Introduction

MAVIS MACLEAN AND JOHN EEKELAAR

IT IS NOT surprising that the law which regulates family matters in any jurisdiction generally enshrines the values of the dominant elements in that society, whether they are defined by factors such as wealth, status, age and gender or by culture, ethnicity and religion. The ways in which the less powerful groups relate to the state family justice system depend on many factors. As societies become more diverse in culture, religion and ethnicity, there is a growing interest in the impact of these influences on the individual's experience of family justice. The question of how the family practices of distinct cultural, ethnic and religious minority groups are accommodated within the legal framework of the wider society of which they are a part has been attracting increased theoretical attention since the beginning of the twenty-first century, though not as yet accompanied by sufficient empirical research activity. The issue has been presented as a particular difficulty for Western liberalism because of the tension between the liberal values of respecting difference and the autonomy-enhancing features of individuals identifying with particular cultures, and the autonomy-restricting aspects of cultural membership, including the apparently illiberal practices of some cultural groups, for example, with respect to gender equality in family law. Furthermore, in human rights discourse, the rights of the individual to respect for his cultural and religious beliefs and practices may conflict with the rights to equality of treatment, personal safety and autonomy.

In addition there is a question of social solidarity. Fears that multicultural policies are creating a divided society have been expressed in Europe (Joppke 2004; Kepel 2005; Pfaff 2005; Meer and Modood 2009) and have been voiced by the chair of the English Commission for Racial Equality (Phillips 2005). In October 2010, the German Chancellor, Angela Merkel, went so far as to say that multiculturalism in Germany had failed, and that minority groups must do more to integrate. In England, these concerns were exacerbated when the Archbishop of Canterbury, the senior primate of the established Church, suggested in 2008 that Islamic law was already recognised in some circumstances and argued that it might need to be treated as a system supplemental to and running in parallel with the state law if proper respect was to be given to people's religions (Williams

2008). In Canada, the question whether the procedure under the arbitration legislation in Ontario should be used to allow disputes to be resolved in accordance with Islamic law has caused much controversy (Aslam 2006).

The issue has been expressed as being not about negotiation with, but about the 'accommodation' of minority group norms. Jeremy Waldron (2010: chapter 7) distinguishes between two types of accommodation. One is by granting minorities certain exemptions from majority norms; another is by permitting minority norms to have legal effect. Either case, Waldron notes, can raise tensions with the rule of law. However, sometimes such accommodation may be held to be 'reasonable'. It is obvious that what is considered to be reasonable in this context could be difficult to agree. One problem, Waldron observes, is whether the exemptions or permissions in themselves cause injustice. But then conceptions of justice may vary between groups. The only solution he suggests is that the minority's views should feed into the 'general mix of democratic debate'.

Academic debate is part of democratic debate. And this collection is part of that debate, presenting a variety of views and a range of empirical studies. We begin by questioning how actively and in what circumstances the state needs to take a view on the family practices of subordinate or minority groups, whether defined by race, culture or ethnicity. We fully acknowledge the salience of other characteristics such as age or gender, but these have been considered elsewhere and are not the primary focus here. We emphasise the need for better information about the social norms and behaviour of all groups which form part of the wider society. We end by questioning how much law we need to regulate the family as an institution, and take as an example of family behaviour the physical punishment of children, presenting empirical evidence which has implications for considering the range of recent legal responses.

We wish to set the currently widely discussed question of the tension between 'state' law and norms within religious or ethnic groups in the context of a more general tension that is common between the law and society. Law does not always attempt to create a monolithic code of practice for everyone. The law itself may legitimate a variety of practices. For example, the recent addition of civil partnerships in England and Wales and in other jurisdictions alongside heterosexual marriage can be seen as the law itself legitimising a wider diversity of lifestyles than formerly. In Israel, the law requires people who wish to marry to do so according to certain recognised religious norms. Other types of practice may not attract specific legal recognition, but do not attract disapproval either. The widespread practice of cohabitation outside marriage, especially in Western Europe, is an example. This allows diversity, but in a different way. But some behaviours, such as polygamy or forced marriage, may attract social disapproval, which may be expressed through the operation of the law. These then are no longer viewed by the state as features of social or cultural diversity, but become defined by the legal response as forms of deviance.

The role of law in marking out the distinctions between social acceptance and social disapproval is particularly acute with regard to family behaviours, as

it feeds into existing concerns about the interrelationships between family norms in the wider society and those of primary communities within families (Maclean 2005). This volume not only discusses theoretical issues underlying any approach to the question, but looks at actual examples supported by empirical evidence and considers what practical action might be taken to respond to it. To illustrate the international scope of their occurrence, the examples are drawn from a variety of national jurisdictions ranging from England and Wales to Poland, France, Israel, Iran and South Africa.

Theoretical and ideological issues which underlie strategic approaches to these issues are dealt with primarily in part one. In chapter one, John Eekelaar sets out a view consistent with Western liberal values that cautions against communitarian approaches that imply that communities may justifiably use coercive means through law to place the interests of the community (or a particular conception of the community) above those of its constituent members. He argues that while submission of individual interests to a particular form of community can have value, that value primarily lies in the voluntary nature of any such submission. He argues that an approach which sees individuals within their cultural context and permits them to choose to follow either the norms of their group, or general state norms, could provide a way of promoting diversity among individuals within a geographical polity. Eekelaar calls this approach 'cultural voluntarism' whereby the state resists conferring state-backed legal authority on minority group institutions, but nevertheless accepts that members of such groups may follow their own rules, enforcing them where they coincide with its law, always allowing group members access to its law, including human rights protection and prohibiting behaviour only where it causes harm or contravenes ordinary criminal law. The chapter raises the question that if the interests of individuals to experience the support and stability of participation in cultural norms are being met there may generally be no need for the state either to incorporate norms of any particular ethnic or religious group into state law or to confer on the institutions of the group express authority to exercise legal jurisdiction over its members. Any attempts to do so might raise problems regarding the identification of the applicable norms and their compatibility with human rights and inhibit the fluidity of individual movement between groups and cultures. He supports the view that no one can escape living within a culture or cultures, but no one culture should be allowed to capture any individual.

This approach implies giving significant value to personal autonomy, and is further explored by Farrah Ahmed, in chapter two. Ahmed challenges the view that group autonomy necessarily restricts individual autonomy. She considers forms of Alternative Dispute Resolution (ADR) which are based in religious beliefs and questions the view that Religious Alternative Dispute Resolution (RADR) necessarily enhances group autonomy at the expense of individual autonomy in ways which challenge liberal values. She argues that, under certain conditions, the use of RADR has the potential to *enhance* individual autonomy as the institutions of RADR provide contexts for expressing freedom to practise

religion, and could even provide opportunities for individuals to influence the nature of the religion and its norms by which they live, either through their representatives or by participating in modes of group deliberation. It is important to note that Ahmed does not argue that RADR does not or cannot restrict autonomy, only that it does not necessarily do so, and under certain conditions can enhance it. This raises important questions about the approach states should adopt towards RADR. It suggests this should not be rejected out of hand and, if approached in certain ways, may be consistent with core liberal values.

We record here with appreciation the contribution made by Maleiha Malik at the 2010 Onati Workshop, where, focusing on law for the family, she outlined the historical role of Sharia in providing a remedy for individuals who want resolution of their disputes primarily in accordance with the norms of their faith rather than in the public sphere of state legal systems. She also emphasised the dynamic nature of Sharia and the difficulty which this can cause both for British law and state structures. Malik developed these themes in a report published by the British Academy in 2012, *Minority Legal Orders in the UK: Multiculturalism, Minorities and the Law.* This reviews the options available to liberal societies with regard to minority legal orders within them. In particular, it develops the idea of 'cultural voluntarism' and shows how it can coexist with a degree of 'mainstreaming', whereby elements of minority legal orders are absorbed within the state law by way of special provisions or exemptions.

The next two chapters in this section go on to develop a robust critique of the liberal approach presented in chapters one and two. Prakash Shah, in chapter three, challenges the use of a liberal framework within which these questions of accommodating minority laws within a legal system are discussed. The liberal values may not be shared by all minority subjects, and could be viewed by them as Eurocentric and oppressive. He questions the assumptions made when human rights are expressed as being in opposition to group values. In opposition to 'cultural voluntarism', he argues for a more active approach which would recognise the need of each individual to have his own system of values reflected in the legal system in which he lives, and for those concerned with policy development to pay close attention to the socio-legal reality of the bargaining processes employed not just between, but within legal minority groups.

Samia Bano, in chapter four, sets the issues within the context of Alternative Dispute Resolution, in particular, religious ADR as used by Muslims in contemporary Britain. Bano stresses the diversity of local Shariah councils, indicating that 'the socio-legal reality of Muslim communities in Britain can be presented as a complex scenario of a multiplicity of state laws and personal laws which challenge the assumed uniformity of state law (as superior, monolithic and homogeneous) and instead points to a postmodern analyses of law and legal relations which highlights 'a diversity of laws' and 'interlegality'. As a result, Muslims have reconstructed personal law systems of law within localised Muslim communities.

Bano describes the emergence of a 'national' Muslim Arbitration Tribunal, and considers its possible role in family issues in the context of legislative moves

that appear to be directed at prohibiting religious arbitration in family and criminal issues. There is a clear tension between what people may fear to be the restrictive and discriminatory features of religious arbitration, which could lead to punitive attempts to prevent it, and its role in enhancing community cohesion and fulfilling the sense of identity of both men and women users. Bano's research suggested that, while some women indeed had criticisms of the process, their attitudes were complex, and 'several' appreciated the contested nature of some Islamic perspectives put forward by religious scholars. The women should not necessarily be considered to be unable to exercise genuine agency. Until more is known of these matters, Bano cautions against either recognition or accommodation of these processes.

Bano's comments on the complex nature of the relationship between religious arbitrators and users, and between both and the state, leads us into part two, which is concerned with detailed examination of instances of state action to regulate the interaction between religious, cultural and state norms in a number of jurisdictions. The first three chapters look at what can be achieved in practice through legislation – whether dealing with specific issues or taking a broader approach – and the fourth chapter looks at the state's use of the courts to deal with an issue of child protection.

In chapter five, Pascale Fournier and colleagues report the initial results of a research project examining the working of recent Israeli legislation intended to help the *agunah* wives who seek divorce but remain married under Jewish law because their husbands refuse to initiate the necessary religious process. These wives are unable to remarry, and any children of a new union are illegitimate and excluded from Judaism. To combat this problem, Israel enacted a Sanctions Law in 1995 giving the rabbinical courts the right, in certain cases, to deprive men who refuse to seek the religious divorce (*get*) of certain privileges, such as the right to leave the country, or hold a driving licence and even to send them to prison. In their responses to the interviewers, the *agunah* demonstrate that religious subjects do not always wait for, or desire, the benevolence of a secular state or a declaration of human rights to make their lives better. Instead, Fournier describes the women as struggling from within the religion to shape and influence religious institutions, seeing the new law as 'a helpful, albeit imperfect, legal instrument'. This is seen as a religious solution to the *agunah* issue, which can be activated through the agency of the women themselves. Nevertheless, the Sanctions Law itself was an enactment of the State of Israel, directed at the activities of a religious community. Its implementation is very inconsistent, being heavily dependent on the attitudes of specific rabbis, many of whom are concerned that its enforcement could be inconsistent with the principle that a *get* could (retrospectively) be pronounced invalid if it had not been granted freely. These uncertainties prevail in a context where obtaining the *get* has become the occasion for bargaining between the parties over the property and financial consequences of the divorce, and even the arrangements regarding the children and thus contribute further elements to the bargaining process.

This research illustrates how an aspect of a religious regime to which the parties hold themselves bound can become an element in a negotiation process that will affect their eventual legal rights. Bargaining can, of course, be an element in any divorce settlement, and negotiating parties will place their own value on the matters up for negotiation. But there could be a question whether the general law should *allow* one party to use his (it is usually his) superior position over the other according to their religious law as part of the bargaining process in relation to their civil law rights. English law appears to be content to do so.[1] Courts could refuse to uphold such bargains, but since they cannot require a religious body to grant a divorce that would be contrary to its religion, to do so would also deprive a wife of what she wants: namely, the divorce. One way (perhaps the only way) of avoiding (or reducing) this outcome is to legislate to bring the religious norms within the jurisdiction of the civil courts, as is proposed in the Muslim Marriages Bill (MMB) in South Africa, discussed by Waheeda Amien in chapter six. But as this major step would retain most features of Islamic family law that maintained gender inequality, the Commission for Gender Equality drafted an alternative, the Recognition of Religious Marriages Bill (RRMB). This alternative allows religious communities to follow their own norms regarding marriage, but permits the secular law and process of divorce to apply to religious marriages. This provides gender equality at this point, but allows the religious norms to operate alongside it. Under the MMB, however, Muslim marriages would not simply be *recognised*; they would be *regulated* by the state courts. Thus many features of Islamic family law, including regulation of polygyny, matrimonial property, forms of divorce and maintenance obligations would be incorporated into the law applied by state courts. Yet the degree to which this would redress imbalances between the parties would depend on the character of the religious norms applied by the courts, and that in turn could depend on the orientation of the judiciary (much for example would depend on whether Muslims appointed as judges followed conservative or other traditions) and of the experts advising them. Questions would also arise regarding the interpretation given to the reach of the provisions of South African constitution with regard to protecting human rights, in particular, gender equality. While the RRMB would be ineffective in protecting women against discriminatory application of Islamic family law, at least, outside the divorce context, the MMB 'codifies' such discriminatory features into the state system. One the other hand, such codification provides a means of regulating those features in a manner that offers more protection to Muslim women than they currently have, and holds out the prospect of developing Islamic family law in accordance with the equality norms of the Constitution, which could be said to be the basic objectives of Islamic law in any case.

The third example of a legislative response comes from the United Kingdom, and concerns an extreme form of marriage involving coercion, usually known

[1] *X v Y (Y & Z Intervening)* [2002] 1 FLR 508.

as 'forced marriage', a practice or strategy for survival based not in religious belief but in the local customs in certain areas from which immigrant families have come to the UK. Forced marriage clearly falls within the category of a human rights issue under UK state law. Marriage has long been subject to the influence of the wider community for reasons ranging from the need for diplomatic alliances or title to the ownership of land, or the need to provide for widows and children without a breadwinner. The choice of a marriage partner by the parties for emotional reasons in the UK is a relatively recent development, as readers of Jane Austen will appreciate. But although in Britain some degree of parental influence on the choice of a marriage partner may still be the norm, and the practice of assisted marriage where parents help to find a suitable partner is quite widespread, serious concerns arose about the occurrence of forced marriage where refusal to cooperate with parental choice has led to maltreatment and even the death of some young women in some Asian communities. Pressure from the public for legislation grew, and the government response and its limitations in practice are described by Mavis Maclean in chapter seven. An evaluation of the Forced Marriage (Civil Protection) Act 2007, which sought to protect the persons at risk without criminalising the perpetrators, was published by the Ministry of Justice in 2009 and showed that those working in the courts found its procedures to be workable, and valued by the police in preventing further honour-based violence. The primary remedy involves separating young women and some men thought to be at risk of being coerced into marriage from their families. But there remains a serious problem in making this form of protection known in the communities most affected, and some reluctance by some public authorities to risk disturbing their developing relationships among the minority communities by taking action. Perhaps the hardest problems arise after the legal intervention and concern how to offer long-term support to the young women who have a protection order but are then cut off from their family and community without educational qualifications or employment opportunities. Legislation which is so far removed in its values from the accepted practices of a tightly-knit community is hard to implement, and where it is used, can give rise to further problems for the members of that community. The limits of legislation as an effective remedy are clear.

The next chapter in this section (chapter eight) concerns a different form of governmental intervention through the use of the criminal courts to deal with parents thought to be endangering their child through adherence to their religious beliefs, even where the child protection legislation gives the state a clear power and duty to intervene. Teresa Picontó Novales presents the case of a 13-year-old boy in Spain who died after refusing a blood transfusion as a result of his religious beliefs. The case was complicated by the fact that, because of those beliefs, the boy rejected the treatment in such a 'state of terror' that the doctors felt unable to carry it out. The parents were charged with attempted murder for failing to try to persuade him to accept the treatment. But how could they have done so given their beliefs? Picontó Novales suggests that earlier intervention, involving removal of

the child by the welfare authorities, would have been possible and would have obviated placing any such duty on the parents that would have conflicted with their religious freedom. But the state authorities were sensitive to the need to respect religious beliefs and reluctant to intervene until matters were sadly beyond remedy for this child.

Similarly, sensitivities regarding intervention, but in relation to a rather different problem of a cultural rather than religious nature arise in Poland with respect to underage marriage among the Roma described by Jacek Kurczewski and Małgozata Fuszara in chapter nine. The age for marriage accepted by the entire Roma community, despite many tribal and local variations in other customs and practices, is lower than that permitted by state law in Western countries and, while not necessarily problematic for the young people themselves, contravenes state law and triggers intervention by often reluctant public authorities. So here we have the state acting reluctantly at the insistence of those concerned with child welfare to enforce a law where neither the minority group nor the state finds the practice particularly problematic. Kurczewski and Fuszara expand their discussion to the general question of state recognition of minority norms, pointing to the 2003 UNESCO Convention on Protection of Intangible Cultural Heritage, and the earlier multiculturalism of the one-time Kingdom of Poland and Lithuania. However, the discussion focuses on the feasibility of recognising Roma marriages in the same way as other religious marriages are recognised in Poland, and Kurczewski and Fuszara argue that it should be possible to reach an accommodation with Roma communities (despite their diversity) on condition that registration requirements are complied with, and the consent of the parties (though possibly not their adulthood) is assured. This would be similar to the way in which Jewish and Quaker marriages have long been recognised in England and Wales, and which could be extended to other minorities.

There appears to be a consistency in the nature of these very different forms of government intervention in family life, demonstrating caution, a reluctance to intervene except in extreme circumstances and certainly no urgent desire to actively mould different forms of family life into a single uniform model through top-down intervention. However, government intrusion can occur differently, in the form of a strongly proactive policy that ignores (at least officially) its impact on minority cultures. In chapter ten, Yasmine Debarge and Benoit Bastard describe what happens when immigrant families from a different cultural and religious background come into contact with the welfare services of a strongly secular nation state. In France, though 'Child Access Services' are intended for all separating parents and their children, ethnic minority families are over-represented among the users, most of whom are directed to the centres by the courts. Because the 'republican' ideology of the state disregards cultural or religious difference, cultural matters are marginalised (to the extent of disallowing use of any language other than French) and the major professional concern is to promote child–parent bonding, in particular, maintaining bonds with the family lines of both the child's parents. The agendas of the state and of these parents may be very

different, and there is little dialogue between them. Debarge and Bastard describe the various ways cultural factors are negotiated in that setting, distinguishing four approaches: approving, acknowledging, ignoring and refusing.

In part three, the contributors turn away from governmental actions to community behaviour, including the role of community-based institutions, and look at ways in which mechanisms have developed in order respond to the issue of inter-penetration of social norms between communities. This part begins in chapter eleven with a description by Gillian Douglas and colleagues, based on empirical research, of the English way of arranging the relationship between religious and state courts concerned with marriage and divorce. It might be termed a 'middle way' between the Israeli conferment of jurisdiction on rabbinical courts and the proposals in the South African Muslim Marriages Bill to bring aspects of Islamic law within the jurisdiction of the civil courts. Under the English arrangement, as regards divorce and annulment, the members of religious institutions who wish to do so accept the authority of those institutions, but the decisions made are not treated as having legal standing by the general law except insofar as they may satisfy the requirements of that law, for example, under the law of contract or arbitration. Douglas describes this as a 'cohabitation' model and presents findings from an empirical study of three religious tribunals in England and Wales, the Birmingham Shariah Council, the London Beth Din of the United Synagogue and the National Tribunal for Wales of the Roman Catholic Church. Douglas describes the workings of these institutions, and their interaction with the secular law, in detail. All three institutions strongly encourage parties seeking dissolution of a marriage to have obtained civil divorce (the Roman Catholics go so far as to require it) so that they will not need to dissolve or annul marriages that remain intact according to civil law. There appeared to be no desire within the religious institutions that the state should grant legal recognition of their determinations: they seemed to understand and accept the demarcation between the religious and the secular authority. Douglas emphasises the fact that the primary focus of these institutions is on the marriage itself, since they can enable applicants to remarry in a manner that is compliant with their faith. So, whether recognised by the state or not, the decisions of these bodies are of great significance for the parties, and it is hard to see reasons for disallowing this, although it is possible (and common) for related matters, for example, regarding children and finances, to be dealt with (also) under the civil law. In this way the civil and religious legal systems 'cohabit'. However, Douglas et al, noting that state law recognises religious marriages in certain circumstances, see no reason why that law should not also recognise divorces performed according to religious procedures, especially as the civil law of divorce is moving even more strongly towards simple administrative notification, thus, in this context, following an 'integration' model.

In chapter twelve, Jagbir Jhutti-Johal describes how parties to Sikh marriages (where divorce is not recognised) use and are influenced by the norms of their religion when engaging with the secular law of divorce. Sikh marriage (*Anand*

Karaj) is not only a physical legal or civil contract which can be dissolved, but a sacred contract recognised and ordained by God. Since separation was regarded as bringing dishonour on the family, families intervened strongly to prevent this. It is still the case that family 'mediation', by parents, other family members or a middleman, plays a strong part in marital disputes, and has a strongly directive character. But research by Jhutti-Johal showed that the younger and better-educated generation of Sikhs are less likely to be directed by the older generation as they interact with the dominant culture around them.

A similar process of cultural evolution, this time modifying legal norms in favour of a traditionally disadvantaged group, is described by Anne Griffiths in chapter thirteen. Griffiths shows how changing social attitudes towards women in Botswana have led to informal modifications of the application of customary law concerning the acquisition of property through inheritance, traditionally dominated by the privileging of male offspring and in particular the eldest son in recognition of his responsibilities as head of the family. An examination of Land Board records shows a marked increase in land holdings by women. The chapter provides an important illustration of how non-state law can adapt and evolve in response to wider social developments, in this case the growing confidence and higher expectations of women. While acknowledging the influence of the actions (including legal developments) of the state and of NGOs in this process, Griffiths observes that this evolution is generated from the 'bottom up' as much as from the 'top down'. Like others in this collection, she urges that in considering the role of the state, close attention should be paid to socio-legal reality 'on the ground'.

This process of social impact on legal regulation can be much more difficult, though not impossible, when state law is the target and it is supported by powerful and repressive elite groups. In chapter fourteen, Nazila Ghanea describes the impact of civil activism to improve – or at least prevent further erosion of – the position of women in Iranian family law. There are limitations in that since this has resulted from a strategic and reluctant response to advocacy the successes are fragile and at risk of reversal. Family law in Iran is only a part of the gender laws, relating to women's role in the wider society, which remains strictly controlled and can be very discriminatory. For example, Ghanea states that 'blood money penalty or "*diyeh*" payment offered on the killing of a Zoroastrian, Christian or Jewish man' was equalised to that payable on killing a Muslim man in 2004, but payment for 'killing a Zoroastrian, Christian, Jewish or Muslim woman is half, and no payment for killing men or women belonging to other religions (such as Bahá'ís) or beliefs is required'. However, Ghanea reports a number of remarkable indications that the official positions are not necessarily reflected in people's behaviour. Hence, despite reduction in the official age of marriage, women's age at marriage is in fact rising. Despite official easing of a husband's right to enter polygamous marriages, the number of single women is increasing. Despite official ideology of restricting women to the home, the numbers of women in education have grown. So this is another example of

bottom-up change. Ghanea discusses the kinds of processes that might influence such change.

Chapter fifteen, however, suggests that resistance to change does not always result from coercive measures from state or other institutional authorities, but may reside in the population itself. Farah Deeba Chowdhury argues that, given its recent political history, secular attempts to impose gender equality in Islamic Bangladesh will not succeed, and gives the example of inheritance law. In strong contrast to the position in Botswana, described by Griffiths (chapter thirteen), Chowdhury observes that women are not able to exercise the limited property rights they already have, so are unlikely to be able to enjoy increased inheritance rights were equality to be granted. It would be better, she implies, to work through Islamic law, which does provide protections for women, and secure the rights they should have under that law, than attempt to impose norms that are inconsistent with that law.

The book concludes in part four by revisiting the original question of how legal systems have accommodated and are now responding to pressure for change in the relationship between different family behaviours arising from cultural and religious beliefs and state systems of family justice. The two chapters look first at law and then at family behaviour. In chapter sixteen, Jordi Ribot asks a question fundamental to the whole debate: how much family behaviour should the law seek to regulate anyway? For to the extent that such behaviours fall outside the remit of the law, it matters less (within limits of course) what norms the family members follow. Ribot therefore considers what it is that family law seeks to achieve. He is sceptical about the capacity of family law to mould social behaviour according to predetermined conceptions of society. Instead, he sees it as a tool for responding to 'the individual's request for justice within family relationships'. This echoes the individualised approach, as set out by Eekelaar in chapter one. Ribot emphasises that the quest for fairness must take into account the social context, including the cultural context of any regulation. Giving examples drawn from a wide range of issues in family law, Ribot suggests that the result could be a hybridisation of the law, in which various active and changing cultural elements would be incorporated into the resolutions applied by the general law on an individualised basis, subject to limits to ensure that the results do not 'jeopardise individual self-determination or result in gender discrimination'.

For the last word, we step outside the sociology of law to the sociology of the family. Marjorie Smith and Ann Phoenix, in chapter seventeen, describe evidence about the use of corporal punishment of children by parents. They remind us of the range of responses the law can make to a common form of behaviour in families, but also of the variety of such behaviour, demonstrating the range of social norms in play. Although there are, or may be, variations between ethnic groups, these are complex. For example, the same kind of behaviour that may be indicative of some form of dysfunction (deviance) in one group (thus associated with negative outcomes for children) may be consistent with a

well-functioning relationship (and thus positive outcomes for children) in another. The evidence also shows the capacity of these norms to fluctuate over time and between generations. All this highlights the care needed in attempts to legislate regarding the inner workings of families, a lesson underlined by problems of interpretation of data exemplified in the description of an interview with an Afro-Caribbean mother in London. The mother was asked about punishment. She said that when her daughter behaved badly, she beat her. When the interviewer asked what she beat her with, she replied: 'With words, of course with words'.

REFERENCES

Aslam, J (2006) 'Judicial Oversight of Islamic Family Law Arbitration in Ontario: Ensuring Meaningful Consent and Promoting Multicultural Citizenship' 38 *International Law and Politics* 876.

Joppke, C (2004) 'The Retreat of Multiculturalism in the Liberal State: Theory and Policy' *55 British Journal of Sociology* 249.

Kepel, G (2005) 'Europe's answer to Londonistan': www.opendemocracy.net/conflict-terrorism/ londonistan_2775.jsp (24 August 2005).

Maclean, M (ed) (2005) *Family Law and Family Values* (Oxford, Hart Publishing).

Meer, N and Modood, T (2009) 'The Multicultural State We're In: Muslims, "Multiculture" and "Civic Re-balancing" of British Multiculturalism' *57 Political Studies* 473.

Pfaff, W (2005) 'A Monster of Our Own Making' *The Guardian* (21 August 2005).

Phillips, T (2005) *Sleepwalking to Segregation* (London, Commission for Racial Equality).

Waldron, J (2010) 'Questions about the Reasonable Accommodation of Minorities' in R Ahdar and N Aroney (eds), *Sharia in the West* (Oxford, Oxford University Press).

Williams, R (2008) 'Civil and Religious Law in England: A Religious Perspective' 10 *Ecclesiastical Law Journal* 262.