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THE MULTI-CULTURAL FAMILY

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The Multi-Cultural Family

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Series Preface

The family is a central, even an iconic, institution of society. It is the quintessentially private space said, by Christopher Lasch, to be a 'haven in a heartless world'. The meanings of 'family' are not constant, but contingent and often ambiguous. The role of the law in relation to the family also shifts; there is increasing emphasis on alternative dispute mechanisms and on finding new ways of regulation. Shifts have been detected (by Simon Roberts among others) from 'command' to 'inducement', but it is not a one-way process and 'command' may once again be in the ascendancy as the state grapples with family recalcitrance on such issues as child support and contact (visitation) arrangements. Family law once meant little more than divorce and its (largely) economic consequences. The scope of the subject has now broadened to embrace a complex of relationships. The 'family of law' now extends to the gay, the transgendered, 'beyond conjugality', perhaps towards friendship. It meets new challenges with domestic violence and child abuse. It has had to respond to new demands – from women for more equal norms, from the gay community for the right to marry, from children (or their advocates) for rights unheard of when children were conveniently parcelled as items of property. The reproduction revolution has forced family law to confront the meaning of parentage; no longer can we cling to seeing 'mother' and 'father' in unproblematic terms. Nor is family law any longer a 'discrete entity', but it now interfaces with medical law, criminal law, housing law etc.

This series, containing volumes on marriage and other relationships (and not just cohabitation), on the parent–child relationship, on domestic violence, on methods of resolving family conflict and on pluralism within family law, reflects these tensions, conflicts and interfaces.

Each volume in the series contains leading and more out-of-the-way articles culled from a variety of sources. It is my belief, as also of the editors of individual volumes, that an understanding of family law requires us to go beyond conventional, orthodox legal literature – not that it is not relevant, and use is made of it. But to understand the context and the issues, it is necessary to reach beyond to specialist journals and to literature found in sociology, social administration, politics, philosophy, economics, psychology, history etc. The value of these volumes lies in their coverage as they offer access to materials in a convenient form which will not necessarily be available to students of family law.

They also offer learned and insightful introductions, essays of value in their own right and focused bibliographies to assist the pursuit of further study and research. Together they constitute a library of the best contemporary family law scholarship and an opportunity to explore the highways and byways of the subject. The volumes will be valuable to scholars (and students) of a range of disciplines, not just those who confront family law within a law curriculum, and it is hoped they will stimulate further family law scholarship.

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Introduction

Around the world, in an age of migration and globalization, families stretch across and between social, cultural and legal frameworks. Beyond the work that all families carry out, the multi-cultural family navigates a complicated balance of tradition and change, home and diaspora, community and autonomy. These families absorb many tensions born of transformation, and pose in turn new challenges for legal orders premised on more stable community membership and identity. This volume collects some of the literature on multi-cultural questions in family law, considering different manifestations of these issues in places from North America, Europe, Australia and New Zealand to Israel, India and South Africa.

The problems addressed here have their origins in the process of conquest and colonization of the Americas, Africa and Asia by Western European nations over several centuries. Colonizers spread their legal systems along with other aspects of their cultures, imposing their norms at different levels on the peoples they encountered. More recently, as waves of immigration have brought many people from the former colonies to live and work in the centres of economic power, the flow of cultural and legal practices has reversed. On both sides, our societies have been fundamentally changed by these processes, just as individual families have been.

A 'multi-cultural' family is one shaped by multiple cultural and legal frameworks. These frameworks often overlap with ethnic, racial, religious or national identities. In the law, issues of multi-cultural accommodation come to the forefront most readily and most often in the context of marriage and divorce, which mark the primary spot where the law intersects with families and thus with the broad range of social and cultural systems that families inhabit. The essays collected here address marriage and divorce conflicts, but also consider other friction points, including reproductive rights, domestic violence, adoption, child custody and family violence. Because working with multi-cultural families raises particular challenges for practitioners, a number of these pieces focus on dispute resolution in a multi-cultural context.

Multiculturalism has generated a large and interesting literature in philosophy and political theory which lies beyond the scope of this collection. In international law, the attempt to mediate and transcend cultural and political differences is reflected in human rights principles that apply to many questions of family law (see generally Estin, 2002). These norms have become part of the substantive or constitutional law of many countries and are referenced in various essays included here, but the larger subject of international human rights is also beyond the scope of this project. When legal decision-makers face the challenge of reconciling the claims of pluralism and individual rights in family law, their decisions are made within the parameters of a given legal system, which provide a far narrower range of options than might be available in the universe of theory. Some of the most interesting and important questions, however, concern the extent to which multi-cultural approaches can and should be permitted to shift or expand the normative boundaries of particular legal traditions.

Marriage and Divorce

Multi-cultural challenges and conflicts take a unique form in every nation, as a result of distinct historical, political, and social circumstances. Broadly conceived, however, there are several distinct patterns of multiculturalism. One pattern, familiar in Europe as well as in North America, Australia and New Zealand, emerges when a liberal democracy, with a largely secular and unitary family law system, faces claims by religious minority groups for accommodation of their distinct legal traditions. A second pattern, typical in the former European colonies in Asia, Africa and the Middle East, involves a pluralistic legal system in which personal status matters including family law are assigned to separate legal authorities based on the religious or cultural background or identity of the individuals concerned. A third pattern, which may overlap with either of the first two, arises from the tension between the law of a dominant society and the indigenous or customary law of non-immigrant minority groups.

Religious Minority Groups and the Secular State

The law of marriage and divorce in Europe and those countries with laws based on the European tradition is formally secular today, but it maintains a shape established by Christian tradition and ecclesiastical law. This is particularly evident in the qualifications for marriage and the restrictive approach to divorce of these legal systems. During the centuries when Jews were not allowed citizenship in these countries, Jewish communities retained autonomy to follow their own marriage and divorce practices, but the modern rule in the West extends national citizenship regardless of religion, and subjects all members of the national polity to the same system of family law.

For members of religious minority groups, whose traditional law is based on different principles, the ostensibly secular provisions of European marriage and divorce law present significant conflicts. The primary challenge for these broader societies is to establish and define the space within which members of different groups can maintain their religious and legal traditions. For group members, the challenge is to build institutions that work within the larger framework of a unitary legal system. In terms of constitutional or human rights, the central questions involve non-discrimination and the freedom of religion. Essays included in this volume address aspects of this problem in Australia, Canada, England, the United States, Belgium and France, considering a range of issues that arise for members of the Islamic and Jewish communities within these nations.

Part I begins with an overview of these issues in the United States. In 'Toward a Multicultural Family Law' (Chapter 1), Ann Laquer Estin assesses the treatment of distinct cultural or religious traditions in marriage, divorce and custody disputes, describing various accommodations of this diversity by the US courts and framing a set of limiting principles for this process. Estin observes that the argument for pluralism is supported by constitutional norms of religious freedom and the prohibition on racial or religious discrimination, while

at the same time constrained by legal and constitutional norms of due process and gender equality.[1]

Patrick Parkinson reviews the Australian Law Reform Commission's work on multiculturalism and family law in 'Taking Multiculturalism Seriously: Marriage Law and the Rights of Minorities' (Chapter 2). The Commission's project represents a much more systematic and comprehensive approach to multiculturalism issues than the more ad hoc common law approach, and while Parkinson finds reasons to applaud the Commission's work, he also criticizes its hesitation to look beyond Western cultural values in its recommendations concerning the minimum age for marriage and the recognition of polygamous relationships. Ultimately, Parkinson believes that the normative boundaries for accommodation should not remain as narrowly drawn as the Commission proposes.

Edwige Rude-Antoine analyses issues faced by immigrants who have come to France from its former colonies in North Africa in 'Muslim Maghrebian Marriage in France: A Problem for Legal Pluralism' (Chapter 3). Based on the results of interviews conducted in two cities, Rude-Antoine describes the continuing importance within these communities of practices such as the father's role in approving his child's choice of a spouse, payment of dowry by the husband to the wife at the time of a marriage and traditional wedding rituals, and she juxtaposes this with the French commitment to civil regulation of marriage and a clear separation of the secular and the religious. In arguing for greater flexibility in the French system to resolve some of these cultural conflicts, Rude-Antoine acknowledges limits to pluralism which 'derive from the basic values and evolution of French society' (p. 75), but also identifies fundamental continuities between the Islamic and French approaches to these questions that should make it possible to find a basis on which the traditions can co-exist.

Writing about conflict of laws questions, Marie-Claire Foblets expands on these issues in 'Migrant Women Caught Between Islamic Family Law and Women's Rights: The Search for the Appropriate "Connecting Factor" in International Family Law' (Chapter 4). Reviewing the question of what law courts should apply in cross-border family law disputes, particularly where the parties have dual or mixed domicile or citizenship, Foblets puts the choice of law question at 'the very core of cross-cultural conflict management in contemporary multicultural society in Europe' (p. 94).[2] She looks closely at the case of Moroccan women claiming protection under the secular law in Belgium, based on reviewing case files and conducting interviews. Ultimately, Foblets recommends a rule that would let the parties determine what law should govern their relationship, subject to constraints based on principles such as the non-discrimination law of the host country.

John Murphy considers the invocation of public policy in English case law in 'Rationality and Cultural Pluralism in the Non-Recognition of Foreign Marriages' (Chapter 5).[3] Suggesting that broad assertions of 'public policy' may be seen as reflecting judicial cultural imperialism, Murphy argues that a clearer delineation of the particular concerns in any given context

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[1] One topic discussed here is the enforcement of religious marital agreements. Other articles addressing this question in the United States and Canada include Blenkhorn (2002), Fournier (2001) and Qaisi (2000).

[2] There is a significant literature on the private international law questions triggered by different marriage rules and practices, such as unilateral divorce. See, for example, Reed (1996).

[3] Other sources addressing these issues in England and Wales include Bainham (1996) and Poulter (1986). For Ireland, see Shúilleabháin (2002).

would be preferable. Murphy illustrates his broader argument, that clear identification of the competing cultural values at stake is important to the process of rational decision-making, with an analysis of the policy concerns in the area of child marriages. In Murphy's approach, 'where incommensurable cultural values exist and the courts (rightly or wrongly) are precommitted to the domestic cultural value' (p. 119), the competing values should be acknowledged even if they are ultimately excluded from the decision. As Murphy notes, the same approach could be taken to other conflicts that have developed around proxy marriages, forced or arranged marriages, or polygamy.

Forced marriages present a particularly difficult clash of values, and Unni Wikan's 'Citizenship on Trial: Nadia's Case' (Chapter 6) addresses a Norwegian case involving a young woman kidnapped by her parents and brought to Morocco, apparently with the goal of forcing her marriage.[4] In describing the subsequent efforts in Norway to procure her release and the prosecution of the parents that followed, Wikan places citizenship at the centre of her analysis, noting that the Norwegian citizenship of the family allowed the diplomatic intervention that returned Nadia to Norway. Citizenship also formed the basis for the court's verdict. Since the parents had chosen to become Norwegian citizens, the court insisted that they could maintain the customs of their country of birth only so long as those customs did not come into conflict with Norwegian law. In Wikan's account, rights of citizenship and laws providing for family reunification are a double-edged sword, since they expose the children of immigrants 'to immense pressure to comply with arranged marriages' (p. 139) giving rise to serious conflicts between 'cultural rights' and the human rights of individual citizens.

Taking a different perspective on what appear as forced marriage cases, Leti Volpp in 'Blaming Culture for Bad Behavior' (Chapter 7) compares narratives in which two groups of young women marry older men. She argues that when the actors involved are white, the behaviour is treated as an individual aberrance, but that when they are immigrants of colour the dominant narrative attributes the problematic behaviour to their culture.[5] She maintains that when this occurs, ethnic difference is equated with moral difference and is used to suggest that there are irreconcilable tensions between cultures. Volpp suggests that these are misreadings of culture, which 'prevent us from seeing, understanding, and struggling against specific relations of power – both within "other" cultures and our own' (pp. 144–45).

With their discussion paper on 'The Reconstruction of the Constitution and the Case for Muslim Personal Law in Canada' (Chapter 8), Syed Mumtaz Ali and Enab Whitehouse present a more muscular claim for multiculturalism. Linking the circumstances of Muslims in Canada to the sovereignty demands of Native peoples and French Canadians, Ali and Whitehouse argue that Canada's Muslims are denied true religious freedom by the lack of public funding for Islamic educational institutions and the obstacles to the creation of a system of Muslim personal and family law. They envision a separate legal regime for Muslims governing marriage, divorce, separation, maintenance, child support and inheritance, which would be available on a voluntary basis and in cooperation with the existing judicial system in Canada.[6]

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[4] Questions concerning forced marriage or the marriage of children are also addressed in international human rights law. See generally Bunting (2000) and Symington (2001).

[5] While Volpp's focus here is on youthful marriages, she has made related arguments in the context of family violence: see, for example, Volpp (1994).

[6] The proposal for Shari'a arbitration in Canada, discussed by Provins in Chapter 24, was made by Ali and the Islamic Institute for Civil Justice.

Ali and Whitehouse argue that neither the secular judicial system nor the informal efforts of the Muslim community have been 'adequate to the task of resolving these problems in a manner that really serves the needs of the Muslim community, as a community' (p. 186). This argument points to the dual nature of their argument for multiculturalism, which includes both a claim about the religious freedom of individuals and a claim about the rights of their religious community to autonomy and self-government in a sphere that would otherwise belong to the government.

Scholars have noted that Muslim personal law may operate even in the absence of official recognition of the type that Ali and Whitehouse advocate. Pearl and Menski describe the English Muslim law (or *angrezi shariat*) developed by institutions such as the Islamic Shari'a Council, which has become 'a dominant legal force within the various Muslim communities in Britain' (1998, p. 58).[7] Even within a voluntary system, however, there are important concerns about fairness and the treatment of women. Lucy Carroll's essay on 'Muslim Women and "Islamic Divorce" in England' (Chapter 9) suggests some of the complexities of the interaction between official and unofficial law as well as important reasons for caution in implementing a pluralist approach. With careful comparison to the Islamic law applied in Pakistan, Carroll identifies rulings of the Islamic Shari'a Council that have imposed unnecessarily harsh interpretations of Islamic law on South Asian women in divorce cases in England. Carroll argues that moderate and educated Muslims need to interest themselves in the question of Muslim law in a non-Muslim environment, and she observes that 'individual Muslim women who possess the strength of personal character and religious faith to take their own individual stands may push the community in more liberal and humane directions' (p. 203) (see also Ali, 2003). Both the Ali–Whitehouse essay and Carroll's chapter were written well before the recent controversy in Ontario over a proposal to allow Shari'a divorce arbitration, described by Provins in Chapter 24.

There are both parallels and distinctions between Islamic and Jewish religious law in their interactions with secular Western family law systems. In the Jewish community, concern has centred on a religious bill of divorce known as a *get*. A divorced woman cannot remarry within the tradition unless she has obtained a *get* from her husband in a proceeding supervised by a religious tribunal. The *get* requirement causes considerable hardship to observant Jewish women whose husbands are uncooperative and has generated a range of responses from secular courts and legislatures attempting to moderate these hardships in some manner.[8]

In 'Jewish Marriage and Civil Law: A Two-Way Street?' (Chapter 10), David Novak addresses the *get* problem and examines the question of accommodation between secular and religious law from a Jewish perspective. Novak sets out the traditional Jewish teachings on the interaction between religious and civil authority, including the principle that marriage as a sacrament is a subject exclusively within the jurisdiction of the Jewish community. For this reason, he rejects the view put forward by some scholars that Jewish marriage can be treated as a kind of civil contract, and expresses larger concerns with the attempt to create secular remedies for the *get* problem.[9] Novak concedes that resolving these dilemmas from within the

[7] For discussion of this issue in England, see also Poulter (1990).

[8] There is a large literature on the *get* problem; see, for example, Bleich (1984), Breitowitz (1993), Broyde (2001), Freeman (1996) and Zornberg (1995).

[9] For an attempt to address the *get* problem though prenuptial agreements that would be enforceable in civil court, see Herring and Auman (1996); also Greenberg-Kobrin (1999).

tradition 'requires a degree of unanimity in the Jewish community at large that is sadly absent at present' (p. 226), but argues that invoking an internal remedy would help in 'restoring the confidence of both Jewish women and men in the moral power of their own religious authorities' (p. 227).

Legal Pluralism and Women's Rights

Those countries that take a pluralist approach to the law of marriage and divorce are explicitly multi-cultural. Their legal systems incorporate multiple laws, each applicable to different segments of society, with jurisdiction defined on the basis of religion. Individual members of these constituent groups are subject to the regulation of the group in most matters concerning the family. The characteristic challenge for these societies lies in the tension between respect for the authority and autonomy of the group and the protection of the rights of individuals as citizens. Often, these questions are debated within the framework of international human rights, and particularly with reference to norms of gender equality. In these materials, India, South Africa and Israel stand as examples of pluralist systems, and several essays consider women's rights within Muslim tradition in the context of reproductive rights and spousal violence.

In 'Balancing Minority Rights and Gender Justice: The Impact of Protecting Multiculturalism on Women's Rights in India' (Chapter 11), Pratibha Jain considers the impact of granting group rights to religious and cultural minorities. After reviewing constitutional and statutory provisions that attempt to balance the rights of women and the rights of cultural minorities in India, Jain addresses efforts by the judiciary to confront these conflicts. She writes that 'while the Indian model of cultural pluralism aimed to provide minority groups with protection from the imposition of a dominant majority culture while simultaneously bridging gaps between various communities, the model has instead achieved the exact opposite result' (p. 249). Jain argues that the existence of parallel legal systems has reinforced separatist tendencies within India and reinforced patriarchal and traditional practices that have denied women their constitutional right to equal treatment.[10]

As in India, debates over the pluralist legal system in South Africa have centred on the conflict between customary norms and values of gender equality. In 'A Critical Analysis of Customary Marriages, *Bohali* and the South African Constitution' (Chapter 12), R. Songca notes the coexistence of both customary marriage, which permits polygamy, and civil monogamous marriage on the Western model. Songca discusses the arguments for abolishing polygamy and the practice of paying *bohali*, or bridewealth, which occurs with both types of marriage. The essay argues that both practices can be regulated to avoid abuses and protect women's interests.[11]

Ruth Halperin-Kaddari's essay, 'Women, Religion and Multiculturalism in Israel' (Chapter 13), extends the debate with an inquiry into women's status in the state of Israel. Noting that Israeli law places family law within the scope of religious authority, Halperin-Kadari argues

[10] On Hindu marriage and divorce law, see generally Basu (2001) and Duncan, Derrett and Krishnamurthy (1983). On the development of Muslim family law in South Asia, including Pakistan, see Haider (2000).

[11] Many writers have addressed these and related questions in South Africa, including Bennett (2000), Bonthuys and Erlank (2004), Fishbayn (1999) and Nhlapo (1995).

that this rule 'renders full equality for women impossible' (p. 272). She points out that both in constitutional terms and in its reservations to international human rights conventions, Israel has subordinated women's equality to religious cultural norms. Looking beyond family law, Halperin-Kaddari carefully charts the formal and informal ways in which the integration of religion with the state has served to limit women's full participation in civic or public life.[12]

Focusing on women's status in Islam, Carla Makhlouf Obermeyer provides 'A Cross-Cultural Perspective on Reproductive Rights' (Chapter 14). Obermeyer reviews the debate over universalism and relativism in the context of women's status and international human rights, and then suggests that the dichotomy between Western societies and those in the Middle East has been overdrawn. She goes on to describe commonalities and points of convergence and urges greater attention to the issues in their particular social and cultural contexts, observing that '[o]nly when we can comprehend local notions of rights can we begin the two-way process of translation and develop culturally relevant definitions and policies' (p. 309).[13]

Azizah Y. al-Hibri provides 'An Islamic Perspective on Domestic Violence' (Chapter 15). Challenging the view that Islamic tradition permits a husband to abuse his wife, al-Hibri works closely with the Qur'anic text to demonstrate that the tradition should be read as rejecting hierarchy and promoting harmonious marital relations. She argues that '[i]t is intolerable that any kind of violence, including domestic violence, be given religious cover and justification' (p. 312) and closes with the observation that early Muslim jurists agreed that wife abuse was a crime and that '[i]t is now time for the rest of the Muslim community to catch up with this vision' (p. 340).[14]

Indigenous and Customary Law

A third setting for multiculturalism questions involves indigenous or customary law and the norms of non-immigrant minority groups that exist in tension with a dominant legal system. Indigenous communities may be accorded a measure of self-government that includes regulation of marriage; in the United States, for example, Native American tribes continue to exercise governmental authority over family law questions. Alternatively, questions of customary or informal marriage and other traditions may surface in legal proceedings within the mainstream society or another more formal or westernized legal context. The issues are discussed in esseys here based on New Zealand and the United States and in a essay on the more general conflict of laws problems raised by customary law.

Jacinta Ruru discusses the recognition and use of Maori customary law in 'Indigenous Peoples and Family Law: Issues in Aotearoa/New Zealand' (Chapter 16).[15] Using marriage and property law and children and parenthood as case studies, Ruru asserts that the New

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[12] The situation in Israel is also addressed in Cornaldi (1996) and Raday (1992). On the conflict between feminism and multiculturalism, see generally Okin (1999) and Volpp (2001).

[13] Other sources exploring the question of gender equality under Islamic law include al-Hibri (1997), Mashhour (2005) and Mayer (1991).

[14] For other cross-cultural analyses of family violence issues, including spousal abuse and child maltreatment, see Abu-Odeh (1997), Horsburgh (1995), Maguigan (1995), Renteln (2004), Terhune (1997) and Zion and Zion (1993).

[15] Maori family law issues are also discussed by Atkin and Austin (1996) and Swain (1995).

Zealand legislation and judicial decisions demonstrate an awareness that the Maori people have a culture-specific approach to these questions, and reflect an attempt to recognize and provide for Maori custom. She also argues, however, that the present law and policy papers fail to address the issue comprehensively.

In 'Evolving Indigenous Law: Navajo Marriage-Cultural Traditions and Modern Challenges' (Chapter 17), Antoinette Sedillo Lopez focuses on the largest Native American nation within the United States. She describes the work of Navajo tribal courts in reclaiming traditional values within a legal framework largely imposed by the dominant society. Based on these values, the Navajo courts have upheld marriages celebrated under tribal custom as 'common law' marriages. Lopez also discusses legislation by the Navajo Tribal Council expanding the range of circumstances in which the tribe will recognize marriages. Under federal law, the United States also recognizes Native American marriages that comply with tribal law or custom, and Lopez notes that historically this extended even to polygamous marriages.[16]

Recognition of marriages under informal or customary law is an issue that crosses national borders. Lona N. Laymon reviews the question in 'Valid-Where-Consummated: The Intersection of Customary Law Marriages and Formal Adjudication' (Chapter 18), considering the situation of both indigenous minority group members in a colonial setting and immigrant individuals who bring with them customary marriages from other nations. As she notes, these are issues that arise in many legal contexts, including divorce, property and financial rights, inheritance, insurance, public benefits, custody, adoption and immigration cases. Laymon considers both evidentiary difficulties involved in the proof of an unregistered customary marriage or divorce and public policy standards that may operate to deny recognition to some marriages. In addition, she discusses a variety of equitable doctrines and policies that may allow for accommodation of different practices but may also distort the meaning of those traditions in the process of fitting them into familiar legal categories.

Children

Across the globe, the broad consensus holds that legal decisions concerning a child should be based on the child's welfare or 'best interests'. In different cultural and legal systems, however, this standard is differently understood (see Alston, 1994 and An-Na'im, 1994). Resolving these differences is another multi-cultural challenge which has seen significant debate in the context of child marriage or practices that may cause physical harm to children. The essays included in Part II focus on questions concerning children and their own cultural identity, as well as the formation of parent–child relationships.

John Eekelaar's 'Children Between Cultures' (Chapter 19) begins with the premise that the basis for protection of cultural rights and practices is the obligation of the liberal state to treat all its members with respect, rather than an obligation owed to the communities themselves, and he asserts that the state must respect the interests of children in determining their own futures. Eekelaar discusses the fluidity of cultural identifications of people from mixed cultural and racial backgrounds, suggesting that in cases involving children it is often impossible to predict the child's long-term interests. He argues that while the state should respect the right

[16] On the family law jurisdiction of Native American groups, see Atwood (2000) and Zion and Zion (1993); also Goldberg-Ambrose (1994).

of parents to pass their religion or culture to their children, the state should intervene if the parents' actions would result in clear harm to the children or if one parent's attitudes would alienate the child from the other parent, that parent's culture or religion, or if the parent would 'close the children's mind entirely to the community around them' (p. 436).[17]

In 'Complicating Culture in Child Placement Decisions' (Chapter 20) Annie Bunting suggests that any consideration of culture and community in the placement of children must be attentive to the social contexts in which a child lives his or her life, and informed by fluid understandings of culture rather than essentialist conceptions of identity. Reviewing the Canadian cases and commentary on race and culture as factors in assessing a child's best interests, Bunting argues that race and culture are factors that ought to be weighed in these decisions, but that they should not be given critical or determinative weight at the risk of perpetuating racism rather than undermining it.

With international adoption, individual families may become multi-cultural in the sense of crossing and blending different racial, ethnic, national or religious affiliations. Jini Roby considers adoption practices in different cultural and legal contexts in 'Understanding Sending Country's Traditions and Policies in International Adoptions: Avoiding Legal and Cultural Pitfalls' (Chapter 21). Roby argues that understanding of factors such as the cultural traditions, religious beliefs and national child and family welfare policies of sending countries is critically important to a mutually respectful and dignified adoption process (see also Hearst, 2002).

In her challenging article, 'Placing the "Gift Child" in Transnational Adoption' (Chapter 22), Barbara Yngvesson examines the emphasis on consent and voluntarism in the practices of adoption, arguing that this emphasis can 'obscure the dependencies and inequalities that compel some of us to give birth to and give up our children, while constituting others as "free" to adopt them' (p. 492). In transnational adoptions, the state plays an important role in producing identity rights that move with the child, and also in establishing reproductive and other policies that produce physically abandoned children and in regulating the process by which these children may be moved across borders. Yngvesson explores both identity and enchainment, noting that these adoptions 'forge the most intimate international ties' (p. 507) and that they remain inherently incomplete, 'leaving open the possibility that a life story might connect the adoptee to *two* names, *two* nationalities (or more) and to multiple parents' (p. 509).

Multi-cultural Dispute Resolution

Lawyers and judges face the daily challenge of bringing distinct cultural traditions into a sort of dialogue as they work to resolve disputes within the multiple frameworks of particular families. All of the essays in this volume address this type of multi-cultural practice, but those in Part III focus on the process of dispute resolution. Another important consideration,

[17] Other sources on the treatment of religion in child custody disputes include Ahdar (1996), Mumford (1998) and Vahed (1999). These problems are particularly complex when they also involve an international law dimension; see, for example, Bruch (2000), Henderson (1997) and Starr (1998).

addressed only indirectly here, is the 'cultural competence' required of lawyers and judges who must translate norms of fairness and respect across linguistic and other boundaries.[18]

In 'Cross-Cultural Dispute Resolution: The Consequences of Conflicting Interpretations of Norms' (Chapter 23), Alison Dundes Renteln advocates broader consideration of traditional law, folkways and beliefs that may affect litigants' behaviour in legal disputes involving cultural differences (see also Renteln and Evans-Pritchard, 1994 and Renteln, 2004). Renteln describes her research into the 'cultural defence' as a form of applied legal pluralism, and her essay argues that 'general principles of law and human rights law require that national legal systems take into account the standards of the ethnic minority group' (p. 522). Renteln offers several examples of the kinds of disputes in which cultural evidence is important and raises the important question of how the specifics of a 'tradition' can be determined, particularly when there are divergent practices within the same ethnic or religious group.

In Canada, proposals to allow Muslims to settle family disputes under Shari'a law are explored by Marie Egan Provins in 'Constructing an Islamic Institute of Civil Justice that Encourages Women's Rights' (Chapter 24). Provins locates the issue in the context of Canadian and international laws and describes the recommendations to allow arbitration by religious tribunals made in 2004 by Marion Boyd after she was appointed to study the issue in Ontario (see Boyd, 2004). Provins describes the advantages and disadvantages of arbitration according to religious principles and reviews a number of controversial questions that might be subject to Shari'a arbitration. She notes that arbitration of various types of disputes also occurs in Jewish tribunals in Canada and while she supports allowing arbitration by religious courts as a matter of religious freedom, she argues at the same time for 'stricter guidelines to guard against inequality of women' (p. 537).[19]

Finally, James R. Coben discusses the incorporation of one ethnic minority group into a statewide mediation programme in 'Building a Bridge: Lessons Learned from Family Mediation Training for the Hmong Community of Minnesota' (Chapter 25). Cohen's essay discusses a 40-hour training programme in the Hmong language designed to allow participants to become certified as mediators for divorce and child custody matters.[20] The programme included opportunities for dialogue about those areas where Hmong tradition and Minnesota family law diverged, as well as presentations that emphasized subjects that 'were not open to cultural relativity' (p. 567). Coben identifies four such areas: 'domestic violence cannot be tolerated or negotiated, "self-help" to seize property or enforce judicial decisions is prohibited, bigamy is illegal, and underage marriages are voidable' (p. 567.) Beyond the introduction to family mediation, Coben notes that the Minnesota programme provided a forum for discussion of the painful challenges of assimilation and translation across cultural boundaries.

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[18] Regarding lawyering in cross-cultural contexts, see Bryant (2001), Razack (1998) and Tremblay (2002).

[19] Provins's essay notes that Boyd's recommendations were rejected in Ontario in September 2005 (see also Blackstone, 2005). Note, however, that amendments in 2006 to the Ontario Arbitration Act and Family Law Act adopted many of Marion Boyd's recommendations, and would permit religious tribunals to arbitrate family disputes provided that all arbitration be conducted exclusively in accordance with the law of Ontario or another Canadian jurisdiction.

[20] On mediation across cultures and in particular cultural contexts, see also Klock (2001) and Shah-Kazemi (2000).

Conclusion

Taken collectively, these essays suggest both the potential for multi-cultural dialogue and accommodation and important reasons for caution. Our globalized economic and social networks, and the ease with which we now cross geographic and national borders, permit an intensity of communication and interaction among peoples that is unparalleled in human history. But the acceleration of cultural exchange has heightened many deep and important differences between cultures, religions and world views. With these changes, the need for careful attention to difference and thoughtful translation between, across and within groups is every day more urgent.

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