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# The Internet, Legal Regulation and Legal Pluralism

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## Abstract

Considerable academic effort is being expended in considering how to regulate various activities on the internet, particularly those as relate to obscene material, breaches of privacy and challenges to intellectual property rights. Post and Johnson (1997) offer the following solution which is typical;

> 'We believe that the most obvious answer to this question -- existing territorial sovereigns -- may well be wrong... The new science of complex systems gives us reason to hope that an overall system of governance of the net that reconnects rulemaking for online spaces with those most affected by those rules -- but that also allows online groups to make decentralized decisions that have some impact on others, and that therefore elicit disparate responsive strategies -- will create a new form of "civic virtue".'

The paper will argue that this analysis is in all but name offering a solution based on the theory of "legal pluralism". That legal pluralism is not articulated as the theory is not surpising given that the debate is dominated by those with access to the internet. Access to the internet is limited, much of the worlds population is unable or prevented from using and becoming part of the internet community (Wresch, 1996). The values of western legal systems, which know little of legal pluralism, therefore prevail.

Legal pluralism is a concept borrowed from sociologists, and only recently been introduced to legal studies (Van den Berg, 1992, p.451; see further McLennan, 1995). It has never been encouraged in the Western European countries where the predominant view is that different legal systems cannot exist within one-nation-state structure. The administration of justice and government has been structured and developed within a monistic structure, pluralist/dualistic ideas were considered dangerous to this establishment. (Merry, 1988, p.872; Van den Bergh, 1992, p.451). Legal pluralism stands in contradiction to the notion that the law is a single, monolithic, unified sets of rules flowing from the State's hierarchy. Progress towards and acceptance of pluralism has been hampered by the difficulty of finding a sufficiently robust definition of legal pluralism. (Griffiths, 1986). Griffiths defines legal pluralism as the presence in a social field of more than one legal order (ibid, p. 1; further see, Merry, 1988, p. 7; Pospisil, 1971; Van den Bergh, 1992, p. 451). Van den Bergh suggests that pluralism should be viewed not as a situation but as a process that develops in time, a complex patterns of continuous interactions (1992, pp.451-454). A Japanese jurist, Chiba provides a perspective of legal pluralism that is critical of the alleged monistic nature and ethnocentric nature of western jurisprudence. In his view, modern western jurisprudence is based and has been developed on Hellenistic and Christian views of men and women (1986, p.2) and has been continually trying to influence, particularly legal systems of Afro-Asian countries. Chiba challenges the monistic system of European laws. Pushing further than Griffiths he identifies various layers of laws, i.e. official laws, unofficial laws, and legal postulates. He emphasises that jurisprudence of any contemporary society cannot be identified as a unified system. The State cannot control the whole of the law as cultural and social aspects of legal principles are not capable of outside control.

The paper will take these forms of analysis of pluralism and apply them to the problems of obscenity, privacy and intellectual property rights as they relate to the internet. With such analysis it is hoped that solutions may be offered with a more coherent foundation than those presently being presented.

## 1. The Internet

The Internet is a network of networks,

> "it is a global communications network with highways and byways of information sources, electronic mail facilities, noticeboards and interest groups" (Furlong 1995 p.3)

It is not capable of centralised control;

> "No single entity - academic, corporate, governmental or non-profit - administers the Internet." (American Civil Liberties Union v Reno, 929 F. Supp. 824, 832 (E.D. Pa. 1996)) [1]

The explosion in the numbers using the internet is due to the development of the World Wide Web. This provides a powerful means of communication. Functioning through the application of Network, Hypertext and Multi-Media technologies. The Web was founded in 1988 by Tim Verners-Lee of the Cern Laboratories in Switzerland and can be best understood as an elaboration and conglomeration of preceding technologies.

The internet was designed to provide a stable communications framework even though individual links may have failed. It is neither free nor is it a highway. Access (and funding) is dominated by state subsidised academic institutions in the first world. Navigation in the WWW via a hypertext based system is like traversing a world of information through a myriad of interconnected country lanes, there are no motorways on the net.

Access to the internet is limited, whilst the simplest form of access to the internet is via a modem onto a phone line, in Africa where less 1% of the population have a phone the internet is virtually unknown. Even where phone lines exist the systems are antiquated and slow. The internet is not universally available, large population groups are excluded. The majority of internet users reside in the United States. Even within the US where there are 51 lines for every 100 people large ethnic groups such as Indian, Eskimo only have 1 in 4 access to a phone. (Wresch, 1996). The internet is therefore a creation of the first world, it has no significant ethnic minority presence nor input from middle-eastern or eastern cultures.

## 2. Legal Regulation of the Internet

Considerable academic effort is being expended in considering how to regulate various activities on the internet, particularly those as relate to fraud, obscene material, breaches of privacy and challenges to intellectual property rights. As is appropriate to a system that is dominated by the first world culture the analysis of the problems of the internet have invariably been from the perspective of western jurisprudence. The problems of regulation on the internet are simply stated. First it allows novel activities email, electronic discussion groups, simple transfer or viewing of text, images, sound and video. These activities may in turn fall foul of laws of obscenity (Akdeniz 1997) or defamation (Waelde and Edwards 1996). Secondly because it is a distributed system that staddles geographical and jurisdictional boundaries, the regulation of such activities are likely to fall within two or more national 'legal' jurisdictions.

The problems of 'controlling' the internet are adequately demonstrated in the recent attempt by Nottingham County Council to suppress a report (the JET report) into the handling by social worker officials of a case of alleged satanic abuse. The Council had obtained an injunction preventing publication of the report on the basis that its reproduction infringed copyright. A letter was sent to a number of web site operators in other countries who had the report on their pages. The letter stated;

> *"You currently hold on your Website the text of the above report. The purpose of this message is to set out the Nottinghamshire County Council's position with regard to its copyright rights in the report. Copyright in the report is vested in the Nottinghamshire County Council and has been since 1990 when the report was produced and as such the Nottinghamshire County Council has rights as copyright owner under the Copyright, Designs and Patents Act 1988. Any copying of the report is an infringement*

*of the Nottinghamshire County Council's copyright.*
*For the avoidance of doubt the copying of the report or any hypertext links on this Internet Website is an infringement of copyright.*
*The provisions of the Copyright, Designs and Patents Act 1988 includes storing of the work in any medium by electronic means. Neither you nor the owners of the Website have sought permission from the Nottinghamshire County Council as copyright holder to store the Report by electronic means.*
*I therefore give you notice that unless the report is removed from the Website forthwith and for the avoidance of doubt within 24 hours of receipt by you of this mail The Nottinghamshire County Council will issue such Court Proceedings including injunction proceedings or take any action as may be appropriate...*

*Yours faithfully,*
*C P. McKay*
*County Solicitor 11/06/97 "*

The replies from web site owners were both obvious and wounding. Typical was the response from Peter Junger, a legal academic at case Western Reserve Law School;

> "My first reaction was simply to ignore this bit of silliness, grounded as it was on the misconception that the ``Copyright, Designs and Patents Act 1988'' of the United Kingdom applies to actions taken in the United States when, as I trust you know, that Act specifically provides that copyright holders' exclusive rights apply only to ``acts in the United Kingdom'

(Details are available from his web site <http://www.samsara.law.cwru.edu/comp_law/#Not>)

Nottingham Councils argument were based upon three assumptions often present in the literature on regulation of the internet.

- First that is possible to establish a comprehensive and coherent set of rules to deal with these activities, in this case the Copyright Designs and Patents Act 1988.
- Second that a specific jurisdiction is capable of adjudicating over such activities, in this case the English courts.
- Third that those regulations will based upon a set of values and norms derived from western tradition, in this case the English legislatures view of copyright and the appropriate exceptions.

The futility and arrogance of the action was finally recognised by Nottingham County Council and the Consent Order withdrawing the injunction was signed by the Council and filed with the court. The Chair of Social Services in Nottingham Tim Bell stated that:

> '*We have been faced with a technology running at a pace which exceeds the law's ability to adopt to deal with it and the best interests of Nottinghamshire people would not be served by running up large bills in difficult areas of law.*' (Details available at <http://www.xs4all.nl/~yaman/jetrep.htm>)

## 2.1 A Comprehensive Set of Rules

The US Computer Decency Act 1996, was an attempt to establish a comprehensive set of rules to regulate obscenity on the internet derived from one set of values. The Act had provisions designed to prevent young people from accessing indecent material over computer networks. It was to be a criminal offence to engage in communication on computer networks that was either 'indecent' or 'patently offensive' if such communication could be viewed by a minor. It failed, the Act being found to be unconstitutional (American Civil Liberties Union v Reno, 929 F. Supp. 824, 832 (E.D. Pa. 1996)). The case illustrates that the jursiprudential debate conducted from a westernised perspective begins with the assumptions that the law is a single, monolithic, unified sets of rules flowing from the State's hierarchy which have universal applicability (Chiba, 1993, p. 197). In this case assuming that the way to deal with obscenity on the internet was through existing federal 'centralised' laws on obscenity and child pornography being extended and applied to the internet.

## 2.2 The Need for a Specific Single Jurisdiction.

The search of western jurists to find an appropriate jurisdiction to adjudicate on the activity has come up against an immediate problem, that is the internet activity is likely to span at least two competing jurisdictions, these are unlikely to agree on the standards to be imposed upon such activities. The result is that the analysis reverts to find one jurisdiction that should have jurisdiction over the activity, a choice of law debate, *US v Thomas* 74 F 3rd 701 (6th Cir 1995), the standards of the receiving state (Tennessee) in this case chosen over the 'host' state (California) The solution then is to view the internet merely as a transmission mechanism allowing the activity to happen between two jurisdictions. The 'values' or 'norms' of the jurisdiction are the applied to the activity.

In an attempt to circumvent the choice of law issues some writers have suggested that the internet should itself be raised to the standard of a national jurisdiction where appropriate values and norms may be applied. Post and Johnson (1997) offer the following solution;

> 'We believe that the most obvious answer to this question -- existing territorial sovereigns -- may well be wrong... The new science of complex systems gives us reason to hope that an overall system of governance of the net that reconnects rule-making for on-line spaces with those most affected by those rules -- but that also allows on-line groups to make decentralized decisions that have some impact on others, and that therefore elicit disparate responsive strategies -- will create a new form of "civic virtue".'

Their analysis is based upon the need to establish a set of values, a jurisdiction in cyberspace, distinct from the national rules that may apply in a 'choice of law; analysis. This merely replacing one states values and norms with a set of values and norms for cyberspace to be determined by some mechanism not defined? In the process raising further problems of how the appropriate standards may be established for cyberspace? In looking for some consensus this will lead to a raising of level of tolerance to encompass the wishes of the most conservative nations. This analysis has added little to the problem for now the instead of choosing between two separate national values one is forced to choose between one nations values and those of cyberspace.

## 2.3 Values

It is a truism to state that the courts of each country will apply their own values to a case. In the context of the meaning of the phrase 'what is in a child's best interests' Brenan J stated;

> 'in the absence of legal rules or a hierarchy of values the best interests approach depends upon the value system of the decision maker'. *(Secretary, Department of Health and Community Services v JMB and SMB,* FLC 92-3 at 79, 191 (1992)*).*

It is not surprising, therefore, given the preponderance of western cultures on the internet, that the attempted legal regulation of the internet bear all the hallmarks western jurisprudence. Any regulation of the internet will inevitably have its base in the English common law traditions. The difficulty is that the internet is potentially a global phenomena and the English common law system holds no sway in significant areas of the world. Take by way of example a contrast between English Law and Islamic Shari'a law. How would the internet regulate the publication by a publisher on its web site of a work similar to Salman Rushdie's "The Satanic Verses"? The approach of English law is secular though some principles of common law have been shaped by the Christian ethos. The Queen in Parliament enacts the law; in reality it is the members of the House of Commons and the House of Lords who participate in the law making process. The influence of the dominant religion is less direct, its protagonists persuading and pressuring within the parliamentary process of law making. Religion also has little impact on the administration of justice, neither do priests who act as judges nor are religious opinions used to determine the decisions of the courts of law.

The contrast with *Shari'a* law could not be greater, Muslims societies and institutions roles are prescribed by Qur'anic principles. States assemblies are expected to play a significant role in administrative and executive matters, but in respect of law, their jurisdiction is limited. Administrators, rulers or members of State assemblies are not, in the eyes of orthodox Islamic law, empowered to make laws. The British 'did not accept any divinely revealed holy law to guide them and regulate their civil, criminal, ritual and dietary matters'. Instead, they pass laws 'in accordance with the exigencies of the time, their own dispositions, and the experience of their judges' (Lewis, cited in Lewis and Schnapper, 1994, p.1). Views similar to the above are still voiced by Muslim jurists. M.Allahbukhsh K. Brohi identified and analysed the law in a secular society as a paradoxical and confused one. The origin of law without a divine intervention is, in his view, illogical. How can

a State create law if a State is a creation of law ? (Brohi in Azzam, 1982, pp.63-6). The late Ayatollah Khomeini bluntly rejected any law making role for legislative assemblies. Law making activities by parliamentarians were seen as unnecessary. In his view, parliamentary functions should be limited to 'oversee implementation; law themselves are divine or deducible from the Qur'an at the hadith' (Fischer in Esposito, 1983, p.169). In terms of its sources character, structure, objective and authority, classical Islamic law is different to English law. Shari'a law is a combination of revealed laws, sunna of Prophet Muhammad (practices of Prophet), [2] customs and interpretations. Customs and interpretations are subject to the revealed laws. In addition there may be certain laws enacted by rulers in Daru L'Islam ( true Islamic State); these are referred to as "regulations". As they are enacted by rulers or legislative assembly they are inferior to *Shari'a* law. In the event of a conflict between "regulations" and Shari'a law, it is always the latter which prevail. The character of Shari'a law is again in marked contrast to English Law. As Andrew Rippin writes:

> 'Law...is a far broader concept than that generally perceived in the English world. Included in it are not only the details of conduct in the narrower legal sense, but also minute matters of behaviour, what might even be formed 'manners', as well as issues related to worship and ritual; furthermore, the entire body of law is traditionally viewed as the 'revealed will of God', subject neither to history nor to change' (Rippin, 1994, p.74).

The law is thus 'Islamic' through and through (Rippin, 1994, p.77; Lewis in Lewis and Schnapper, 1994, p.1). [3] Its divine origin makes it a reference point and main source of law. In brief, the law giver is no other than God, 'he alone is the ruler and the real legislature. He will alone sanctions the law' (Brohi in Azzam, 1982, p.66). The law is simply not, in the view of Muslim jurists, the business of human beings. The Qur'an specifically states that '*wa lan Jajida lesunntallh tabila*', you must not see change in God's law (Brohi in Azzam, 1982, p.71).

Divine laws must be used by rulers to shape and mould the behaviour of individuals and structure of Muslims' States. It is for all mankind since God's revelations are common to every one irrespective whether he is a Muslim or not. Therefore , there is a divine authority behind every legal principle, they are a universal truth. In classical Qur'anic law, rulers are simply believers who have been delegated authority by God to introduce rules and regulations subject to limitations imposed by holy writs and sunna of the Prophet Muhammad (Brohi in Azzam, 1982, p.66). The purpose of delegating such powers is to allow believers to administer their duty and State activities to establish an "order on earth". As good 'believers', they are expected to uphold the rule of law in terms of Shari'a. Every individual abides by Shari'a law to suppress fasad (corruption) and crimes, and to submit to the authority of Qu'ranic laws.

Unsurprisingly the English courts had no difficulty in finding that no offence had been committed. The response of the judiciary was that it is neither for them to fill a vacuum by creating new legal remedies nor at any event did they want to encroach upon the territory of the legislature. The court found as follows:

> 'We have no doubt that as the law now stands it does not extend to religions other than Christianity. Can it in the light of the present condition of society be extended by the courts to cover other religions ? Mr. Azahar submits that it can and should be on the grounds that it is anomalous and unjust to discriminate in favour of one religion. In our judgement where the law is clear it is not the proper function of this court to extend it; particularly is this so in criminal cases where offences cannot be retrospectively created. It is in that circumstances the function of Parliament alone to change the law...The mere fact that the law is anomalous or even unjust does not, in our view, justify the court in changing it, if it is clear. If the law is uncertain, in interpreting and declaring the law the judges will do so in accordance with justice and to avoid anomaly or discrimination against certain classes of citizens; but taking that course is not open to us, even though we may think justice demands it, for the law is not, we think, uncertain' (*ex parte Chaudhry* [1991] I All ER 306, p.318).

Transferred to the internet such analysis would not prevent publication of such works even though it is deeply offensive to large numbers of people. The current position in English law of only relating to the sensitivities of Anglican Christians is hard to justify. This would continue to exclude large populations from the internet. Of course the effect maybe to attempt to disallow material not considered offensive by many. .

In *R v Lemon* [1979] AC 617 the appellants were the editor and publishers of a magazine called "Gay News," the readership of which consisted mainly of homosexuals, though it was on sale to the general public at some bookstalls. An issue published in June 1976 contained a poem entitled "The Love that Dares to Speak its Name," accompanied by a drawing illustrating its subject matter. The prosecution for blasphemy was upheld, yet the poem is available on the internet at <http://www.plexus.org/chalkboard/reverie/messages/262.html>

The policy (and its logical consequences) that 'you can discriminate for or against Roman Catholics as much as you like' (per Lord Denning, *Mandla v Dowell Lee* [1982] 3 All ER 1108, p.1111) should not therefore be transferred to the internet.

## 3. Pluralism as a Legal Theory

Legal pluralism "refers to the situation where two or more laws interact" (Hooker, p.6). The concept of legal pluralism is borrowed from sociologists, and has only recently been introduced to legal studies (Van den Berg, 1992, p.451; see further McLennan, 1995). It has never been encouraged in Western European countries, where the predominant view is that different legal systems cannot exist within the one-nation-state structure. The administration of justice and government has been structured and developed within a monistic structure, pluralist/dualistic ideas were considered dangerous to this establishment. Yet this reluctance to accept this theory did not prevent European jurists and policy makers encouraging former Afro-Asian colonies to practice legal pluralism. Recently some scholars have attempted to interpret obligation patterns of sub-groups in industrialised societies in terms of pluralism (Merry, 1988, p.872; Van den Bergh, 1992, p.451).

Progress towards and acceptance of pluralism has been hampered by the difficulty of finding a sufficiently robust definition.(Griffiths, 1986). Griffiths defines legal pluralism as the presence in a social field of more than one legal order (ibid, p. 1; further see, Merry, 1988, p. 7; Pospisil, 1971; Bergh, 1992, p. 451). This does not mean that more than one rule is applicable to the same situation. The state's laws have still a role to play in regulating individual behaviour whilst allowing personal laws and customs to be used to a certain extent in those matters specific to those communities. Bergh suggests that pluralism should be viewed not as a situation but as a process that develops in time, a complex patterns of continuous interactions (1992, pp.451-454). What is agreed is that in a pluralistic legal regime several sets of laws are administered in several sets of institutions. (Griffiths, ibid. p. 5). Many sub-orderings operating independently and often interacting with each other, most evidently in contemporary multiethnic and multireligious systems. As Galanter asserts 'law in modern society is plural rather than monolithic, that it is private as well as public in character and that the national (public, official) legal system is often a secondary rather than a focus of regulation' (Galanter, 1981, p. 20, see further, Merry, 1988; Pospisil, 1971). In consequence these writers assert that in westernised systems legal pluralism operates in all but name, personal laws/customs of sub-groups' are operated sometimes with the blessing of State and in most instances without any sanction at all. Though the gap between sub-groups' laws and States' laws are visible, both Griffiths and Merry argue that the mythical division is a misleading one, for such a social division is a man-made phenomenon, and in reality these two systems are interacting constantly (Griffiths, 1985, pp.17-18) creating tensions as well as contributing to each others. As such the system is operating as a pluralistic one. For Pospisil sub-groups are not constrained by sets of rules or laws of 'political society'. They may have its own laws and rules which mould their behaviour and are responsive to a conflict scenario (1971). A. Allot agrees, subject to the proviso that these personal rules do not empower such illegal groups and organisations as the IRA and Mafia (Allot, 1980).

A Japanese jurist, Chiba, provides a different perspective on legal pluralism. He is critical of the alleged monistic and ethnocentric nature of western jurisprudence. In his view, modern western jurisprudence is based and has been developed on Hellenistic and Christian views of men and women (1986, p.2) and has been continually trying to influence, particularly legal systems of Afro-Asian countries. Chiba challenges the monistic system of European laws. Pushing further than Griffiths he identifies various layers of laws, i.e. official laws, unofficial laws, and legal postulates. He emphasises that the jurisprudence of any contemporary society cannot be identified as a unified system. The State cannot control the whole of the law as cultural and social aspects of legal principles are not capable of outside control. These cultural practices continue to evolve and develop separate from the state. The totality of the law is plural, consisting of different systems of laws interacting with one another harmoniously as well as creating conflict scenario. These cultural diversities for Chiba operate at three levels:

(a) official laws;
(b) unofficial laws; and
(c) legal postulates.

The first category, official laws, are sanctioned by the legitimate authority of the country, i.e. parliament, state assemblies or king or monarch. These laws have little relevance or connection to the lives and customs of individuals. Ethical, cultural and religious practices are reflected in non-official laws that are not explicitly sanctioned by the State. Nevertheless they operate on their own, even influencing the formation of official State laws. Though unofficial laws operated without the blessing of the authorities, they are sanctioned by the general consensus of people who practise them. This general consensus may consciously or unconsciously

be observed, it may influence, change or undermine the State laws. The role of legal postulates is complementary and based upon a value system specifically connected with a particular official or unofficial laws and consists of established legal principles such as natural justice, morality and equity (p.6). They relate particularly to litigation encouraging individuals to settle their disputes in a cultural context, possibly outside official courts.

## 4. The Internet Assumptions and Pluralism

The analysis of legal regulation of the internet I have argued, proceeds on three assumptions. Legal pluralism stands in contradiction to each of them.

First that is possible to establish a set of rules to deal with these activities. For legal pluralism the law is not a single, monolithic, unified sets of rules flowing from the State's hierarchy. Its proponents argue that centralist theories suffer from the following inadequacies. Firstly centralist theories have to rely on the existence on one set of rules and values. Griffiths unambiguously rejects the notion of centralist and monolithic legal norms. He sees such a system, "the legal centralism" based on monistic ideas, as a myth, an ideal, a claim an illusion which obstructs the development of a democratic legal system and a major obstruction to accurate observation of customs and personal laws of minorities (ibid. p. 4; Galanter also agrees, 1981, p.4 and 18; see further, Merry, 1988, p.871). This misconception of superiority of the western notion of state laws is challenged by Marc Galanter. He writes:

> 'The view that the justice to which we seek access is a product that is produced or at least distributed exclusively by the state, a view which I shall for convenience label legal centralism' is not an uncommon one among legal professionals' (Galanter, 1981, p. 1).

Any centralist attempt, argues Galanter, would be similar to a program of making all spoken language to a common written language. He continues;

> 'no one would deny the utility or importance of written language, but it does not invariably afford the best guidance about how to speak. We should be cautioned by the way that it is our tendency to visualise the 'law in action' as a deviant or debased version of the higher law, the 'the law of the book' (Galanter, 1981, p.5).

Second that a jurisdiction can be isolated to adjudicate over such activities. Centralist systems espouse the notion that all justice should be dispensed through one system of courts, that is the dominant States courts and its arbitration system. This is impossible. The development of alternative dispute, resolution, techniques and informal justice lay the lie to the competence of one set of courts. (Merry, 1988, p. 874; McLennan, 1995). Galanter points out that we have to 'examine the courts in the context of their rivals and companions...we must put aside our historical perspective of legal centralism, a picture in which state agencies (and their learning) occupy the centre of legal life and stand in a relation of hierarchic control to other, lesser normative orderings such as the family, the corporation, the business network' (Galanter, 1981, p.17).

Third that those regulations will based upon one set of values and norms of western thinking. Centralist systems show insufficient respect paid to customs or in a colonial context, customary laws. The attempt to bolster the superiority of western values and laws is aided by an attack on the veracity of the culture and values of others. The literature is rife with claims by western jurists that customs in some cultures are underdeveloped, rigid and inappropriate in developed societies. English is littered with examples of courts and legislators acting in ignorance of the customs and values of others. ** give examples. Customs are ridicules as 'the law of the ancestors or the law of long ago' (see details, Allot, 1980, p. 60), (see critical analysis on this, Chiba, 1993, p. 198) For example, Alf Ross wrote:

> 'The transition from customary law to legislation is immensely important on the evolution of any society. Customary law is conservative, it relies on traditional and static patterns of behaviour. Those bounds by it act as their fathers did. This does not mean that customs are unchangeable, for they may be adapted to changing conditions; this adaptation is slow and unplanned, lacking calculation and rational understanding of the requirement of a change in conditions' (Ross, 1968, p. 97, cited in Allott, 1981, p.51).

Stanley Diamond views customs as a 'modality of primitive society'. In contrast, he argues, the State's laws

are highly organised and are a manifestation of civilisation sanctioned by organised force (Diamond, 1973). This inevitably leads to a lack of toleration, the state feeding on its hegemonistic attitudes and the influence of the dominant culture and its social and legal values. In such a view the only source of legitimacy in modern societies, it is argued, are the State's law and its only recipients are individuals (McLennan, 1995, p.46). In such a society there is a lack of tolerance, minorities or merely those holding different views are repressed and are discouraged from continuing their religious and cultural activities. (Raz, 1994, p.68). Raz sees a tolerance of alternative views as an extension of the classical liberal concept of constitutional, civil and political rights. In intolerant societies (referring to Western European countries) that refuse pluralism, Raz argues "...there is the view of the superiority of the secular, democratic, European culture, and a reluctance to admit equal rights to inferior oppressive religious cultures, or ones whose cultural values are seen as limited and less developed" (ibid. p. 70).

Yet there has been little enthusiasm amongst English lawyers for the doctrine of legal pluralism (Hooker, 1975). The literature is sparse and confined to colonial or migrant law issues. Of those alluding to the issue many are content with superficial references to the topic (see now, Menski, 1993, p.242, Jones and Welhengama. 1998). Of those who have addressed the issue Bainham has argued that there are good reasons to justify the accommodation of cultural and religious practices particularly in the field of family law, but within certain limits (1995, p.238). His support is qualified: 'those family practices regarded as oppressive, especially perhaps oppressive of women or children, cannot however, be supported' (p.239). This cautious approach taken by English law is emphasised by Pearl who in discussing the approach to be taken to migrants and their customs;

'These customs, deeply ingrained into the way of life of the immigrant population, cannot be cast aside by the English community around them. This country has a multi-cultural history and the recognition of alien customs, so long as they do not fall below minimum standards of public policy....' (emphasis added, 1972, pp.120-121).

## 5. Pluralism on the Internet

I would submit that a more generous acceptance of pluralism would provide a more satisfactory basis upon which to begin to regulate the internet. The three assumptions, the need for a coherent set of rules, the need for a specific jurisdiction and the dependence upon western values cease to be pertinent if pluralism is embraced. Pluralism within the internet would suggest that it is possible to have more than one legal order, not to have several rules applicable to one situation but to provide mechanisms that allow conflicting rules to co-exist, thereby enabling and encouraging their interaction. Within the internet several conflicting rules do exist but no mechanism exists to allow them to co-exist or interact. Already the solution have been suggested, Lord Scarman in Lemon stated:

> 'In an increasingly plural society such as that of modern Britain it is necessary not only to respect the differing religious beliefs, feelings and practices of all but also to protect them from scurrility, vilification, ridicule and contempt... When nearly a century earlier Lord Macaulay protested in Parliament against the way the blasphemy laws were then administered, he added (Speeches, p. 116): "If I were a judge in India, I should have no scruple about punishing a Christian who should pollute a mosque" (1922) C.L.J. 127, 135. When Macaulay became a legislator in India, he saw to it that the law protected the religious feelings of all. In those days India was a plural society: today the United Kingdom is also.' (*R v Lemon* [1979] AC 617, p.658).

Those seeking to regulate the internet should focus not on the desire to establish rules and jurisdictions but on mechanisms whereby several sets of rules may operate within a single context. Whereby the inherent and natural conflicts of jurisdictions may be allowed to co-exist, for co-exist they must..

**End Notes**

(1). See an attempt to control elements of the internet, Internet Service Providers <http://www.ispa.org.uk/>

(2). God Allah was followed by the Prophet Mohammed to the letter of the divine revealed laws. Therefore his behaviour, sunna is considered unequivocally as 'classical guidelines' and thus Muslims are expected to

follow sunna.

(3). Many Western jurists believe at the end the dominant state laws will be able to extinguish customs and personal laws of normative orderings/sub-groups. An adaptation of dominant culture and legal system by sub-groups and prohibition of non-state laws on the ground of repugnance and public policy by State, in their views, could be able to create monistic legal system. See further, Diamond, S (1973) 'The Rule of Law Versus the Order of Custom', in Black, D and Mileski, M eds, The Social Organisation of Law, Seminar Press: New York, pp. 318-344.

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