other words,

[t]he organization of a multicultural society presupposes...the mechanisms *for recognising differences* and the effective guarantee of minority rights, including ...the inclusion in the calendar of various cultural and religious holidays and celebrations (‘Introduction to Part III’: 505; italics added).

Several essays in the volume illustrate the point that pushing the agenda of accommodation as proposed is less than obviously the best policy if one considers the historical, political and societal context of a particular state at a particular point in time. The fact that “[t]he essays reflect some degree of dissatisfaction with state methods of dealing with diverse groups,” is therefore to be expected (Renteln and Nader, ‘Introduction to Part IV’). For instance, in the case of East Timor, with “a legally monist regime, coupled with its wilful blindness to cultural and legal diversity”, it may be said that “difference is not really managed, ‘it just happens’” (Introduction to Part I: 12, referring to Wesley-Smith).

The principle of cultural and religious accommodation has been challenged by different ideological voices from liberal, conservative and egalitarian sides (Cliteur 1999; Barry 2002 giving an egalitarian perspective; McColgan 2009 arguing against the special status awarded to religion; Okin 1999). The confrontation and debate are largely absent from this volume, which (re)presents one particular side of the scholarly ideological spectrum. With all the chips placed on legal pluralism as the main framework for analysis, the limits to accommodation of difference are set, largely ignoring the arguments of those who wish to be blind to these differences. Radical movements in Western Europe often rely on other insights than those presented by legal pluralists, and to understand such movements it seems necessary to examine the perspectives they adhere to. Any such head-on encounter with the ‘other side’ is missing from this debate.



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In connection with the emphasis on legal pluralism, the so-called ‘critique of the mono-cultural paradigm’ takes a prominent place in a number of contributions. Thus Hoekema and van Rossum “document the conditions that encourage judges to adhere to the monocultural paradigm” (‘Introduction to Part IV: 845). It is said that, in accordance with the ‘law in society’ frame, the operation of legal institutions in practice is investigated rather than simply the ‘law on the books’.

[O]ne must consider the legal actors involved - judges, lawyers, social workers, and also journalists in their treatment of ethnic minorities when dealing with hot button issues such as gender and family. There are recurring problems of ethnocentrism that result from the culture-based ignorance of legal elites and their publics, or from their fears about social order. (‘Introduction to Part IV’: 844.)

It is said that these elite professionals often close their eyes to the culturally colored nature of the laws they use and the systems which they keep running.

By treating the state apparatus as though it were neutral, they can avoid the appearance of foisting their own value system on to immigrants who have come from abroad while also avoiding the charge of cultural imperialism (‘Introduction to Part IV’: 846).

For instance, in child custody matters, the best interest of the child standard often favors the “the parent from the dominant culture or the parent who has most successfully become assimilated” (‘Introduction to Part IV’: 845).

Last, the mass media, according to the editors, plays a role in all of this by building a disserving image:

Journalists tend to focus on the most bizarre, or sensational cases such as those involving honor killings, female genital cutting, and child abduction. Their sensational reporting often has a perverse effect inasmuch as they undoubtedly influence judges and other decision makers. Inadvertently or not, the media may promote ‘Orientalizing’ rather than cross-cultural understanding. *Instead of encouraging judges to learn successful techniques for settling disputes from legal systems in the Middle East which have vast experience with applied legal pluralism or co-existence, there is a*

risk that the media will reinforce negative stereotypes in the minds of judges and alienate new immigrants by treating them as the exotic or underdeveloped ‘other.’ (‘Introduction to Part IV’: 848. Italics added)<sup>11</sup>

The role of the media with regard to ethnic diversity and cultural difference has been frequently attacked (e.g. d’Haenens et al. 2004). Diversity in and of the media has been an issue for some time now (Maynard Institute n.d.), and also became a focal point during the ‘European Year of Intercultural Dialogue’ (European Commission 2009: 5). Obviously this remark should not be generalized, in particular when we consider important segments of investigative and explanatory reporting, with expositions and portrayals that play an important role in broadening the horizons of the general public by making ‘the other(s)’ visible and sparking the interest of scholars and academics. On the other hand, the task of encouraging judges to learn certain successfully regarded dispute settlement techniques might be too much to expect of any media.

### State Responses to Cultural Diversity in the Netherlands: Two Studies

The extensive country study by Vermeulen on the changing ground rules of minority policy and law in the Netherlands, arguably the centerpiece of the volume, is recommended reading. (B.P. Vermeulen, ‘On Freedom, Equality and Citizenship. Changing Fundamentals of Dutch Minority Policy and Law (Immigration, Integration, Education and Religion)’, 45-143. See also Joppke 2004; Hagendoorn 2007.) Vermeulen’s central thesis is that developments in different policy areas, “which at first sight are unrelated,” have as *common inspiration* a stronger emphasis on civic commitment and citizenship, accompanying the striving for unity and social cohesion triggered by a number of stressful national occurrences (Vermeulen: 45, 47; examples of such occurrences are the murders of Pim Fortuyn and Theo van Gogh, noted below. See also Hagendoorn 2007.) A ‘thicker’ conception of citizenship is now promoted. No

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<sup>11</sup> See also Hoekema and Van Rossum: 875, talking about the coverage in the popular Dutch media, that are “widely read by judges”, of stories of (presumed) child abduction by parents of mixed Dutch-Egyptian ex-marriages. On the theme of Orientalism as a background for postcolonial studies, see Said 1978.

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longer is it assumed that granting formal legal citizenship will induce citizens to integrate and adopt fundamental Dutch values, thus making nationals truly citizens. Rather, the order of the quid pro quo is reversed: first the immigrant must integrate, only then will he or she receive Dutch citizenship.

As a side-note to Vermeulen's thesis, it may be argued that immigration, naturalization, integration, and also education and religion, in so far as they relate to the same minority groups, are closely connected as policy areas even at first sight (Bruquetas-Callejo et al. 2007, referred to by Vermeulen). This makes it less than surprising that certain societal shifts have effects across the board.

Vermeulen offers a fascinating narrative with great emphatic fluidity, starting out by explaining the historically engrained organization of Dutch society into so-called 'pillars', calling this 'pillarisation' (*verzuiling*), "the typical Dutch arrangement of multicultural accommodation" (Lijphart 1968; see also Boer 2004, arguing that equal treatment has strong roots in the Dutch culture of 'verzuiling' and in the Dutch way of dealing with religious and other minorities).<sup>12</sup> The account then continues to the fundamental shift away from traditional strategies of pluralist accommodation in Dutch society, policy and law, which has meant stricter immigration, naturalization and integration policies and limitations on the expression of religious belief. "For quite a while the Netherlands were proud to call themselves a multicultural society" (Vermeulen: 84). The "abrupt shift in public attitudes" ('Introduction to Part I': 4) towards multiculturalism was triggered by a number of important events in the Netherlands' not so distant past. One of these was the political rise of the charismatic and flamboyant politician Pim Fortuyn who coined the phrase 'Nederland is vol (the Netherlands is full).'<sup>13</sup> His murder days before the May 2002 elections by a radical left-wing Dutch activist

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<sup>12</sup> Pillarisation is also pervasive in Belgian society, with different ideologies having their own social institutions (e.g. socialist, liberal, catholic pillars with their own 'mutualities', cooperatives, labor unions, newspapers, etc. more or less connected with the political parties). See Christians: 822-23, on the pillarisation of Belgian society.

<sup>13</sup> The late Dutch politician Hans Janmaat was in 1995 convicted for discrimination and incitement to ethnic cleansing for using slogans such as 'vol=vol' (full is full), and 'Eigen Volk Eerst' (Own People First). Such statements have now been popularized amongst certain segments and would arguably no longer lead to convictions.

shocked the Netherlands and reignited a lively public debate on the limits of accommodation and multiculturalism in that country. In 2000 a famous newspaper article dubbing Dutch society a “multicultural drama” (Scheffer 2000, referred to Vermeulen: 83) had led to widespread public debates calling for the recognition of the lack of cultural and economic integration of continuing waves of new migrants into the Netherlands. The Blok Commission was instituted to research thirty years of Dutch integration policy. In its highly criticized report *Bruggen Bouwen* (Building Bridges) of 2003, it argued that integration had largely been a success thanks only to the efforts of minorities themselves (Scholten and van Nispen 2008, referring to Blok 2003<sup>14</sup>). It was clear to many that Dutch multiculturalism showed many gaps, facilitating or even promoting a high degree of geographic segregation (Bovens and Trappenburg 2004: 174-75, arguing that a too strictly applied antidiscrimination policy had promoted segregation of minorities through the formation of ‘black’ schools and neighborhoods)<sup>15</sup> and the side-by-side existence of ‘black’<sup>16</sup> and ‘white’ schools even in mixed neighborhoods. Vermeulen writes that:

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<sup>14</sup> The Blok Commission concluded that the current segregation was to a large extent caused by Dutch government policy, or the lack of it. The new immigrants, in contrast to migrants from Dutch-India, Suriname and Antilles, were not assisted in their search for housing and were either housed by their employers or sought the cheapest alternatives available to them. The attempts of certain communes and housing corporations to disperse immigrants was frowned upon by the national government, which stressed ‘individual choice’. Then a number of judicial decisions rejected any attempts at more general dispersal as discriminatory. (Commission-Blok 2003: 352.)

<sup>15</sup> The Netherlands have a comparatively significant level of geographic segregation between so-called ‘allochtones’ (non-European immigrants) and the native white Dutch population, called ‘autochtones’, both in housing and in education. A large proportion of ethnic minorities live in one of the four large Dutch cities, often in a neighborhood with many other (ethnically varied) minorities. Local schools do not necessarily reflect the proportional composition of the neighborhood. The question is how that has arisen, and whether it relates to the ‘free choice’ of immigrants themselves. Laurent Chambon, a French sociologist living in Holland, argues that, unlike the French and Belgians, the Dutch mainly adhere to endogamy, and there are comparatively fewer mixed marriages (Chambon 2002).

<sup>16</sup> These so-called ‘black’ schools with large numbers of immigrant pupils from lower socio-economic backgrounds receive more government funding as it is

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[a] pervasive feeling of gloom, an atmosphere of depression and distrust have developed. In part this can be explained by the economic recession of 2002-2004. But it also has to do with certain incidents that have given rise to the idea that all schemes and policies to integrate minorities and immigrants have failed, that multiculturalism is bad for social cohesion and that there is a so-called ‘Muslim problem’. (Vermeulen: 85)

That feeling was increased when a Dutch-Moroccan Muslim extremist violently killed Dutch filmmaker-*provocateur* Theo Van Gogh in the streets of Amsterdam in 2004. The murder was motivated by Van Gogh’s production of a film entitled *Submission* which showed an actress, playing four mistreated Muslim women, with Quranic verses on her naked body. The screenplay was written by Dutch-Somali politician and staunch Islam critic Ayaan Hirsi Ali, who was forced into hiding. Between the formation of new governments, successive Dutch cabinets redesigned policies on cultural and religious diversity, dropping the severely discredited multiculturalist policy in favour of an approach emphasizing the acceptance and internalization of ‘Dutch values’ and requiring effective integration *results* from migrant minorities. Vermeulen argues that certain newly introduced policies do not pass the test of liberal democratic principles and calls for “pragmatic and more relaxed” initiatives that will promote the socio-economic participation of migrant communities. The shortcomings and need to re-focus on the socio-economic are not new (Joppke 2007). In 1989 the Dutch Scientific Council for Government Policy called for more attention to this aspect of integration (Netherlands Scientific Council For Government Policy 1990, referred to in Duyvendak and Scholten 2009). Since 2007 newcomers have been required to meet stricter conditions of ability in the Dutch language and knowledge of Dutch culture. It will be interesting to evaluate whether this, in combination with nondiscrimination enforcement mechanisms, will in practice lead to increased participation in the workforce.

Nevertheless, according to Vermeulen “Dutch legal order is friendly towards *soft* versions of legal pluralism” (Vermeulen: 122). In particular, referring to the contribution by Hoekema and Van Rossum, Vermeulen states that

[a]bstract legal concepts (concerning the autonomy of the family,

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considered that the pupils will need additional assistance.

the church etc.), general standards (fairness, equality etc.) and private international law often allow the administration and the courts to take minority norms into account (Vermeulen: 122).

The empirical case study on the Netherlands by Hoekema and Van Rossum is based on data derived from sociological and anthropological research (Hoekema and Van Rossum, 'Empirical Conflict Rules in Dutch Legal Cases of Cultural Diversity': 851-888). Based on interviews with judges and a review of a number of cases with multicultural elements, a number of daring - albeit tentative - conclusions about judges' behavior when judging multicultural conflicts are presented. The authors empirically assess the expectation that 'open legal concepts' and 'general standards' in various laws allow for an 'influx' from norms coming from the multicultural society, e.g. customary rules. They argue that in daily family law practice "the rhetoric of diversity is not always consistent with the social reality" ('Introduction to Part IV': 848). The "influx idea" is "wishful dogmatic legal thinking" as open legal concepts are "filled with Dutch internalized notions and stereotypes" (Hoekema and Van Rossum: 851). Consequently,

despite a willingness to take distinct cultural argumentation and interpretations into account ... encountered among judges in our interviews, in daily practice it appears to be difficult for judges to permanently keep all sensors open for possible cultural issues (Hoekema and Van Rossum: 867).

Judges' roles in managing cultural diversity have been emphasized by, amongst others, Foblets in her Francqui Prize acceptance speech (Foblets 2004). In a number of areas where delicate conflicts involving multicultural values and norms have arisen and no legislative solution had been provided, for example in family law and social security law, judges have "as it were made the law" in ways that have accommodated a minority's legal norms (Foblets 2004; see also Hoekema and Van Rossum: 857). Sometimes these solutions have been adopted into legislation, and made into official law (from then on called official legal pluralism in legal anthropology). But even if this is not the case, judicial decisions must make abstract rules concrete for the parties involved, for instance when laws require custody to be granted on the basis of 'the best interest of the child'.<sup>17</sup>

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<sup>17</sup> The expression 'the best interest of the child' is preferable to 'the interest of the child' which is a literal translation of the Dutch 'het belang van het kind'.

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In judging the case of a mixed or foreign couple, a judge possibly has to evaluate the claims in light of distinct cultural perspectives, customs, practices and particular societal contexts (Hoekema and Van Rossum: 857). For instance, the case of a Turkish man Hamid (presumably not his real name) discussed by Hoekema and Van Rossum (864-866) can offer illustration. Hamid's Turkish wife had been living in the Netherlands for a while before Hamid came over to join her following an arranged marriage. After several seemingly happy years, and two children later, things turned sour. The wife became depressed and she left the mutual home remaining absent for a year and a half. In the meanwhile, the two children were living with a sister of Hamid and with his parents in Turkey. Ready to move on, Hamid obtained a divorce, but was confronted with his ex-wife's demand for sole custody. The report written by the Dutch Child Care and Protection Board, looking into the children's best interest, favored sole custody for the wife who had not seen the children for quite some time. This report's content and method as well as the judge's decision that largely followed this report's conclusions are criticized for being permeated with frameworks, references and expectations derived from the dominant culture. (See also Breuil 2006.) The report stated that Hamid had put his own interests first, neglecting that of the children (presumably because they had been sent to Turkey), and was not able to be the primary caretaker. This was attributed to Hamid's Turkish background which explained why "his honour was damaged" (Hoekema and Van Rossum: 865). Further,

the judge reproached Hamid for his lack of affectionate behavior. Further, there was no discussion of the possibility that in other cultures other patterns of child-raising could be common... [S]uch a pattern of 'extended family' is 'quite common' in Turkish culture. The 'interest of the children' was also not served, according to the judge, by moving them back and forth between Turkey and Holland and from one family to another.<sup>18</sup> This amounted to 'a culture shock'.... (Hoekema and Van Rossum: 866)

Basically, the preconceptions that seeped into the report and the judges' ruling

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<sup>18</sup> This while the judge had ordered the children to return to Holland in order to decide on the custody issue.

excluded the possibility of Hamid giving meaning to the open legal concept of 'the interest of the child'. A 'culture shock' for instance is only experienced when the preconception is that 'steadiness' is a normal and desirable state of living. Further 'biological' parents gain importance when a restricted version of 'family' is taken into account. And 'affectionate behavior' is a gendered term, but gender roles differ between cultures. (Hoekema and Van Rossum: 866-67)

The authors derive the following 'empirical conflict rule' from this case:

In case of open legal concepts in the field of family law, like for instance 'the interest of the child', judges follow the meaning given by professional organisations. Judges and professional organisations in cases of open legal concepts tend to follow *commonsense interpretations* within the dominant culture, excluding possible interpretations from different (minority) cultures. (Hoekema and Van Rossum: 867; italics added.)

These 'empirical rules' are basically hypotheses but the authors "are not saying that all judges act (let alone should act) according to this rule" (Hoekema and Van Rossum: 867). From the text it is unclear on how many cases the research is based, and whether there were cases that did not follow the same pattern or were 'exceptions' to the 'rule' for some reason.<sup>19</sup> In this otherwise stimulating contribution, the presentation of the thesis in 'empirical conflict rules' seems far-fetched, making a more straightforward (but less creative) presentation of findings preferable. By referring to 'empirical rules' rather than hypotheses (but stating it is in fact not a rule of behavior), you open up for criticism when on basis of a limited number of cases you argue something that seems to be posited as being universally

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<sup>19</sup> In that light: the authors argue that in labor law cases, things are different and judges take cultural factors 'extensively into account'. Thus for example the "case of Mohammed" describes the case of a Moroccan truck driver who seems less than motivated to return to work after an extended family vacation but whose employer was not allowed to dismiss him under the Dutch labor law rules. It is not clear on how many labor law cases this conclusion is based, if and why this is an exemplary case and whether there are exceptions to the "rule". (Hoekema and Van Rossum: 879-82.)



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valid (even if it has no normative value). Much effort goes into explaining what these ‘empirical rules’ are and are not,<sup>20</sup> while this space could be used to illustrate its content. Framed as a hypothesis, the finding that judges do *not* in fact take foreign norms into account through open legal concepts such as the ‘best interest of the child’ standard, or are biased from their hyper- socialization into local dominant culture, could offer a useful starting point for further research.

## Conclusion

The period running from the colloquium in 2006 to the coming-of-age of this volume in 2010 was a period of ripening and a diplomatic odyssey during which the editors dealt with cultural differences amongst contributing scholars from various backgrounds. A few blemishes seem to have been inevitable in the process.<sup>21</sup> But while it is acknowledged that “given the constraints inherent in this sort of exercise” not “all potentially relevant or interesting countries” have been included, the volume packs a rich mix of well-known and lesser known examples of state diversity managements, often richly detailed (‘Introduction’: xiv). A volume as large as this perhaps unavoidably sparks the image of a cacophonous ensemble which needs many stitches and introductions pointing out convergences and parallels to keep the story flowing. Fortunately, an edited academic volume unlike a great movie, does not suffer per se to the same extent from a possible lack of great internal dynamic. Great scenes in this case do make the package appealing.

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<sup>20</sup> Call these rules: social rules. They are not codified, have no formal normative validity and are not binding on judges. They are not part of the law, but are the product of our anthropological and sociological invention. (Hoekema and Van Rossum: 857.)

Clearly then, our concept of conflict rules is quite different from that in private international law... (Hoekema and Van Rossum: 858.)

<sup>21</sup> Thus for example scholars were asked to structure their contributions according to a common format (‘Introduction’: xv), but the questionnaire which is said to be included as an appendix to this volume seems to be missing; there are references to a scholar (Spellenberg) whose contribution is not included (Hoekema and Van Rossum); there are some unfortunate translations of foreign terms (e.g. Hoekema and Van Rossum noted above).

As a whole, *Diversity and the Law* should be viewed as a timepiece. Bringing together the varied writings (using various styles and research methods) of a number of important players in legal pluralism, cultural diversity, family law issues, and Islam in Europe and Asia, the volume informs and enhances the reader's familiarity with issues regarding a most important contemporary legal and societal challenge. It is said that great ideas take time to find their ground in society. This book is packed with some great ideas which need to find appropriate avenues to penetrate the general consciousness.

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