The morality of cultural pluralism

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Prologue – Pluralism and children’s rights

In 1968 a man went to a doctor in South London for medical treatment of a venereal disease. He introduced his young wife to the doctor and let it be known that he had already taken her to a clinic to be fitted with a contraceptive appliance. The doctor was concerned and reported the matter to the police who brought a complaint to the juvenile court that she was in need of care because she was being exposed to moral danger.¹ The couple were Nigerian Muslims:² he was in his mid-twenties and she was at most 13, but may have been as young as 11. They had married in northern Nigeria shortly before coming to England. The court made a “fit person order”³ under the Children and Young Persons Act 1963 and the girl was admitted to the care of a local authority. The reasons which prompted the court to conclude that she was in moral danger are encapsulated in the following statement:

Here is a girl, aged 13, or possibly less, unable to speak English, living in London with a man twice her age to whom she has been married by Muslim law. He admits having had sexual intercourse with her at a time when according to the medical evidence the development of puberty had almost certainly not begun . . . He further admits that since the marriage . . . he has had sexual relations with a prostitute in Nigeria from whom he has contracted venereal disease. In our opinion a continuance of such an association, notwithstanding the marriage, would be repugnant to any decent-minded English man or woman. Our decision reflects that repugnance.⁴

This decision was reversed on appeal by the Divisional Court. The Lord Chief Justice, Lord Parker, conceded that it was possible to hold that a validly married wife was in moral danger, but he refused to accept that the girl in this case was. He said:

² They were domiciled in Nigeria.
³ Fit person orders were replaced by care orders in 1969.
I would never dream of suggesting that a decision by this bench of justices, with this very experienced chairman, could ever be termed perverse: but having read that, I am convinced that they have misdirected themselves. When they say that ‘a continuance of such an association notwithstanding the marriage would be repugnant to any decent-minded English man or woman’, they are I think, and can only be, considering the view of an English man or woman in relation to an English girl and our Western way of life. I cannot myself think that decent-minded Englishmen or women, realising the way of life in which this girl was brought up, and this man for that matter, would inevitably say that this is repugnant. It is certainly natural for a girl to marry at that age. They develop sooner, and there is nothing abhorrent in their way of life for a girl of 13 to marry a man of 25 . . . Granted that this man may be said to be a bad lot, that he has done things in the past which perhaps nobody would approve of, it does not follow from that this girl, happily married to this man, is under any moral danger by associating and living with him. For my part, as it seems to me, it could only be said that she was in moral danger if one was considering somebody brought up and living in our way of life and to hold that she is in moral danger in the circumstances of this case can only be arrived at, as it seems to me, by ignoring the way of life in which she was brought up, and her husband was brought up.5

The Divisional Court held that the marriage was entitled to recognition by the English courts. It followed from this that the husband was not committing the offence of unlawful sexual intercourse6 – unlawful meant outside marriage.7

The case, understandably, provoked considerable controversy. The Daily Express was outraged. So was Baroness Summerskill who initiated a debate in the House of Lords.8 The decision was branded as racist, a failure by white institutions to protect a vulnerable black child. Olive Stone thought the case "disturbing"9 and Ruth Deech believed its “practical consequences would be disastrous”.10 It led Ian Karsten to call for a minimum age to be prescribed for recognition purposes.11 But other commentators welcomed the decision. It showed a willingness to embrace the customs and culture of another society.12 What was “moral danger” was being tested by the morality of the culture to

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5 Ibid., pp. 15–16.
6 Sexual Offences Act 1956 s. 6(1) (intercourse with a girl under 16).
8 Hansard H. L. vol. 290, cols. 1321–1323.
10 "Immigrants and Family Law", (1973), 123 NLJ 110, 111.