

Russel Sandberg, (ed.) *Religion and Legal Pluralism* (Farnham: Ashgate, 2015, 282 pp., £70)

In its counter-extremist strategy published at the beginning of October 2015, the government revealed that it would be undertaking a review of Shariah tribunals in Britain. The review was justified according to the government by evidence that the tribunals were acting in contravention of the law. The government went on to state emphatically that only one rule of law existed in the country, and that no informal religious system of law would be allowed to operate in competition with it. Not long after this publication, *The Independent* reported that a Jewish Beth Din tribunal in London was taking the unprecedented attempt of naming and shaming a Jewish man in a newspaper for refusing to give his wife a divorce. It is clear from these and other such incidents that legal pluralism and religious tribunals in Britain are currently a topical and pressing issue. *Religion and Legal Pluralism* is thus a timely and welcome academic contribution to the public debate. The book forms part of the series published by Ashgate on the current role and impact of religion in society. The series spans a wide variety of disciplines within the fields of humanities and social sciences. This particular book represents the first in the series that tackles the topic of religion and society from a legal perspective, with the issue of legal pluralism being chosen by Sandberg as the focus.

As Sandberg notes in the preface, the focus of scholars specializing in religion and law before the Archbishop's speech in 2008 was the legal manifestation of religious freedom.<sup>1</sup> Little attention had been paid by scholars to the interaction between the state legal system and religious law, particularly the emergence of religious tribunals. The stormy debate which ensued after the Archbishop's speech was the turning point after which legal pluralism and religious tribunals took center stage in the academic domain of religion and law. A key breakthrough in this regard came in the form of an empirical study conducted by Sandberg and his colleagues at Cardiff University, examining three religious tribunals already well-established in Britain. The purpose of the study was to fill the vacuum of empirical data that existed in the literature on religious tribunals and legal pluralism in Britain, which it certainly accomplished. *Religion and Legal Pluralism* attempts to build on this project, by further enriching the literature with both theoretical and empirical studies.

The book is made up of fourteen essays divided into three parts. Part i deals with the practical manifestation of legal pluralism, including the emergence of religious tribunals. Part ii looks at the way in which legal pluralism has been dealt with in the literature. Following this theme very closely, Part iii focuses on the theory of legal pluralism as an analytical framework. The list of contributors boasts a prominent array of both practitioners and academics working in the field of religion and law, resulting in a successful combination of theory and practice in the analysis presented. Sandberg begins the book with an introductory chapter that lays the foundation for the subsequent analyses. He criticizes the contradictory approach of the English courts toward religious belief, noting how they recognize the subjectivity of religious belief in principle, yet often refuse to accommodate subjective manifestations of belief in practice. A Christian girl must thus choose between her belief in purity rings or attendance at her school; she cannot choose both. Sandberg states that this binary approach must be

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<sup>1</sup> The speech was delivered by Rowan Williams, Archbishop of Canterbury at the time. It explored the legal rights of religious groups in modern secular society. Drawing on the work of the socio-legal scholar Ayelet Shachar, the Archbishop challenged the post-enlightenment concept of the rule of law and argued that Shariah tribunals could be accommodated by the state with certain conditions. See Rowan Williams, "Civil and Religious Law in England: A Religious Perspective" (2008) 10(3) *Ecclesiastical Law Journal*, 262–282

challenged if religious tribunals are to function at all. He endorses Shachar's model of joint governance, noting that it recognizes and accommodates the multiplicity of identities that citizens adhere to in their daily lives, without compromising the civic rights bestowed upon them by the state legal system.<sup>2</sup> Sandberg ends by suggesting a new term that most appropriately captures the reality of religious tribunals and avoids the shortcomings of previous terms, namely Heterogeneous and Autonomous Legal Orders (halos). The term acknowledges the diverse nature of such legal orders and has the additional advantage of an acronym that expresses the relationship between such orders and their users.

Mark Hill QC kick-starts Part i with a concise survey of the accommodation that the English legal system has afforded religious groups and their practices. After exploring the special legal status of the Church of England, he notes the numerous exemptions and accommodations that religious groups have received from the state to date. Smith follows up this general survey by honing in on Christian law and its established position in the English legal system. His particular focus is the Clergy Discipline Measure 2003, which marked significant reforms in the way the Church of England disciplines its clergy. This measure is a good choice for analysis, as it portrays with particular clarity the complex and complimentary relationship between secular and Christian law. Cranmer's essay undertakes to show how Quakers actively lobbied for same-sex marriage, challenging the stereotype of religious groups as regressive organizations. The final three contributions in Part i are all based on empirical studies and contain the most valuable analysis in the section. Douglas, who took part in the Cardiff study on religious tribunals, provides an excellent socio-legal analysis of religious tribunals and their current role in the regulation of marriage and divorce. She strongly argues that religious tribunals should be permitted, like any other mediator or arbitrator, to assist parties in reaching a settlement if this is what suits them best. D'Auria draws on her empirical study of Catholic marriage tribunals to assess whether they uphold their own rules on the use of experts in nullity proceedings. Focusing on psychological incapacity cases, her research reveals that the tribunals are inconsistent in their use of experts, which she argues may be violating the right of the clients involved to due process. Bacquet finally draws on her empirical study of the significance of religious symbols to argue that states must take into account the important role of religious symbols in the lives of believers when contemplating how to accommodate their use in the public sphere.

Part ii contains four essays loosely tied together by the topic of religion and legal pluralism yet differing greatly in their focus. Pocklington explores in detail the role of quasi-law in the English legal system. His analysis highlights the rise of English administrative law in the last century. This has resulted in the delegation of legal functions to private institutions, including most pertinently for the topic at hand, administrative tribunals. Hussain argues that accounts of legal pluralism have neglected the study of less prominent religious and cultural minorities. Such minorities should be included within studies of legal pluralism to enhance

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<sup>2</sup> Shachar is renowned for her innovative multicultural model that permits minority groups a maximum degree of autonomy yet still protects insiders who are placed at risk by their own group's communal practices. For an excellent analysis of Shachar's overall thesis regarding state accommodation of communal practices, see Russel Sandberg et al., "Britain's Religious Tribunals: 'Joint governance' in Practice" (2013), 33(2) *Oxford Journal of Legal Studies*, 263. See also Ayelet Shachar, "Group Identity and Women's Rights in Family Law: The Perils of Multicultural Accommodation" (1998), 6(3) *Journal of Political Philosophy*, 286; Ayelet Shachar, "State, Religion and the Family: The New Dilemmas of Multicultural Accommodation", in Ahdar and Aroney (eds.), *Shari'a in the West* (Oxford University Press 2010), and Ayelet Shachar, *Multicultural Jurisdiction: Cultural Differences and Women's Rights* (Cambridge University Press, 2001).

the literature and ensure it provides a representative and accurate depiction of legal pluralism. Singler's socio-legal analysis of new religious movements and their methods of dispute resolution on the Internet is thus an appropriate follow-up to Hussain's article. Gozdecka ends Part ii with an in-depth survey of religious pluralism as a legal principle in European law, revealing how the principle has been rendered ineffective by consistent reliance on the margin of appreciation afforded to member states.

In Part iii, Codling attempts to address the setbacks in the prominent theoretical expositions of legal pluralism that currently exist in the literature. She suggests that legal pluralism is best defined according to people's own perceptions of law. A similar suggestion has already been made by the legal pluralist scholar, Brian Tamanaha, a fact that Codling neglected to mention.<sup>3</sup> Kenny reinforces Codling's notion of subjective legal pluralism by showing how the practice of the veil is based on a diverse array of socio-religious factors that vary depending on the wearer. Kenny argues that focus should shift from the practice of wearing the veil to the actual individual who chooses to wear it, in order to appropriately assess how to respond to the practice. Davies next presents a secularist model of society that promotes pluralism yet ensures that the rights of individuals are not undermined as a result. Sandberg ends with a bold attempt to solve the problems inherent in legal pluralist theory by turning to Luhmann's systems theory of law. He skilfully derives several benefits from Luhmann's theory for the case of legal pluralism and fine-tunes his descriptive construction of socio-legal orders. Nevertheless, when one evaluates the analysis as a whole, it must be submitted that Tamanaha's view is once again vindicated. Law is a man-made construct, and thus no theory of law can ever successfully claim to have decisively discovered the reality of law.

The book contains an interesting appendix in which Sandberg and Cranmer present a Draft Bill titled "Non-Statutory Courts and Tribunals (Consent to Jurisdiction) Bill" to illustrate how religious tribunals could be appropriately regulated. The bill seeks to address concerns about the genuineness of consent to the jurisdiction of religious tribunals as well as concerns that such tribunals illegally claim jurisdiction in criminal and family matters. In this regard, the bill creates statutory offences for exercising judicial jurisdiction without a person's consent and for falsely claiming jurisdiction in matters of crime and in cases involving children. The bill addresses important matters and is a useful vehicle for discussion. Its underlying rationale is nevertheless questionable. Studies of religious tribunals have not pointed to consent as an issue that has been empirically proven. On the contrary, women were found to be empowered by the services provided by the religious tribunals.<sup>4</sup> One of the main issues that was empirically proven was the procedures of the councils, which were shown at

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<sup>3</sup> Tamanaha states in this regard: "What makes the notion of legal pluralism so irresistible, despite its irresolvable conceptual problems, is the fact that diverse, competing and overlapping legal orders in different types and forms appear to be everywhere and multiplying. Griffiths was right that legal pluralism is a fact. Where Griffiths went wrong, as he now recognises, was in thinking that law could be formulated as a scientific category. Law is a 'folk concept', that is, law is what people within social groups have come to see and label as 'law'. It could not be formulated in terms of a single scientific category because over time and in different places people have seen law in different terms." See Brian Tamanaha, "Understanding Legal Pluralism: Past to Present, Local to Global" (2007), 30 *Sydney Law Review*, 396. See also Brian Tamanaha, "The Folly of the 'Social Scientific' Concept of Legal Pluralism" (1993), 20(2) *Journal of Law and Society*, 199–202.

<sup>4</sup> See Sonia Shah-Kazemi, *Untying the Knot: Muslim Women, Divorce and the Shariah* (The Nuffield Foundation, 2001); Mohamed Keshavjee, "Alternative Dispute Resolution in a Diasporic Muslim Community in the United Kingdom", (DPhil Thesis, University of London School of Oriental and African Studies, 2008) and Samia Bano, "Complexity, Difference and 'Muslim Personal Law': Rethinking the Relationship between Shariah Councils and South Asian Muslim Women in Britain" (DPhil thesis, University of Warwick, 2004).

times to cause undue distress to clients. For this reason, discussions on how to reform such procedures would arguably be more pertinent and useful. Moreover, one of the main functions of Jewish and Islamic religious tribunals is to emancipate women who are purposefully chained in their marriage by oppressive husbands. In many cases, this necessarily involves the coercion of the husbands to cooperate in the proceedings. Such a bill may make tribunals reluctant to place pressure on their clients in these situations out of fear of prosecution. Disgruntled husbands could also use the bill (if hypothetically enacted) to ensure their wives do not obtain the religious divorce that they desperately need by claiming that they did not consent to the decision of the religious tribunal. As for the clauses of claiming false jurisdiction, it is questionable whether these are necessary, given the clear precedent that already exists in the law on the matter.<sup>5</sup> Indeed, Baroness Cox's bill, which sought to limit the jurisdiction of religious tribunals, was rejected by the government primarily because of the contention that the law already deals adequately with the jurisdiction of religious tribunals.<sup>6</sup>

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<sup>5</sup> See *AI v MT* [2013] EWHC 100 (fam)

<sup>6</sup> See HL Deb October 2015 C903