

## *Law in a Pluralist Society*

In his much-discussed book *A Theory of Justice* John Rawls suggested that the relative justness of various societies could be tested by asking which society one would choose to belong to if ignorant what position one would occupy within it. In most plural societies some roles are a good deal pleasanter than others. One might, for example, steer clear of an otherwise attractive society such as fifth-century Athens in case one were a slave. As the late Paul Sieghart observed, ‘the ultimate measure of whether a society can properly be called civilized is how it treats those who are near the bottom of its human heap . . .’<sup>1</sup>

There are many groups which may in different societies be subjected, to a greater or lesser extent, to disadvantage: racial, ethnic, religious, or linguistic minorities; women; children; homosexuals; refugees; gypsies; prisoners; the mentally ill or deficient; the diseased; and so on. For reasons of space this paper will be confined to the first group—racial, ethnic, religious, and linguistic minorities. In doing so it is convenient to speak of ‘minorities’, while recognizing that the group so disadvantaged need not be a minority (e.g. the black populations of South Africa or, formerly, Rhodesia) and that a group may, although a minority of the population as a whole, be a majority in its own heartland (as, for example, the Catholic nationalist population in parts of Northern Ireland, the Sikhs in the Punjab or the Tamils in parts of Sri Lanka).

The law ordinarily plays a crucial role in regulating relations between the majority and the minorities under discussion. There are, speaking very broadly, three ways in which the law may be used.

### A. DOMINATION

The law may, first, be used to entrench the dominance of the majority and secure its continuing monopoly of power and influence.<sup>2</sup> Various devices may be used to disenfranchise, or weaken the electoral position of, the minority, as in Sri Lanka,<sup>3</sup> South Africa, Rhodesia (until it became Zimbabwe), the southern states of the United States (until the 1950s), Northern Ireland (until 1969), or Malaysia. The law may also be used to give one community the lion’s share of wealth and economic influence at the expense of another, as it was in most of the countries

<sup>1</sup> *Human Rights in the United Kingdom* (1988), ed. Sieghart.

<sup>2</sup> Palley, *Constitutional Law and Minorities*, MRG Report No. 36.

<sup>3</sup> Schwarz, *The Tamils of Sri Lanka*, MRG Report No. 25.

just mentioned and has been, to the detriment of the Asian trading community, in parts of East Africa. The law may be similarly used in the cultural sphere, particularly by adoption of a single official language with which the majority are and the minority are generally not familiar, as in Malaysia, Burma, Thailand, Iran, and Sri Lanka. In all these cases the law is used in a manner inconsistent with the principles which should underlie a liberal democracy.

#### B. AUTONOMY

The law may, secondly, be used not to ensure the subjection of the minority but to recognise its existence as a distinct entity, seeking to avoid conflict by according the minority its own rights and institutions and as much autonomy as the political situation permits. Segregation can of course be an instrument of oppression, as notoriously in the case of *apartheid*, but what is more relevant under this head is a benign application of the law, designed to make a virtue of diversity and not to suppress it. The world contains many examples of the law being successfully used in this way. In Switzerland, where many citizens believe themselves to be members of a minority, the federal form adopted, giving great autonomy to the cantons and reflecting an extreme commitment to the democratic process, has proved very successful in minimizing internal conflict.<sup>4</sup> The entrenched constitutional autonomy and economic rights granted by Italy to the South Tyrol have largely solved a seriously divisive problem which had previously led to terrorist violence.<sup>5</sup>

The measures taken by Finland in 1921 to preserve the language and rights of the Swedish minority have been described as 'the best treatment of a minority group by a host nation anywhere in the world'.<sup>6</sup> In an attempt to solve a very long running linguistic conflict Belgium has revised its constitution so that there are at the federal level three communities (Flemish, French and German-speaking) and three regions (Flemish, Brussels, and Walloon).<sup>7</sup> In many countries (such as India, Cyprus, New Zealand, Fiji) separate electoral rolls and separate blocs of seats in the legislature have been employed to ensure fair representation of minorities. In others (such as Switzerland and Canada) there have been conventions governing the ethno-linguistic composition of the cabinet or provisions (as formerly in Lebanon under the Lebanese National Pact of 1943) for the allocation of cabinet posts on a confessional basis.<sup>8</sup>

The objection to laws providing for autonomy or benign separation of a minority

<sup>4</sup> Steinberg, *Switzerland*, in *Co-existence in some plural European Societies*, MRG Report No. 72.

<sup>5</sup> Alcock, *South Tyrol*, *ibid.*

<sup>6</sup> *The Swedish Community in Finland*, *ibid.*, at 10.

<sup>7</sup> Bossuyt, *Belgium*, *ibid.*

<sup>8</sup> Palley, *op. cit.*

is not so much legal as political. No state wants to see itself dismembered. There is accordingly an understandable reluctance to grant anything approaching full autonomy to a minority which might wish to secede or separate itself altogether from the state of which it forms part. This has no doubt influenced the Indian response to the Sikhs<sup>9</sup> and the Nagas.<sup>10</sup> It also throws light on the contrasting experience of the United Kingdom in Scotland and Northern Ireland. Scotland has long enjoyed a high degree of autonomy, with its own church, its own laws, legal system and courts, its own currency, its own civil service, its own secretary of state, its own professional institutions and its own educational system. Northern Ireland, between 1922 and 1972 had an even greater degree of autonomy, with its own parliament and executive responsible for most governmental powers other than income tax, defence, and foreign affairs. The unionist majority, however, believed, not without reason, that the aim of the nationalist minority was not to promote the success of Northern Ireland as a political sub-division of the UK but to secede from the UK and destroy Northern Ireland as a political entity. The result was that power was not shared with the minority, against which there was discrimination on an institutionalized basis. The result has been the introduction of direct rule from London and the virtual extinction of Northern Ireland's local autonomy. The problem of how power can be safely shared with a minority whose loyalty to the state cannot be relied upon remains (in Northern Ireland) unsolved.

### C. INTEGRATION

The third broad approach is sometimes labelled, not altogether happily, assimilationist or integrationist. The essence of this approach is a guarantee that all citizens, whether of the majority or the minority, shall be treated equally and that minorities shall not be the subject of adverse discrimination. The underlying hope is that, with the passage of time, education and growing familiarity, racial, religious, and linguistic differences will cease to be divisive and the bonds of common citizenship will be gradually strengthened. It is this broad approach which, with some exceptions, the law of the United Kingdom adopts. But the labels are not entirely apt because, as the Home Secretary pointed out in 1966, the integration sought is 'not . . . a flattening process of assimilation but . . . equal opportunity coupled with cultural diversity in an atmosphere of mutual tolerance'.<sup>11</sup>

This approach has a solid foundation in international law.<sup>12</sup> The Universal

<sup>9</sup> Shackle, *The Sikhs*, MRG Report No. 65.

<sup>10</sup> Maxwell, *India, The Nagas and the North East*, MRG Report No. 17.

<sup>11</sup> See Peter Sanders, Chief Executive of the Commission for Racial Equality, in letter to *The Independent*, 28 August 1990.

<sup>12</sup> See generally Fawcett, *The International Protection of Minorities*, MRG Report No. 41, and Thornberry, *Minorities and Human Rights Law*, MRG Report No. 73.

Declaration of Human Rights, adopted by the General Assembly of the United Nations in December 1948, declared in Article 1 that 'All human beings are born free and equal in dignity and rights' and in Article 2 that 'Everyone is entitled to all the rights and freedoms set forth in this Declaration without any distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' The later UN Covenants<sup>13</sup> and the European Convention of Human Rights repeat this prohibition of discrimination and pledge the contracting states to take all necessary steps to give effect to it for all their inhabitants and to provide them with effective remedies for breach. The UN Civil and Political Rights Covenant further provides, in Article 27:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Between 1948 and 1972 some twenty-five constitutions gave express effect to the Universal Declaration.<sup>14</sup> The Indian Constitution, in Article 15, prohibited discrimination on the grounds of religion, race, caste, sex, or place of birth. The United Kingdom, lacking a written constitution and perhaps suspicious of general principles has, although bound by all these conventions, incorporated them into its domestic law in a cautious, piecemeal and partial manner. It is convenient briefly to consider the law of the United Kingdom under the three heads of race (using that expression in its broadest sense to embrace all questions of colour, nationality, and ethnic or national origins), religion and language, although there is some unavoidable overlap between the first two heads.

#### (1) *Race*

The British tend to think that (differences between England, Wales, Scotland, and Northern Ireland apart) their society was racially relatively homogeneous until large-scale immigration from the New Commonwealth began in the 1950s onwards. This was never true: from the earliest times there have been successive waves of settlers culminating, in the first half of the present century, in large-scale settlement of Jews seeking to escape pogroms in Eastern Europe and Nazi persecution.<sup>15</sup> The greatest mark has however been made by post-war immigrants from Jamaica and the West Indies, the Indian sub-continent, Cyprus, Malta, Hong Kong, West Africa, East Africa, Vietnam, Iran, and Sri Lanka. In the result the British have been described as 'clearly among the most ethnically composite of the Europeans'.<sup>16</sup>

<sup>13</sup> Civil and Political Rights Covenant and the Economic Social and Cultural Rights Covenant.

<sup>14</sup> Thornberry, *op. cit.* 9.

<sup>15</sup> On this and many of the topics which follow I am deeply indebted to Dr S. M. Poulter's illuminating work *English Law and Ethnic Minority Customs* (1986).

<sup>16</sup> J. Giepel, *The Europeans: An Ethnohistorical Survey* (1969), 163–4.

In 1962 an Act was passed to restrict immigration into the country and in 1965 a White Paper *Immigration from the Commonwealth* was published, having two declared aims: to reduce further the number of Commonwealth immigrants to enter Britain; and to promote better race relations and help achieve the integration of those already settled. These latter aims were reflected in the Race Relations Act 1965. The Act sought to achieve these aims by amicable persuasion, not coercion. It has been said to have contained 'probably the most reluctant enforcement mechanism that could be devised by the mind of man'.<sup>17</sup> In the three years the Act was in force no case ever reached the courts.<sup>18</sup> A further Race Relations Act (and a further Immigration Act) were enacted in 1968, and then the Act now in force, the Race Relations Act 1976. This Act is very far-reaching in its scope, applying to almost every imaginable transaction, service and facility.<sup>19</sup> For purposes of the Act a person discriminates against another if (put very summarily) he treats him less favourably than others on racial grounds or imposes unjustifiable requirements with which that other, on racial grounds, is unable or less well able than others to comply.<sup>20</sup> Complaints arising from employment are pursued before industrial tribunals, other complaints in the County Court.<sup>21</sup> In either case damages may be awarded, including compensation for injury to feelings.<sup>22</sup> In a recent case arising from discrimination against a convicted prisoner by the prison authorities the Court of Appeal increased the damages awarded from £50 to £500.<sup>23</sup> The Race Relations Act is reinforced by provisions, now found in the Public Order Act 1986, imposing criminal penalties on those convicted of inciting racial hatred.<sup>24</sup>

During very roughly the same period the United States enacted the Civil Rights Acts of 1964 and 1968 and The Voting Rights Act 1965 to achieve somewhat similar ends. These Acts were tougher than their British counterparts and affirmative action was taken to promote the interests of the black minority in a way not duplicated in Britain. But the background problem was interestingly different. The United States was dealing with a long-settled black population against which a complex body of discriminatory laws had been built up; the concern in the UK arose in the main from a recent immigrant population which was the subject of no formal discrimination. Again, the United States Acts followed a decade (or rather longer) of radical Supreme Court decision-making which undermined the constitutional basis of segregation;<sup>25</sup> in the UK the 1965 Act represented the first tentative step in the field, taken at a time when there were doubts, conscientiously held, whether the intrusion of law into this delicate field might not do more harm than good. There can be little doubt that the intervention of the law has proved salutary in the United States.<sup>26</sup>

<sup>17</sup> Claiborne, *Race and Law in Britain and the United States*, MRG Report No. 22, 11.

<sup>18</sup> *Ibid.* 11.

<sup>20</sup> s. 1.

<sup>23</sup> *Alexander v Home Office* [1988] ICR 685.

<sup>25</sup> *Ibid.* 6–8.

<sup>19</sup> ss. 4, 17, 20, 21, 25, 29.

<sup>22</sup> ss. 57(4), 56(1)(b).

<sup>24</sup> ss. 17–29.

<sup>26</sup> *Ibid.* 14–15.

Since the purpose of the Race Relations Act in the UK is to educate public opinion and modify public conduct, no crude tally of legal decisions can indicate with any reliability whether the legislation is achieving its object or not. But some legal decisions none the less deserve brief mention as illustrating the strengths and weaknesses of the Act.

The most celebrated decision is *Mandla v Dowell Lee*,<sup>27</sup> a case in which a Sikh boy was denied admission to a private school because he and his father insisted on his wearing a turban, which the headmaster would not accept. The Court of Appeal held<sup>28</sup> (contrary to the undoubted intentions of those who framed the Act) that Sikhs were not a racial group and so were not protected by the Act. The House of Lords reversed this ruling. In doing so it acknowledged that the boy could physically comply with the requirement of not wearing a turban (which is not of course one of the five symbols of Sikhism) but held that 'can comply' in the Act should be read as 'can consistently with the customs and cultural conditions of the racial group comply'. The House rejected the headmaster's justifications based on practical convenience and the Christian nature of the school.

This enlightened decision laid to rest a somewhat similar problem (already, perhaps, on the way to solution), the insistence of Hindu and Muslim women on keeping their legs covered, a practice unacceptable to some employers whose female staff were dressed in skirts. In *Malik v British Home Stores*<sup>29</sup> an industrial tribunal found for an 18-year old Muslim schoolgirl who had been refused employment because she wished to wear trousers under her skirt. In *Kingston and Richmond Health Authority v Kaur*<sup>30</sup> a Sikh woman was refused training as a nurse on similar grounds. The case led to a modification of the statutory instrument governing nurses' dress and a change of mind by the health authority, and the applicant was eventually allowed to train wearing grey trousers and a white tunic top.<sup>31</sup>

There have been more questionable decisions the other way. In *Singh v Rowntree Macintosh Ltd*,<sup>32</sup> *Panesar v Nestlé Co Ltd*<sup>33</sup> and *Singh v Lyons Maid Ltd*<sup>34</sup> Sikh men lost claims against food manufacturers who maintained a ban on beards in the interests of hygiene. In *Kuldip Singh v British Rail Engineering Ltd*<sup>35</sup> a Sikh employed in an engineering workshop was demoted because he refused to wear a voluntary form of protective headwear. One's reservations concerning these decisions are not as to the genuineness of the employers' interest in hygiene or safety but as to whether adequate thought was given to reconciling this interest with the cultural requirements of the Sikh community. In more obvious cases, however, the results seem plainly correct. Where, as a result of theft at a manufacturing plant, the employer required every black person seeking to enter the plant to be interrogated, it was held that this could be a detriment to

<sup>27</sup> [1983] 2 AC 548.

<sup>29</sup> (1980), unreported, Manchester.

<sup>31</sup> Poulter, *op. cit.* 263.

<sup>33</sup> [1980] ICR 144.

<sup>35</sup> *The Times*, 6 Aug. 1985, see Poulter, *op. cit.* 262.

<sup>28</sup> [1983] QB 1.

<sup>30</sup> [1981] IRLR 337.

<sup>32</sup> [1979] IRLR 199.

<sup>34</sup> [1975] IRLR 328.

black employees.<sup>36</sup> Where a Liverpool store required its employees to live outside the city centre, it was held that this amounted to indirect discrimination against black job seekers who mostly lived in the city centre.<sup>37</sup> Where Asian bank employees who had served overseas were denied the benefit of previous service for pension purposes (unlike, as they complained, their white counterparts) the case was allowed to proceed.<sup>38</sup>

The governmental agency entrusted with promoting good race relations in the UK is the Commission for Racial Equality, one of whose most important tasks is to investigate and report on suspected discriminatory practices.<sup>39</sup> The Commission's investigations have covered a very wide range, from medical school admissions,<sup>40</sup> to the allocation of council housing<sup>41</sup> and the employment of dustmen in Westminster.<sup>42</sup> The Commission also seeks to protect the interests of racial minorities when new legislative changes are proposed.<sup>43</sup>

While serious and disturbing racial discrimination undoubtedly remains in the UK, it is reasonable to hope that the law has helped to mitigate its worse effects. But the prohibition of discrimination is only one objective of the law; the other, as already noted, is that all citizens shall be treated equally. The general policy of UK law undoubtedly is that there shall be one law for all, irrespective of race or cultural tradition. Thus, for example, a marriage celebrated in England under the age of 16, or within the prohibited degrees of consanguinity and affinity, appears to be void even though valid by the law of the parties' domicile outside England.<sup>44</sup> An English marriage is necessarily monogamous, even though the personal laws of the parties may allow polygamy.<sup>45</sup> A father who punishes his son excessively by English standards cannot escape conviction by showing that the punishment would have been normal in his native West Indies.<sup>46</sup> The statutory prohibition on tattooing children makes no exception for communities in which this practice is normal and accepted.<sup>47</sup> A Nigerian mother who incised the cheeks of her young sons in accordance with Yoruba tradition was convicted of assault causing actual bodily harm, although the trifling nature of the incisions and the boys' eager consent earned her an absolute discharge.<sup>48</sup> While the circumcision of males has long been accepted, although only of ritual significance to Jews and Muslims, the circumcision of females is forbidden by statute even among

<sup>36</sup> *B L Cars Ltd v Brown* [1983] ICR 143.

<sup>37</sup> *Hussain v Saints Complete Home Furnishers*, Liverpool Industrial Tribunal.

<sup>38</sup> *Barclays Bank v Kapur* [1989] ICR 753.

<sup>39</sup> Race Relations Act 1976, ss. 48-51.

<sup>40</sup> Report into St George's Hospital Medical School (1988).

<sup>41</sup> Report into the allocation of council housing (1982).

<sup>42</sup> Report into Westminster City Council, NUPE and four named NUPE officers (1988).

<sup>43</sup> e.g. Response to the Home Office White Paper 'Crime, Justice and Protecting the Public'.

<sup>44</sup> Dicey and Morris, *The Conflict of Laws*, 11th edn. (1987), vol. 2, 636-7.

<sup>45</sup> *Ibid.* 657.

<sup>46</sup> *R v Derriviere* (1969) 53 Cr App Rep 637.

<sup>47</sup> Tattooing of Minors Act, 1969.

<sup>48</sup> *R v Adesanya*, *The Times*, 16 and 17 July 1974. And see Poulter, *op. cit.* at 150-1.

communities where it is traditionally practised.<sup>49</sup> It is of interest that although this prohibition is subject to a mental health exception, the Act provides that 'In determining . . . whether an operation is necessary for the mental health of a person, no account shall be taken of the effect on that person of any belief on the part of that or any other person that the operation is required as a matter of custom or ritual.'<sup>50</sup>

Happily, the principle of equality is not applied in blind disregard of cultural differences. Sikhs have been exempted by statute from the requirement to wear crash helmets on motor cycles,<sup>51</sup> even though imposition of the ordinary rule on Sikhs involved no breach of the European Convention of Human Rights.<sup>52</sup> In *Hirani v Hirani*<sup>53</sup> the Court of Appeal, on a petition for annulment of a marriage on grounds of duress, took full account of the position of a 19-year old Indian Hindu girl pressured by her family to marry a man not of her choice instead of the Muslim she wished to marry. A complaint of cruelty against a husband has been upheld even though the act in question was not that of the husband but of a member of his extended family with whom the wife was required to live.<sup>54</sup> A wife who, at her instigation, obtained a divorce valid in Jewish law by a *get* of the Beth-Din in London on grounds of her husband's desertion was held to be disentitled to complain of her husband's desertion thereafter.<sup>55</sup> In *Brett v Brett*<sup>56</sup> a divorced husband refused to give his wife a *get*, without which she would not be free to remarry under Jewish law; the Court of Appeal's order relieved the husband of part of his financial obligation if he delivered a *get* and in that way gave recognition to the Jewish custom. A charge of having unlawful sexual intercourse with a girl under the age of 16 will not lie where the parties were validly married in Nigeria, where they were domiciled, when the girl was 13.<sup>57</sup> Where an unsophisticated Muslim woman helped to unpack imported cannabis on the direction of her brother-in-law, sentence was reduced to reflect her relative lack of criminality.<sup>58</sup> Where a Portuguese waiter confessed to having corruptly offered money to a driving examiner, believing that what was common practice in Portugal was common practice in England also, he was not prosecuted.<sup>59</sup>

## (2) *Religion*

There is in the UK, in contrast with the United States,<sup>60</sup> no constitutional protection of religious freedom. It is not generally unlawful (save in respect of employment in

<sup>49</sup> Prohibition of Female Circumcision Act 1985.

<sup>50</sup> Section 2(2).

<sup>51</sup> Motor-Cycle Crash Helmets (Religious Exemption) Act 1976.

<sup>52</sup> *X v United Kingdom* (1978) 14 Decisions and Reports of the European Commission 234. And see Poulter op. cit. 284.

<sup>53</sup> (1983) 4 FLR 232.

<sup>54</sup> *Devi v Gaddu* (1974) 4 Fam. Law 159.

<sup>55</sup> *Joseph v Joseph* [1953] 1 WLR 1182. But see *Corbett v Corbett* [1957] 1 WLR 486.

<sup>56</sup> [1969] 1 All ER 1007. And see Poulter, op. cit. 109, 128.

<sup>57</sup> *Alhaji Mohamed v Knott* [1969] 1 QB 1. And see Poulter, op. cit. 19–21, 273.

<sup>58</sup> *R v Bibi* [1980] 1 WLR 1193.

<sup>59</sup> Poulter, op. cit. 275.

<sup>60</sup> First amendment to the US Constitution, 1791.

Northern Ireland)<sup>61</sup> to discriminate against another on grounds of religion alone. The religious freedom which is enjoyed in fact is the product not of legal protection but of the removal of disabilities formerly imposed on those who were not members of the Church of England. This freedom is of relatively recent growth. The Toleration Act, 1688, despite its encouraging title, was of benefit only to protestant dissenters. Not until the last century were disabilities against Roman Catholics and Jews gradually dismantled.<sup>62</sup> In 1847 Baron de Rothschild, elected to Parliament for the City of London, could not take his seat because he was unable to swear allegiance 'on the true faith of a Christian'.<sup>63</sup> Until the 1850s only members of the Church of England could become members of Oxford University or take degrees at Cambridge.<sup>64</sup> Not until 1871 were lay posts in those universities thrown open to men of all creeds on equal terms.<sup>65</sup> From 1880 to 1886, although repeatedly elected by his constituents, Bradlaugh was prevented from taking his seat in the House of Commons because he was an avowed atheist, and the Court of Appeal aided his exclusion.<sup>66</sup> As late as 1974 a statute was needed to make clear that a Roman Catholic could lawfully be appointed Lord Chancellor.<sup>67</sup>

The lack of formal prohibitions and disabilities now means that people are in general free to worship when, where and how they please. If planning permission to build a synagogue, mosque, temple, *gudwara*, or other place of non-Christian worship were found to have been refused on grounds of religious prejudice the decision would without doubt be quashed on an application for judicial review. There is nothing to prevent the establishment of a private denominational school and there is nothing to prevent the state contributing towards Hindu and Muslim schools as it does towards Anglican, Roman Catholic, and Jewish schools. But a Muslim may not, in breach of his contract of employment, absent himself from his professional duties to comply with those of his religion,<sup>68</sup> nor will a Seventh Day Adventist be excused work on Saturdays unless his contract so provides.<sup>69</sup>

Within the state educational system the existence of religious minorities is acknowledged. Thus although pupils are required on each school day to take part in an act of collective worship,<sup>70</sup> which in most schools must be 'wholly or mainly of a broadly Christian character',<sup>71</sup> and although the national curriculum taught in state schools must provide for religious education,<sup>72</sup> a parent may

<sup>61</sup> Fair Employment (Northern Ireland) Act 1976.

<sup>62</sup> By Acts such as the Roman Catholic Relief Act, 1829; the Jewish Disabilities Removal Act 1845, the Jews Relief Act 1858 and the Qualification for Offices Abolition Act 1866.

<sup>63</sup> Woodward *The Age of Reform 1815-1870*, 156.

<sup>64</sup> *Ibid.* 471.

<sup>65</sup> University Tests Act 1871. And see generally Engel, *From Clergyman to Don* (1983).

<sup>66</sup> *AG v Bradlaugh* (1885) 14 QBD 667.

<sup>67</sup> Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974.

<sup>68</sup> *Ahmad v Inner London Education Authority* [1978] QB 36.

<sup>69</sup> *Esson v United Transport Executive* [1975] QB 36.

<sup>70</sup> Education Reform Act 1988, s. 6(1).

<sup>71</sup> *Ibid.*, s. 7(1).

<sup>72</sup> *Ibid.*, s. 2(1).

request that a child be excused from the act of worship and the education provided by the school and alternative arrangements may be made<sup>73</sup> (although there is currently some dissatisfaction among ethnic minority parents on this score). Deference to the beliefs or wishes of minorities may also be found, for example, in the anomalous exemption of Quakers and Jews from the general law governing the solemnisation of marriages,<sup>74</sup> and in the making of special provision for slaughtering animals and poultry in the manner approved by the Jewish and Muslim religions.<sup>75</sup>

The most striking inequality of treatment which now survives in the religious field concerns the law of blasphemy. It is an offence at common law to vilify the Christian religion, in particular if a breach of the peace is likely to result. In *Whitehouse v Lemon*<sup>76</sup> Lord Scarman strongly urged that the law be extended to cover all recognized religions and not Christianity alone, as was provided in the Indian Penal Code originally drafted by Lord Macaulay in 1837. The Law Commission, to which the problem was referred, was divided; a bare majority favoured abolishing the common law offence and putting nothing in its place; the minority thought that a new statutory offence should be created and that its scope should be wide enough to cover non-Christian faiths as well as Christianity.<sup>77</sup>

This issue has recently become highly topical following the publication in 1988 of *The Satanic Verses* by Salman Rushdie, a book understood by Muslims to be a scurrilous and deeply offensive libel on their religion. The book has led to violence and disorder in various parts of the world, including the UK, and to the pronouncement of a sentence of death on Rushdie by religious leaders in Iran, which imposes a duty on devout Muslims to assassinate the author.

The sense of outrage undoubtedly felt by devout Muslims led to an application to the Chief Metropolitan Magistrate in London for the grant of a summons against the author and publishers on grounds of blasphemous libel at common law. The grant was refused, and the applicant then sought to quash the Magistrate's decision. This application failed,<sup>78</sup> the Divisional Court ruling as it was bound to do that the law as it stood did not extend to religions other than Christianity. The Court did, however, say that if it were open to them to extend the law to cover religions other than Christianity they would refrain from doing so,<sup>79</sup> believing that to do so would pose insuperable problems and would be likely to do more harm than good.<sup>80</sup> The resentment of the Muslim minority was the more understandable when a film (*International Guerillas*) portraying the author in a bad light was banned in the UK, but this decision was later reversed.

<sup>73</sup> *Ibid.*, s. 9.

<sup>74</sup> Marriage Act 1949, s. 26(1)(c)(d).

<sup>75</sup> Slaughter of Poultry Act 1967, s. 1(2); Slaughterhouses Act 1974, s. 36(3).

<sup>76</sup> [1979] AC 617.

<sup>77</sup> Report No. 145: *Offences against Religion and Public Worship* (1985).

<sup>78</sup> *R v Bow Street Magistrates' Court ex parte Choudhury*, unreported, 9 April 1990.

<sup>79</sup> Transcript, p. 22.

<sup>80</sup> Transcript, p. 30.

The problem of amending the law may be exaggerated, but there remains a deep division of opinion how it should be amended. Over the last two years there have been no fewer than four attempts to introduce bills, some seeking to extend the criminal law of blasphemy to protect Hinduism, Islam, Sikhism, Judaism and Buddhism as well as Christianity,<sup>81</sup> some seeking to abolish the offence altogether.<sup>82</sup> None has progressed to a second reading and the Government is proposing no change in the law because there is too little agreement whether there should be change and, if so, what the change should be. It may none the less be questioned whether it is acceptable, in a plural society such as the UK now undoubtedly is, that adherents of world religions, locally in the minority, should lack the legal protection afforded to the local majority.

### (3) Language

The onward march of the English language within the UK has proved irresistible, extinguishing (or nearly extinguishing) such old indigenous languages as Gaelic, Manx and Cornish. The only exception is Welsh. In 1847 a government commission on education strongly favoured the suppression of the Welsh language:

The Welsh language is a vast drawback to Wales, and a manifold barrier to the moral progress and commercial prosperity of the people. It is not easy to over-estimate its evil effects . . . It dissevers the people from intercourse which would greatly advance their civil-ization, and bars the access of improving knowledge to their minds. As a proof of this, there is no Welsh literature worthy of the name.

The evil of the Welsh language . . . is obviously and fearfully great in courts of justice . . . It distorts the truth, favours fraud, and abets perjury, which is frequently practised in courts, and escapes detection through the loop-holes of interpretation . . . The mockery of an English trial of a Welsh criminal by a Welsh jury, addressed by counsel and judge in English, is too gross and shocking to need comment. It is nevertheless a mockery which must continue until the people are taught the English language . . .<sup>83</sup>

Matthew Arnold, an inspector of schools, shortly afterwards wrote in *The Times*: 'The Welsh language is the curse of Wales.'<sup>84</sup> But the language struggled to survive, and in 1967 the Welsh Language Act was passed by Parliament recognizing that

it is proper that the Welsh language should be freely used by those who so desire in the hearing of legal proceedings in Wales; that further provision should be made for the use of that language, with the like effect as English, in the conduct of other official or public business there; and that Wales should be distinguished from England in the interpretation of future Acts of Parliament.

<sup>81</sup> e.g. a bill introduced by Harry Greenway in March 1990.

<sup>82</sup> e.g. bills introduced by Tony Benn and Bob Cryer.

<sup>83</sup> Jan Morris, *Wales* (1982), 66.

<sup>84</sup> *Ibid.*

There are Welsh language radio and television programmes and the language has a special place, protected by statute in the curriculum of schools in Wales.<sup>85</sup>

No other language alternative to English enjoys such protection. The UK is bound by a European Community Directive 'to take appropriate measures to promote, in co-ordination with normal education, teaching of the mother tongue and culture of the country of origin for the children' of other Community nationals,<sup>86</sup> and has informally agreed that this obligation should be extended to the children of non-Community nationals.<sup>87</sup> It is not, however, clear that very much has been done to perform this obligation, which in any event does not avail the children of UK nationals unless they could show themselves to be the subject of less favourable treatment. In 1985 the Swann Committee did not favour the introduction of programmes of bilingual education in state schools<sup>88</sup> and considered that maintenance of the mother-tongue was best achieved within the ethnic communities themselves, but the Committee did favour the teaching of pupils' mother tongues as part of the general foreign language teaching in schools. The Secretary of State has authority to specify any modern foreign language as part of the national school curriculum and the means therefore exist to give effect to this recommendation.<sup>89</sup>

One cannot, however, disguise or conceal the dominant position of the English language in the UK today. Where a statute requires information to be provided, it has been held that the information need be provided only in English.<sup>90</sup> A consultation exercise has been held not to be flawed by lack of adequate interpretation for the benefit of all minority ethnic groups attending a meeting.<sup>91</sup> Pressure towards integration or assimilation is here perhaps seen at its strongest, motivated (one trusts) not by a desire to dominate or extinguish cultural diversity but by a belief that mastery of English is an almost essential pre-condition of personal fulfilment and success in an overwhelmingly English-speaking society.

#### CONCLUSIONS

The law is not, of course, omnipotent: as Professor Palley wrote:

it would be legal megalomania to imagine that legal regulation can stem powerful political, economic and social forces or massive revolutionary violence, but Law can, particularly in the long run, affect the framework in which these forces will operate, and can reinforce or weaken the claims of particular groups in society, whether these claims be political, economic, social or cultural and already enunciated or merely latent.<sup>92</sup>

<sup>85</sup> Education Reform Act 1988, s. 3 (1)(b), (2)(c).

<sup>86</sup> EEC Directive on the Education of Children of Migrant Workers 1977.

<sup>87</sup> Swann Committee Report, 401–2.

<sup>88</sup> *Ibid.* 406–11.

<sup>89</sup> Education Reform Act 1988, s. 3(2)(b).

<sup>90</sup> *R v Governors of Small Heath School, ex parte Birmingham City Council*, unreported.

<sup>91</sup> *R v Birmingham City Council, ex parte Kaur*, 10 July 1990, unreported.

<sup>92</sup> *Op. cit.* 5.